

8.8.2022 Due To The Public Holidays The

Case is Adjourned To 30-9-2022.



Reader.

21.06.2022

Mr. Amad Nasir Khan Kundi, advocate for the appellant present and arguments at preliminary hearing heard.

Learned counsel for the appellant contended that the appellant is aggrieved of the impugned order dated 23.04.2013 whereby major penalty of dismissal from service was imposed on the appellant for willful absence w.e.f. 03.07.2012. The appellant was charged in FIR No. 257 dated 28.03.2012. He was arrested on 16.02.2020 and acquitted by the competent court of jurisdiction on 22.03.2021. It was further argued that as the appellant was facing criminal proceedings therefore he remained absent from duty and it was only after acquittal on 22.03.2021 that he submitted departmental appeal on 21.05.2021 which was not decided within the statutory period whereafter the appellant approached the august Peshawar High Court in Writ Petition No. 3584-P/2021. However, his Writ Petition was dismissed on the ground of jurisdiction under Article 212 of the constitution, on 10.11.2021. The appellant thereafter submitted the instant service appeal on 23.11.2021. It was further contended that the appellant after having been nominated in the said FIR, had requested for 30 days leave which was accordingly granted on 08.05.2012. Thereafter, the appellant submitted another application on 28.05.2012 for 2 months leave which was also accordingly sanctioned w.e.f. 04.05.2012 to 02.07.2012 vide office order dated 02.07.2012. However, on expiry of the leave period, the appellant did not report for duty and remained absent as a result of which notices were issued and departmental proceedings initiated against him under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Learned counsel for the appellant further argued that ends of justice have not been met because the appellant was facing criminal proceedings and absence was not willful on his part. He has not been afforded personal hearing before the imposition of major penalty of dismissal from service which is in itself harsh penalty and there are plethora of judgements of the superior court that in case of imposition of major penalty of dismissal or removal from service, it is obligatory for the respondents to give the appellant fair chance of defence and personal hearing.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments before the S.B on 09.08.2022.

(Mian Muhammad)
Member (E)

Rs-500/-
Appellant Deposited
Security & Process Fee

A. J. 21/6/22

Notice Issued
for 09/08/22

19.04.2022

Learned counsel for the appellant present.

Learned counsel for the appellant though tried to argue the case but could not justify the issue of limitation i.e 8 years nor she could produce any substantial evidence/document on the point. She requested for adjournment enabling her to prepare the case for proper assistance of the court. Adjourned. To come up for preliminary hearing on 25.05.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER(E)

25.05.2022

Mr. Amad Nasir Kundi, Advocate junior of learned counsel for the appellant present and requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing on 21.06.2022 before S.B.



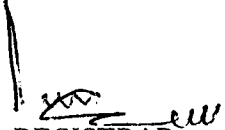


(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7785/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/11/2021	<p>The appeal of Mr. Jasim Khan resubmitted today by Mr. Mukhtiar Ahmad Maneri may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put there on <u>07/02/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	07.02.2022	<p>Due to retirement of the Hon'able Chairman, the case is adjourned to 19.04.2022 before S.B for the same.</p> <p style="text-align: right;"> Reader</p>

The appeal of Jasim Khan S/O Sher Ghulam Khan received today i.e. on 23.11.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Address of the appellant is incomplete.
2. Page no. 11, 13, 14-24, 47 attached with the appeal are illegible which may be replaced by legible/better one.

No. 2328 /S.T,

Dt. 23/11 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mukhtar Ahmad Maneri Adv.,
SCP, Peshawar.

Sir

Resubmitted after doing the
needful



24-11-2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 7785 /2021

Jasim Khan

.....Appellant
Versus.

Government of Khyber Pakhtunkhwa & Others

..... Respondents.

I N D E X

S.NO.	DESCRIPTION OF DOCUMENTS	ANNUEXURE	PAGES
1.	Memo of Appeal along with affidavit		1-7
2.	Application for condonation of delay		8-9
3.	Copy of CNIC of the Appellant	A	10
4.	Copies of appointment order dated 11.12.2009 &	B	11
5.	Copy of Service card of the Appellant	C	12
6.	Copy of FIR	D	13-14
7.	Copies of applications & sanctions	E, F, G & H	15-18
8.	Copy notices	I, J, K, L & M	19-23
9.	Copy of office order dated 23.04.2013	N	24
10.	Copy of judgment dated 22.03.2021	O	25-45
11.	Copy of appeal dated 20.05.2021	P	46
12.	Copy of forwarding letter dated 04.06.2021	Q	47-48
13.	Copy of letter dated 04.08.2021	R	49-52
14.	Copies of letter dated 20.08.2021 & 27.08.2021	S & T	53-57
15.	Copies of WP No. 3584-P/2021 and order dated 10.11.2021	U & V	58-66
16.	Wakalatnama		67

Peshawar.

Dated:- ___/08/2021.

MIRI
Appellant.

Through:

Mukhtar Ahmad Maneri
Advocate Supreme Court of Pakistan
Office # 2, 2nd Floor, Juma Khan Plaza, Near
Directorate Health, KP, Warsak Road, Peshawar.
Ph:091-5200710, Mob: 0333-215-6006
Email: mukhtaradvocate@yahoo.com

&

Ser
Amaad Nasir Kundi
Advocate High Court, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____/2021

Jasim Khan
S/O Sher Ghulam Khan

.....Appellant

VERSUS.

1. Government of Khyber Pakhtunkhwa,
Through Secretary Agriculture, Livestock and Cooperation,
Civil Secretariate, Peshawar.
2. Section Officer (Establishment),
Agriculture, Livestock and Cooperation, Civil Secretariate,
Peshawar.
3. Director Agriculture Engineering,
Directorate of Agriculture Engineering,
Khyber Pakhtunkhwa, G.T Road Tarnab, Peshawar.

..... Respondents

=====

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNALS ACT, 1974
AGAINST THE ORDER DATED 23/04/2013 WHEREBY
MAJOR PENALTY OF DISMISSAL FROM SERVICE W.E.F.
03.07.2012 WAS IMPOSED ON THE APPELLANT IN TERMS
OF RULE 9 OF KHYBER PAKHTUNKHWA (E & D) RULES,
2011 AND SUBSEQUENT ORDERS ON THE APPEAL FOR
RE-INSTATEMENT IN SERVICE DATED 04.06.2021,
04.08.2021, 20.08.2021 & 27.08.2021 OF THE
RESPONDENTS NAMED ABOVE.

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED
ORDERS DATED 23/04/2013 WHEREBY MAJOR PENALTY
OF DISMISSAL FROM SERVICE W.E.F. 03.07.2012 WAS
IMPOSED ON THE APPELLANT IN TERMS OF RULE 9 OF
KHYBER PAKHTUNKHWA (E & D) RULES, 2011 AND
SUBSEQUENT ORDERS ON THE APPEAL FOR
RE-INSTATEMENT IN SERVICE DATED 04.06.2021,
04.08.2021, 20.08.2021 & 27.08.2021 OF THE
RESPONDENTS NAMED ABOVE MAY BE SET ASIDE AND
THE APPELLANT MAY BE RE-INSTATED IN SERVICE WITH

ALL BACK AND CONSEQUENTIAL BENEFITS PURPOSES.

ANY OTHER RELIEF WHICH HAS NOT SPECIFICALLY BEEN PRAYED FOR BUT IS MORE CONDUCTIVE IN THE FACTS AND CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED IN THE BEST INTEREST OF JUSTICE, EQUITY AND THE LAW.

Respectfully Sheweth;

FACTS:

1. That the appellant is law abiding citizen of the Islamic Republic of Pakistan and bona fide resident of District Peshawar having all his rights guaranteed under the law and Constitution of the Islamic Republic of Pakistan, 1973.

Copy of CNIC of the Appellant is attached herewith and marked as Annexure-A.

2. That the appellant was appointed as Junior Clerk (BPS-07) in the Directorate of Agriculture Engineering KP vide his appointment order No. Endst. No. 7172-74 /DAE/Estt; dated 11.12.2009 and was performing his duties to the entire satisfaction of his high ups.

Copies of appointment order dated 11.12.2009 & Service card of the Appellant are attached herewith and marked as Annexure-B & C respectively.

3. That appellant was illegally nominated in case FIR No. 257 dated 28.03.2012 registered U/S 302, 324, 34 of PPC, of PS Chamkani whereby he was put behind the bars in the in the above mentioned forged, fictitious and concocted FIR.

Copy of FIR is attached herewith and marked as Annexure-D.

4. That the Appellant intimated the department (respondent No. 3) in respect the above-mentioned situation vide his application dated 09.04.2012 which was sanctioned on 04.05.2012 and another application for extension dated 28.05.2012 which was also accepted vide sanction dated 02.07.2012.

Copies of applications & sanctions are attached herewith and marked as Annexure-E, F, G & H respectively.

5. That on account of gravity of the matter the Appellant along with

his family members have shifted to some unknown place and that the situation mentioned-above was beyond his control as such he could not attend his office whereby the department vide various notices of absence from duty dated 24.07.2012, 06.08.2012, 16.08.2012 & 13.03.2013 and lastly the publication in the newspaper were issued against him which were neither communicated nor received to appellant named above.

Copy notices are attached herewith and marked as Annexure-I, J, K, L & M respectively.

6. That although the respondent department was informed by the Appellant but even then, he was dismissed from service with retrospective effect on account of his absence vide office order Endst: No. 1325-27/DAE/Estd. Dated Tarnab, the 23/04/2013 issued by respondent No. 3 impugned herein which order has also never been communicated to the appellant as such he was deprived of his livelihood.

Copy of office order dated 23.04.2013 is attached herewith and marked as Annexure-N.

7. That after full-dressed trial by the court of worthy Additional District & Session Judge / Model Criminal Trial Court, Peshawar the appellant was honorably acquitted vide judgment in case No. 52/MC-SC of 2020 dated 22.03.2021.

Copy of judgment dated 22.03.2021 is attached herewith and marked as Annexure-O.

8. That after honorable acquittal by the learned trial court, the appellant filed an appeal dated 20.05.2021 through proper channel in respect of re-instatement in service which was received in the office of respondent No. 3 vide dairy No. 3014 dated 21.05.2021.

Copy of appeal dated 20.05.2021 is attached herewith and marked as Annexure-P.

9. That the above-mentioned appeal of the appellant, for re-instatement was forwarded by the respondent No. 3 to the respondent No. 2 vide his letter No. 7084/DAE/Estt:1/565 dated Tarnab, the 04/06/2021.

4

Copy of forwarding letter dated 04.06.2021 is attached herewith and marked as Annexure-Q.

10. That the respondent No. 2 has further forwarded the appellant's appeal for re-instatement in service to the respondent No. 1 vide letter No. SOR-III(E&D)/1-3/2020 dated 04.08.2021, wherein it has been opined that appellant should have been proceeded under Rule 9 of the KP Government Servants (E&D) Rules, 2011 and after fulfilment of the codal formalities removal from service should have been imposed instead of dismissal from service.

Copy of letter dated 04.08.2021 is attached herewith and marked as Annexure-R.

11. That vide letter dated 20.08.2021 of the respondent No. 1 addressed to the respondent No. 3 wherein it has also been mentioned that the request of the appellant may be examined under Rule 17 of KP Government Servants (E&D) Rules, 2011 which has also been not responded but vide letter date 27.08.2021 the above mentioned was send to the present appellant as such the appellant was left hi-and-dry.

Copies of letter dated 20.08.2021 & 27.08.2021 are attached herewith and marked as Annexure-S & T respectively.

12. That the appellant being constrained has approached the Honorable Peshawar High Court, Peshawar in the W.P No. 3584-P/2021 which was disposed of and the appellant was advised to recourse to the proper/competent forum for redressal of his grievances.

Copies of WP No. 3584-P/2021 and order dated 10.11.2021 are attached herewith and marked as Annexure-U & V respectively.

13. That the appellant has no other remedy but to knock the door of this honorable Tribunal on the following amongst other grounds;

GROUND S; -

A. That the impugned orders and inactions on the part of respondents are against the law, facts, and in violation of the

- settled norms of justice, hence liable to be set-aside.
- B. Because Appellant was nominated in a forged, fictitious and concocted case FIR No. 257 dated 28.03.2012, of PS Chamkani, regarding which he has dully intimated the department (respondent No. 3) in respect the above-mentioned situation vide his applications which were initially sanctioned and on account of gravity of the matter (lodging of FIR) the Appellant along with his family members were shifted to some unknown place in order to save their lives as the situation mentioned-above was absolutely beyond his control as such he could not attend his office whereby the department have served number of notices of absence from duty which have never been received to the Appellant in such like situation the respondent should kept the appellant under suspension as has been provided in regulation No. 194 of CSR.
- C. Although the respondent department was duly informed by the Appellant regarding the above-mentioned situation but even then, he was dismissed from service which is not justified as he was honorably acquitted by the learned Additional District & Session Judge / Model Criminal Trail Court, Peshawar after full dressed trail vide judgment in case No. 52/MC-SC of 2020 dated 22.03.2021 which is enough proof of the fact that the Appellant along with his family were facing the situation beyond their control, hence the dismissal order impugned herein is liable to set-aside.
- D. That after honorable acquittal by the learned trail court, the Appellant moved an appeal dated 20.05.2021 received in the office of respondent No. 3 vide dairy No. 3014 dated 21.05.2021 for re-instatement in service which was forwarded by the respondent No. 3 to the respondent No. 2 and further forwarded the same for re-instatement in service to the respondent No. 1, wherein opinion was furnished by the respondent NO. 1 & 2 that Appellant should have been proceeded under Rule 9 of the KP Government Servants (E&D) Rules, 2011 and after fulfilment of the codal formalities removal from service should have been imposed instead of dismissal from service while ignoring the ground reality that on account of honorable acquittal of the Appellant by the competent court of law nothing was left for

opinion as such the impugned orders are liable to be declared as illegal, null and void and ineffective upon the rights of the Appellant, hence this appeal.

- E. That a very harsh penalty has been imposed on present appellant inspite of the fact that he was nominated in the FIR and that he was behind the bar, which situation were absolutely beyond his control and after his hon'ble acquittal he then and their availed the departmental remedy but to no avail, hence he knocked the door of the Peshawar High Court, Peshawar by filing a writ petition bearing No. 3584-P/2021 which was disposed off with the observation that the present appellant would be at liberty to approach the proper/competent forum to redressal of his grievance.
- F. That although the present appeal is within time, but even then separate application is being filed alongwith this appeal for condontion of delay if any, because the appellant has inadvertently approached the Hon'ble Peshawar High court, Peshawar by filing a writ petition, which was disposed off with the observation, hence the present appeal.
- G. That the Appellant has never committed any act or omission which could be termed as misconduct, Since the Appellant has been acquitted honorably in the criminal case mentioned above, therefore, the Appellant is entitled to be reinstated in service with all back benefits.
- H. That the major penalty of dismissal from service has been passed without holding a regular inquiry, nor the respondents have passed dispensing with inquiry order with speaking reasons. Thus the whole action is not tenable under the law.
- I. That the impugned order/s of dismissal from service in violation of Rule 9 above, as the respondents have never observed the mandatory provisions of publication in two leading newspapers.

- J. That the impugned order/s is/are unlawful, as the same was passed with retrospective effect which is nullity in the eyes of law.
- K. That the Appellant is jobless since his illegal dismissal from service and urges other grounds at the time of hearing of this appeal with the kind permission of this hon'ble court.

Prayer;

It is, therefore, prayed that on acceptance of this appeal, the impugned orders dated 23/04/2013 whereby major penalty of dismissal from service w.e.f. 03.07.2012 was imposed on the appellant in terms of rule 9 of Khyber Pakhtunkhwa (E&D) Rules, 2011 and subsequent orders on the appeal/application for re-instatement in service dated 04.06.2021, 04.08.2021, 20.08.2021 & 27.08.2021 of the respondents named above may be set aside and the appellant may be re-instated in service with all back and consequential benefits purposes.


Any other better relief/s which has not specifically been prayed for but is more conducive in the facts and circumstance of the case may also be granted in the best interest of justice, equity and the law.

Peshawar.

Dated:- ____/08/2021


Appellant.

Through:

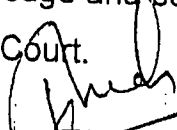

Mukhtar Ahmad Maneri
Advocate Supreme Court of Pakistan
Office # 2, 2nd Floor, Juma Khan Plaza, Near
Directorate of Health, KP, Warsak Road, Peshawar.
Ph:091-8200710. Mob: 0333-215-6006
Email: mukhtaradvocate@yahoo.com

&


Ameer Nasir Kundi
Advocate High Court, Peshawar.

AFFIDAVIT

I, Jasim Khan Jan S/o Sher Ghulam Khan, resident of Mohallah Garhi Khalid Khan Afridi, Tarnab Farm, Tehsil & District Peshawar, do hereby solemnly affirm and declare that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this August Court.


Khalid Mahmood
Oath Commissioner
Peshawar High Court


Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____/2021

Jasim Khan

.....Appellant
Versus.

Government of Khyber Pakhtunkhwa & Others

.....Respondents.

APPLICATION FOR CONDONATION OF DELAY


Respectfully Sheweth:

1. That the above titled appeal has been filed by the appellant named above in which no date of hearing has yet been fixed.
2. That the present appellant has filed his appeal before the respondent named above well in time.
3. That when the respondents named above didn't consider his appeal he was constrained to recourse to further remedies as such he filed a writ petition before the Hon'ble Peshawar High court, Peshawar in W.P No. 3584-P/2021, which was disposed off vide order dated 10.11.2021, hence the time consumed may kindly be condoned and the appeal of the present appellant may kindly be decided on merits.
4. That the superior courts have consistently been held that the cases should be decided on merits and technicalities should always be avoided for the safe administration of justice.

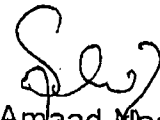
It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled appeal may kindly be condoned in the best interest of justice.


Appellant.

Through:


Mukhtar Ahmad Maneri
Advocate Supreme Court of Pakistan
Office # 2, 2nd Floor, Juma Khan Plaza, Near
Directorate of Health, KP, Warsak Road, Peshawar.
Ph: 091-5200710. Mob: 0333-215-8006
Email: mukhtaradvocate@yahoo.com

&


Aamir Masir Kundi
Advocate High Court, Peshawar.

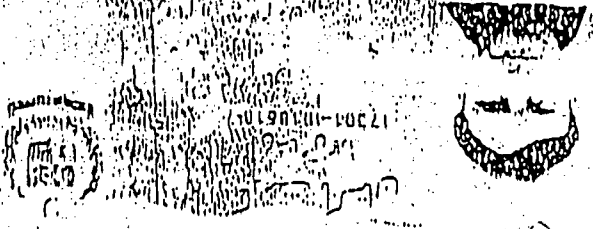
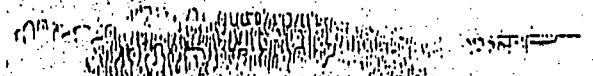
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20/12/2028 20/12/2010



SM971J 72001-4010510-2



12001-4010510-2

OFFICE ORDER

On the recommendation of Departmental Selection Committee, the competent authority is pleased to appoint Mr. Jasim Khan S/o Sher Ghulam, Mohallah Ghari Khalid Khan Afridi Village Tarnab Farm, Tehsil and District Peshawar as Junior Clerk BPS-07 (Rs. 3530-190-9210) plus usual allowance as admissible under the rules) on regular basis against the vacant post.

His appointment is subject to the following terms and conditions;

- i. He will get pay at the minimum of BPS-07 including usual allowances as admissible under the rules. He will also be entitled to annual increment as per existing policy.
- ii. His services will be considered regular but without pensionary or Gratuity benefits in terms of Section-19 of the NWFP Civil Servant Act, 1973 as amended vide NWFP Civil Servants (Amendment) Act, 2005 He will however be entitled to contribute to Contributory Provident Fund in such a manner and of such rates as prescribed by the Government.
- iii. His services will be liable for termination on one month's notice from either side. In case of resignation without notice two months pay/allowance shall be refunded to Government.
- iv. The appointee should join duty within 30-days of the issue of this order. After one month of issue of this order, his candidature will expire automatically and no subsequent appeal etc shall be entertained.
- v. He will be governed under such rules and regulations as may be issued from time to time by the Government.
- vi. In case of misconduct, he will be proceeded against the NWER Removal from Service (Special Powers) Ordinance, 2000 and the Rules framed there under from time to time.
- vii. No TA/IDA will be allowed to him for joining duty.
- viii. He shall produce a medical certificate of fitness from Medical Superintendent Civil Hospital before reporting himself for duty as required under the rules.

If the above terms and conditions of appointment are acceptable to him, he should in immediately communication his acceptance in writing in the office of the undersigned on or before 24.12.2009

Director
Agricultural Engineering
NWFP Tarnab Peshawar

11 B
OFFICE ORDER

On the recommendation of Departmental Selection Committee, the competent authority is pleased to appoint Mr. Jasim Khan S/O Sher Ghulam, Mohallah Ghari Khalid Khan Airdi, Village Tarnab Farm, Tehsil and District Peshawar as Junior Clerk (BPS-07 (Rs. 3530-190-9230) plus usual allowances as admissible under the rules) on regular basis against the vacant post.

His appointment is subject to the following terms and conditions:-

- i. He will get pay at the minimum of BPS-07 including usual allowances as admissible under the rules. He will also be entitled to annual increment as per existing policy.
- ii. He has not been previously dismissed or debarred from service of Government, Board, Local body or Autonomous or Semi-Autonomous organizations etc.
- iii. His services will be considered regular but without pensionary or Gratuity benefits in term of Section-19 of the NWFP Civil Servant Act, 1973 as amended vide NWFP Civil Servants (Amendment) Act, 2005. He will however be entitled to contribute to Contributory Provident Fund in such a manner and at such rates as prescribed by the Government.
- iv. His services will be liable for termination on one month's notice from either side. In case of resignation without notice, two month's pay/allowances shall be refunded to Government.
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- vii. In case of misconduct, he will be proceeded against the NWFP Removal from Service (Special Powers) Ordinance, 2000 and the Rules framed there under from time to time.
- viii. No TA/DA will be allowed to him for joining duty.
- ix. He shall produce a medical certificate of fitness from Medical Superintendent Civil Hospital before reporting himself for duty as required under the rules.

If the above terms and conditions of appointment are acceptable to him, he should immediately communicate his acceptance in writing to the office of the undersigned on or before 24.12.2009.

SD/-(HIDAYATULLAH JAN)
Director,
Agricultural Engineering,
N.W.F.P. Tarnab, Peshawar.

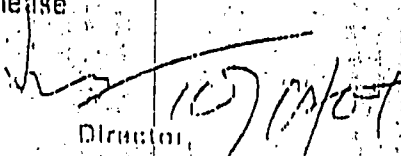
Endst: No. 7172-74 /DAE/Estt/ dated Tarnab, the 11 /12/2009.

Copy forwarded to:

1. Mr. Jasim Khan S/O Sher Ghulam, Mohallah Ghari Khalid Khan Airdi, Village Tarnab Farm, Tehsil and District Peshawar;
2. The Accountant General, NWFP, Peshawar;
3. The Accountant of this office;

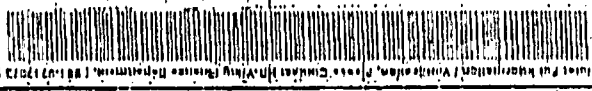
for information and necessary action please

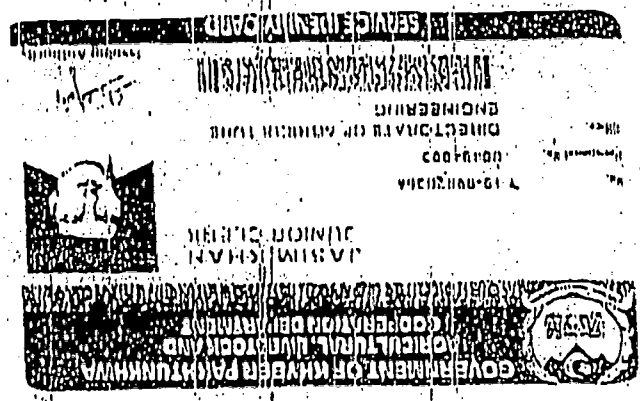
SA
T.C


Director,
Agricultural Engineering,
N.W.F.P. Tarnab, Peshawar.

1/8

1/8

	
Present Address: MOHALLAH DI ANI (KUALA KUALA APING), TAMPAL PAHAT, P.O. TAMPAL PAHAT, TERENGGANU DISTRICT, PERHAYUAN.	
Emergency Contact No: 0348-8000217	Home Group: A
Valid Until: 06-10-2010	Valid From: 06-10-2010
Mark of Identification: WOUND ON LEGS	
CHIC No: 17001-8011511-7	Date of Birth: 1980-1-1988
Family Name: SHICH-THULAM	



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14

2

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

ضلع: پشاور

تھانہ: چمکنی

وقت 05:30 بجے

تاریخ: 28/03/2012

علت: 257

1	تاریخ و وقت رپورٹ: 28/03/2012 وقت 07:20 بجے	چا کیدگی 28/03/2012 وقت 08:10 بجے
2	نام و سکونت اطلاع دہندہ مستغیث	ارباب شاہ ولد زربادشاہ قوم اعوان بعر 50/55 سال سکنہ مہرگل کلمیرہ کچوڑی
3	مختصر کیفیت جرم (معد دفعہ) اگر کچھ لیا گیا ہو۔	PPC 302/324/34/512
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	مہرگل کلمیرہ مکان خود کے اندر
5	نام و سکونت ملزم	
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	بہ رسیدگی تحریری مراسلہ مقدمہ قائم کیا جاتا ہے
7	تھانہ سے روانگی کی تاریخ و وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو۔

اس وقت ایک تحریری مراسلہ منجانب گل شہزاد SI آن ڈیوٹی کچوڑی LRH پشاور سے موصول ہو کر بہ مضمون ذیل ہے: بخدمت جناب SHO صاحب تھانہ چمکنی مجروحین میاں بادشاہ ولد زربادشاہ قوم اعوان بعر 50/55 سال (2) قسمت خان ولد زربادشاہ بعر 30/35 سال ساکنان مہرگل کلمیرہ کچوڑی بمقام کچوڑی LRH پشاور مدعی مقدمہ بالا بسلسلہ ہذا رپورٹ کرتا ہے کہ میں بمعہ مجروح قسمت خان جو بے ہوش ہے اور برادر ام سیال بادشاہ اور غیرت شاہ اور دیگر اہل خانہ خانہ خود میں موجود تھا سابقہ عداوت کی بناء پر رشتہ داران مسمیان (1) جان خان ولد عبدالقیوم (2) ارشاد ولد جان خان (3) جاسم خان ولد شیر غلام خان (4) سید خان ولد وزیر خان ساکن دیہہ ام با مسلح اسلحہ آتشیں آ کر اور یکدم جملہ کسان بالانے بہ ارادہ قتل اپنے اپنے اسلحہ آتشیں سے فائرنگ شروع کی جن کے فائرنگ سے میں اور قسمت خان اور سیال بادشاہ اور غیرت شاہ بھی لگ کر زخمی ہوئے جس سے بھی زخمت سے خون --- ہوئے سیال بادشاہ اور غیرت شاہ موقع پر جاں بحق ہوئے جو موقع پر پڑی ہے اور قسمت خان اور میں علاج معالجہ کی خاطر رشتہ داران نے ہسپتال لایا ہوں جو قسمت خان بے ہوش ہے اور بعد فائرنگ ملزمان جملہ فرار ہوئے میں اپنے آپ پر اور مجروح قسمت خان پر بار بار قتل فائرنگ کرنے اور زخمی کرنے اور مقتولین ہر دو کے قتل کا برخلاف بالا کسان دعویٰ ہوں واقع ہذا میرا اور مجروح اور دیگر خانہ خود میں موجود کسان کا چشم دید ہے العبد دستخط اُردو کارروائی پولیس حسب گفتہ سائل رپورٹ درج ہو کر پڑھ کر سنایا جا کر درستی کا دستخط ثبت کر کے جس کی میں تصدیق کرتا ہوں مجروحین کے نقشہ ضرر مرتب کر کے حوالہ CMO صاحب کیا جا کر مقتولین موقع پر پڑی ہے

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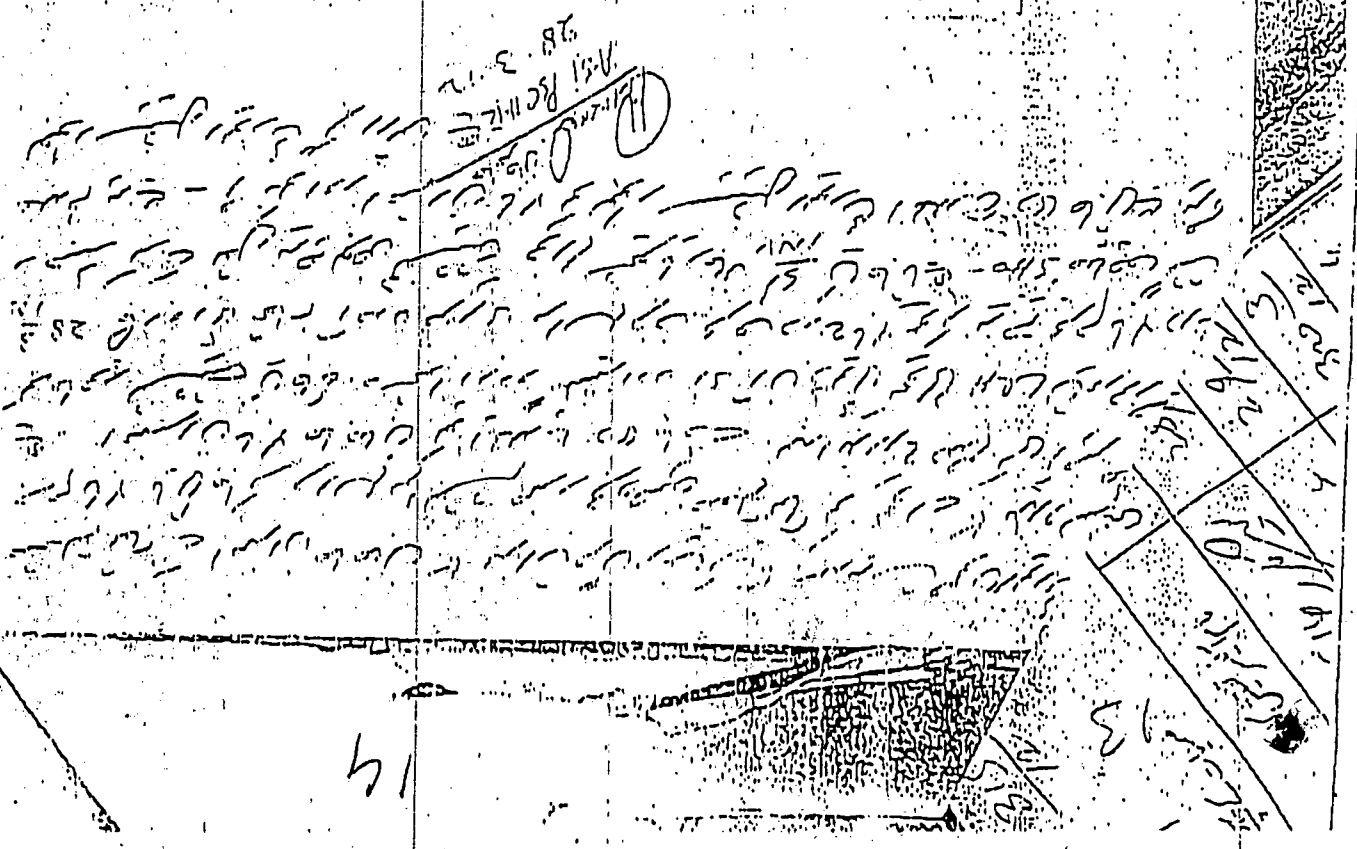
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۱۶
بخدمت جناب ڈائریکٹر ایگریکلچرل انجنئرنگ ترناب پشاور

درخواست برائے رخصتی بمعہ تنخواہیں

جناب عالی:

مودبانہ گزارش ہے کہ فدوی جو آپ کے زیر سایہ جوئیئر کلرک کے پوسٹ پر کام کر رہا ہے
فدوی اپنے گھر کو تعمیر کرنے جا رہا ہے۔ جس کی وجہ سے تین ماہ تک دفتر ہذا میں فرائض سرانجام دینے سے قاصر
ہے۔

لہذا آپ صاحبان مہربانی فرما کر فدوی کو تین ماہ رخصتی کی بمعہ تنخواہ منظور فرما کر مشکور فرمائیں۔

فقط: زیادہ آداب

مورخہ: 04-04-2012

العارض

جاسم خان ولد شیر غلام خان جوئیئر کلرک ساکن محلہ گڑھی خالد خان آفریدی ترناب فارم ضلع پشاور

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OFFICE ORDER

Mr. Jasim Khan Junior Clerk of this office is hereby granted 30 days earned leave with full pay w.e from 04/04/2012 to 03/05/2012 (both days inclusive) as admissible under revised leave rules 1981.

The official to be likely to return to the same post, Station on expiry of his leave.

(Mohib Ali Shah)

Director Agriculture Engineering

Khyber Pakhtunkhwa Tarnab Peshawar

No. 1278-80/DAE/ESTT

Dated: Tarnab the 08/05/2012

Copy to:

1. The Accountant General Khyber Pakhtunkhwa , Peshawar.
2. The Accountant of this office.
3. The official concerned with ref. to this application dated 04-04-2012.

For information and action

Director Agriculture
Engineering Khyber Pakhtunkhwa
Tarnab Peshawar

16

F

(1)

OFFICE ORDER

Mr. Jamim Khan Junior Clerk of this office has been granted 30 days earned leave with full pay w.e.f. from 4/4/2012 to 3/5/2012 (Both days inclusive) as admissible under revised leave rules-1981.

The official is to be likely to return to the same post/position on expiry of his leave.

34/- (MOHIB ALI SHAH)
Director,
Agril. Engineering,
Khyber Pakhtunkhwa,
Tarnab, Peshawar.

NO: 278-20 /DAE/Estt./
Copy to

Dated Tarnab the 8/5/2012

1. The Acting General Khyber Pakhtunkhwa, Peshawar
2. The Accountant of this office;
3. The official concerned with ref. to his application dated 4/4/2012;

For information and n/a action.

Director,
Agril. Engineering,
Khyber Pakhtunkhwa
Tarnab, Peshawar.

Page - 2

7/5 4/5
2012

S.T.C

S.T.C

To

17 G
The Director Agriculture Engg: KPK
Tarnab Peshawar

Subject: Two Months Leave

Sir:-

Most Respectfully I beg to say that I am building my house and cannot attend the office duty.

Therefore, Kindly grant me leave for two months.

I shall be very thankful to you for this act of Kindnes.

Thanks

Yours Obediently

Junior Clerk

of DAE

Dated: 28/05/2012

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~~W. H. Miller~~
12/15/12

~~12/15/12~~
12/15/12

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Mr. C. D. ...
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OFFICE ORDER

Mr. Jasim Khan Junior Clerk of this office was granted 30 days earned leave on full pay with effect from 4-4-2012 to 03-05-2012 vide this office No. 1278-80 dated 08-05-2012 the leave is hereby extended for more sixty days is earned leave on full pay with effect from 4/5/2012 to 2/7/2012 as admissible under the revised leave rules 1981. No further leave will to sanctioned to him after availing the leave.

Sd/ENGR MOHIB ALI SHAH
Director Agriculture Engg
Khyber Pakhtunkhwa °Tarnab Peshawar

No. 1890-92/DAE/Estt/1/563

Dated Tarnab the 2/07/2012

Copy to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Accountant of this office for information and with the remarks that pay of the official may be stopped after 2/7/2012, till further orders.
3. The official concerned.

Director Agriculture
Engineering Khyber Pakhtunkhwa
Tarnab Peshawar

18

H

OFFICE ORDER

Mr. Jozim Khan Junior Clerk of this office was granted 30 days earned leave on full pay with effect from 4/4/2012 to 3/3/2012 vide this office No. 1278-80 dated 13/5/2012; the leave is hereby extended for more 30 days as earned leave on full pay with effect from 4/3/2012 to 2/7/2012; as admissible under the revised leave rules 1981. No further leave will be sanctioned to him after availing of this leave.

Sd/- (MNGR. MOHED ALI SHAH)
Director, Civil Engineering,
Khyber Pakhtunkhwa Tarnab

NO: 1570-92/DAN/Estt/1/563/ Dated Tarnab the 2/7/2
Copy to :

- 1: The Acctt: General Khyber Pakhtunkhwa Peshawar;
- 2: The Accountant/Cashier of this office for information and with the remarks that pay of the official may be stopped after 2/7/2012, till further orders;
- 3: The official concerned;

Witness

Sd/- Director,
Civil Engineering,
Khyber Pakhtunkhwa,
Tarnab, Peshawar

Per-3

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No. 2082/DAE/Estt/

19 I
Dated Tarnab the 24/07/2012

To:

Mr Jasim Khan
Junior Clerk
S/o Sher Ghulam
Mohallah Ghari Khalid Khan Afridi;
Village and P/O Tarnab Farm Tehsil and District Peshawar.

Subject Absent from Duty

MEMORANDUM

The earned leave granted to your vide this office Order No. 1890/92 dated 02/07/2012 has expired on 02/07/2012 but have not reported for duty since 03/07/2012 till now.

You are therefore directed to report for duty within ten days from the receipt of this memo and also explain the reason of your willful absence otherwise action will be initiated against you under the relevant rules.

Director Agriculture
Engineering Khyber Pakhtunkhwa
Tarnab Peshawar

19

I

UNCLASSIFIED

2082/DAE/att:1

Dated Tarnab the 24/07/2012



Mr. Jasin Khan;
Junior Clerk
S/O Sher Muhammad,
Mollah Shari Khalid Khan Alvidi,
Village P.O. Tarnab Farm Tehsil and Distt.
Peshawar.

SUBJECT: ABSENCE FROM DUTY

MEMORANDUM

The earned leave granted to you vide this office order No. 1090-92 dated 2/7/2012 has expired on 2/7/2012 but you have not reported for duty since 3/7/2012 till now.

You are therefore directed to report for duty within 10 days from the receipt of this memo. and also explain the reason of your wilful absence; otherwise action will be initiated against you under the relevant rules.

P-91

Director,
Agricultural Engineering,
Khyber Pakhtunkhwa, Tarnab,
PESHAWAR

WAHEED

5/2/2012

P-101, 103
-6/15/12

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REGISTERED

20

"J"

No. 2170/DAE/Estt/1/565/

Dated Tarnab the 06/08/2012

To:

Mr Jasim Khan
Junior Clerk
S/o Sher Ghulam
Mohallah Ghari Khalid Khan Afridi;
Village and P/O Tarnab Farm Tehsil and District Peshawar.

Subject Absent from Duty

MEMORANDUM

Your attention is drawn to this office memo No. 2082/DAE/Estt/1/565 dated 24/07/2012 where in you were asked to report for duty but have still absent from duty.

You are once again directed to report for duty within 7 days from the receipt of this memo and also explain the reason of you willful absence, otherwise action will be taken against you under efficiency and Disciplinary Rule 2011.

Director Agriculture
Engineering Khyber Pakhtunkhwa
Tarnab Peshawar

20

J

REGISTERED

NO: 2170
TO:

/DAM/Extt: 1/565/

Dated Tarnab the 6/8/2012

Mr. Basim Khan,
Junior Clerk,
S/O.

Shor Ghulam,
Mehallah Ghani Khaliq Khan Afridi,
Village and P.O. Tarnab, Tehsil and
District Peshawar.

SUBJECT:

ABSENT FROM DUTY

MEMORANDUM

Your attention is drawn to this office memo. No. 2082/DAM/Extt: 1/565/ dated 24/07/2012, wherein you were asked to report for duty, but you have been absent from duty.

You are once again directed to report for duty within 7 days from the receipt of this memo, and also explain the reason of your wilful absence, otherwise action will be taken against you under Efficiency and Disciplinary Rules 2011.

Director,
Agriculture Department,
Khyber Pakhtunkhwa,
Tarnab, Peshawar.

Waheed

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Handwritten initials: T.C

Handwritten number: P-93



21
" K "

FINAL NOTICE REGISTERED

No. 2243/DAE/Estt/1/565/

Dated Tarnab the 16/08/2012

To:

Mr Jasim Khan
Junior Clerk
S/o Sher Ghulam
Mohallah Ghari Khalid Khan Afridi;
Village and P/O Tarnab Farm Tehsil and District Peshawar.

Subject Absent from Duty

MEMORANDUM:

Your attention is drawn to this office No. 2082/DAE/Estt/1/565/ dated 24/07/2012 and subsequent reminder No. 2170/DAE/Estt/1/565 dated 06/08/2012 and with the remarks that you are finally directed through this notice to report for duty within 7 days to the office of the undersigned and also explain the reason of your willful absence 3/7/2012 failing which action will be taken against you under Khyber Pakhtunkhwa E & D rules 2011.

Director
Agriculture Engineering
Tarnab Peshawar

21 12
FINAL NOTICE BY REGISTERED

NO: 2243
TO :

/DAE/Batt: 1/565

Dated: Tarbela, 16/8/2012

Mr. Farid Khan,
Junior Clerk,
S/O Sher Ghulam,
Mohallah Ohari Khelid Khud Khudai,
Village and P.O. Tarbela Farm Tehsil
and District Peshawar.

SUBJECT:

ABSENCE FROM DUTY

MEMORANDUM :

Your attention is drawn to this office
No. 20812/DAE/Batt: 1/565/ dated 24/4/2012 and subsequent
reminder No. 2170/DAE/Batt: 1/565/ dated 6/8/2012 and with
the remarks that you are finally directed through this
notice to report for duty within 7 days to the office
of the undersigned and also explain the reason of your
willful absence since 3/7/2012, failing which action will be
taken against you under Khyber Pakhtunkhwa B & I Rules, Para-9,
2011.

Witnessed

Director,
April Engineering,
Khyber Pakhtunkhwa,
Tarbela, Peshawar.

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DAE/Estt/1/565/

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" L "

Dated Turnab the 13/03/2013

To

The director of Information
Government of Khyber Pakhtunkhwa
Peshawar

Subject: NOTICE ABSENT FROM DUTY

Memo:

Enclosed please find herewith (7) copies of the notice absent from duty in (Urdu) which may kindly be advised in the News Papers as per standing order for wide publicity. The bill of cost may please be submitted to this office in duplicate for payment.

(ENCL: AS ABOVE)

Director
Agriculture Engineering
Tarnab Peshawar

22 L

1/DAE/Estt/1/565 dated Tarnab

13-03-2013

The Director of Information,
Government of Khyber Pakhtunkhwa,
Peshawar.



Subject: NOTICE ABSENT FROM DUTY

Memo:

Enclosed please find herewith Seven (7) copies of the Notice, absent from duty in (Urdu) which may kindly be advertised in the News Papers, as per standing order for wide publicity. The bill of cost may please be submitted to this office in duplicate for payment.

(ENCL: AS ABOVE)

Director,
Agricultural Engineering,
Khyber Pakhtunkhwa, Tarnab, Peshawar.

19/4

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OFFICE ORDER

Whereas Mr. Jasim Khan Junior clerk of this office remained will fully absent with effect from 03.07.2012 to date.

2. whereas the above named official was directed to report/join duty in office of the _____ the following registered letters on home address immediately;

- i. This office registered letter No. 2082 dated 24.07.2012
- ii. This office registered letter No. 2170 dated 06.08.2012
- iii. This office registered letter No. 2243 dated 16.08.2012

3. Whereas the above named official neither reported/joined his duty nor responded to the office for attendance. Finally the official was served with notice. Published in))))))) express on 212.03.2012 yet he failed to present himself for duty.

4. Now the before, after, careful consideration of above mentioned fact, Mr. Jasim Khan junior clerk of this office is hereby dismissed from service with effect from 03.07.2012 i.e. the date of his letter from duty under clause/section 9 of the efficiency and disciplinary rules 2011.

Director
Agricultural Engineering
Khyber Pakhtunkhwa Tarnab Peshawar



انڈیکس

بعدالت جناب نوید الرحمن ایڈیشنل ڈسٹرکٹ جج / ایڈیشنل ایڈووکیٹ جنرل پشاور

عنوان: سید محمد علی محمد صاحب

نمبر مقدمتہ: 52 اسل. رجسٹر. 16/8/2020 رجسٹر. 10/10/2020 فیصلہ: 13/3/2021 صفحات: 150
C-3-117

نمبر شمار	تعداد	تفصیل
0-1	1	فہرست
2-19	18	انٹیمڈیٹ ڈیکریٹ
20-21	1	فائل نمونہ
21-62	42	مکاتیب عدالت
63-80	18	فہرست
81-112	32	فہرست
113-138	25	مکاتیب عدالت
139-150	12	مکاتیب عدالت

Certified that papers, as detailed above have properly been indexed.

Muharrir

Countersigned by

(Naveed ur Rehman)
Additional District & Sessions Judge
Model Criminal Trial Court, Peshawar

ATTESTED

29 MAR 2021

(Examiner)
District Court Peshawar

S
T.C



COURT OF MUHAMMAD FAISAL KHAN ADDITIONAL SESSIONS
JUDGE-IV, PESHAWAR
FORMAL CHARGE

SERIOUSLY AS JASIM and others

CR No. 26 dated 28/03/2012 under section 302/34/34 PPC of Police Station Chamkani, Peshawar.

Muhammad Faisal Khan Additional Sessions Judge-IV, Peshawar do hereby charge you accused:

Jasim, Khans s/o Sher Ghulam aged about 34 years r/o Afridi Ghari, Peshawar as follows:-

FIRSTLY:

That you accused named above along with you absconding co accused namely Jan Khan s/o Abdul Qayum, Irshad s/o Jan Khan and Said Khan s/o Wazir Khan on 28/03/2012 at about 05:30 hours at Mir Gul Kalay, Peshawar falling within the criminal jurisdiction of Police Station Chamkani, Peshawar while duly armed with deadly weapons and in furtherance of your common intention attempted at the lives of complainant Arbab Shah s/o Zurbad Shah and his three brothers namely Qismat Khan, Syal Badshah and Ghurat Shah, as a result of which Syal Badshah and Ghurat Shah sons of Zar Badshah sustained injuries and died on the spot and thus you thereby committed an offence punishable u/s 302/34 of the PPC and within my cognizance.

SECONDLY:

That you accused named above along with absconding named above on the same date, time and place while duly armed with firearms and in furtherance of your common intention attempted at the lives of complainant Arbab Shah s/o Zurbad Shah and his three brothers named above, as a result of which Arbab Shah s/o Zurbad and Qismat Khan sustained injuries and you thereby committed an offence punishable u/s 302/34 PPC and within my cognizance.

And I hereby direct that you be tried by me in the said charge.

RO & AC
10/07/2020.

Muhammad Faisal
ASJ-IV, PESHAWAR

The charge has been read over and explained to accused.

Q. Have you heard and understood the charge?

A. Yes.

Q. Do you want to plead guilty or claim trial?

A. No. I plead 'Not Guilty' and claim trial.

RO & AC
10/07/2020.

Muhammad Faisal
ASJ-IV, PESHAWAR

Accused Jasim Khan

CERTIFICATE

Certified that the charge has been framed in presence of accused under my hearing and dictation. The same has been read over and explained to the accused who signed/thumb impressed the same.

Muhammad Faisal
ASJ-IV, PESHAWAR

12/11/2020

12/11/2020

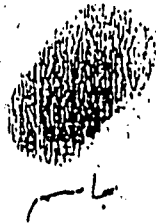
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27

IN THE COURT OF NAVEED UR RAHMAN
ADDL: SESSIONS JUDGE/ MCTC, PESHAWAR

79

ORDER
22/03/2021



Mr. Anwar Khan Dy.PP for the State present.
Accused Jasin Khan produced in custody.
Arguments have already been heard and record
perused.

Vide detailed judgment of today separately
recorded and placed on file; the accused facing trial
namely Jasin Khan S/o Sher Ghulam is hereby
acquitted. He is present in custody; therefore, he set
free if not required in any other case.

Co-Accused Irshad has already been declared
proclaimed offender in the previous trial of the
acquitted co-Accused Jan Khan and Said Khan
through order dated 29/06/2013 (by the then learned
ASJ-XIII, Peshawar). Evidence is preserved against
him within the meaning of section 512 Cr.P.C and his
perpetual non bailable warrant of arrested is issued.

The case property be kept intact till the arrest
and trial of the absconding co-Accused Irshad or
appeal/revision, whichever is later.

File be consigned to record room after
necessary completion and compilation.

Announced
22/03/2021

Naveed ur Rahman
Addl: Sessions Judge/
Mudera Criminal Trial Court,
Peshawar

ATTEST

29 MAR 2021

(Examiner)
District Court Peshawar

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100/12

63

IN THE COURT OF NAVEED UR RAHMAN,
ADDITIONAL SESSIONS JUDGE/
MODEL CRIMINAL TRIAL COURT, PESHAWAR

Case No. 52/MC-SC of 2020
Date of Institution 16/06/2020
Date of Transfer to this Court 10/10/2020
Date of Decision 22/03/2021

Statevs.....Jusim Khan s/o Sher Ghulam r/o Afridi
Ghuri, Peshawar
(Accused facing trial)

CASE FIR No. 257 DATED 28/03/2012 W/S 017/12-1/24 I.P.C AT POLICE
STATION CHAMKANL, PESHAWAR

JUDGMENT

1. Facts of the case as alleged in the FIR are the complainant Arbab Shah s/o Zar Badshah on 28/03/2012 at 0720hours while in injured condition reported in the casuality of L.R.H, Peshawar to the Duty Police Officer that at 0530hours he alongwith injured Qismat Khan (his brother and the second injured), two of his other brothers, namely Siyal Badshah, Ghairat Shah and other inmates of the house were present in their house when in the meanwhile the accused Jan Khan s/o Abdul Quyyum, Irshad s/o Jan Khan, Jusim Khan s/o Sher Ghulam, Said Khan s/o Wazir Khan duly armed trespassed into their house and started firing at the victims with their respective firearms in order to kill them; as a result of which the Complainant alongwith Qismat Shah, Siyal Badshah and Ghairat Shah got hit and sustained injuries. The injured Ghairat Shah and Siyal Badshah died on spot while he (Arbab Shah) and Qismat Shah were shifted to hospital by relatives. The

(Signature)
Naveed Ur Rahman
Addl. Sessions Judge
Model Criminal Trial Court, Peshawar

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T-C

(Signature)
29 MAR

Model Criminal Trial Court, Peshawar

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injured Qismat Shah was unconscious. The accused party after firing decamped from spot. Motive for the occurrence was stated as previous blood feud enmity.

2. After completion of investigation initially challan u/s 512 Cr.PC was submitted against all the four accused after compliance of formalities u/s 204 Cr.P.C and 87 Cr.P.C as they were all absconding and proceedings u/s 512 Cr.PC were initiated against them. Later on, co-accused Jan Khan and Saif Khan were arrested and faced trial and though initially convicted by my learned predecessor through judgment dated 08/05/2019; however, they were ultimately acquitted by the august Peshawar High Court Peshawar in Criminal Appeal No-617-P/2019 through judgment dated 08/10/2019. Later on the accused now facing trial Jasin Khan was arrested and his supplementary challan was submitted. This judgment of acquittal was not available on the case file or the requisitioned record; therefore, its attested copy was requisitioned and got verified from the quarter concerned.

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Accused was summoned from judicial lockup to face trial. Provisions of section 265-C Cr.PC was complied with and charge was framed to which the accused pleaded not guilty and claimed trial. Hence Prosecution was directed to produce its evidence.

4. Gist of evidence produced by Prosecution is as under:

PW-1 Qismat Shah stated that "on 28.03.2012 at about 05:30 hours, Jan Khan S/O Abdul Qayyum, Saeeel Ahmed S/O Afazir Khan, Irshad S/O Jan, Jasin Khan S/O Sher

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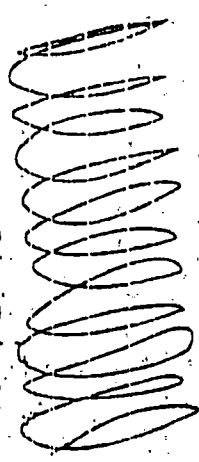
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Ghulam entered in our house while armed with deadly weapons and started firing, as a result of which I Qismat Shah, my three brothers Arbab Shah, Syal Badshah and Ghairat Shah sustained firearm injuries. My two brothers Syal Badshah and Ghairat Shah sons of Zar Badshah died on the spot. Later on people of the locality attracted to the spot and took us to the hospital. The occurrence was also witnessed by my nephew, I being unconscious on the way to the hospital. After about three months of the occurrence and on my discharge from the hospital, on 26.6.2012 my statement was recorded by the I.O. I charge the accused for the commission of offence."

P.V-2 Muhammad Shafi S/o Ghairat Shah stated that "on 28.03.2012 at about 05:30 hours, I alongwith my father Ghairat Shah and uncles namely Syal Bachu, Qismat Shah and Arbab Shah sons of Zar Badshah and others inmates of the house were present in our house, in the meanwhile the accused facing trial namely Jasam Khan son of Sher Ghulam alongwith co-accused Jan Khan s/o Abdul Qayyum, Saeed Ahmad s/o Wazir Khan and Irshad s/o Jan Khan entered into our house duly armed with firearms and started firing with the intention to kill us. Resultantly my father Ghairat Shah and uncle Syal Badshah son of Lal Badshah were hit and died on the



Naveed-Ur-Rahman
 Addl. District & Sessions Judge
 District Criminal Trial Court, Peshawar

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spot, the two other males namely Arabah Shah and Qismat

Shah sustained severe injuries and were seriously

injured with the help of neighbours and relatives they

were shifted to the LKH Hospital. The L.O visited the

spot after the medical treatment and discharged from

hospital of my uncle (Lehlu) Shah and prepared the plan of

my-pollution. The L.O took into possession the cord and

rewoven cord of the accused Saeed from the spot in my

presence. The L.O also took into possession blood stained

earth and empty shells in my presence. I charge the

accused for the commission of offence.

PV-3 Arabah Shah stated that "on 28.3.2012 at 05:30

hours we all family members including males/females and

children were present in our house. In the meanwhile

accused facing trial Jussam Khan son of Sher Ghulam

alongwith co-accused namely Jan Khan son of Abdul Qayum,

Arshad son of Jan Khan, Saeed Ahmad son of Wazir Khan dily

arrived with firearms entered into our houses and started

firing at us. Resultantly I sustained firearm injuries. Due

to the firing of the accused, my elder brother Syal

Badshah, Chahar Shah and Qismat Shah got hit and

sustained injuries. Syal Badshah and Chahar Shah died on

the spot. Thereafter accused decamped from the spot. PV

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Arbah Shah was present on the spot

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29 March 2012

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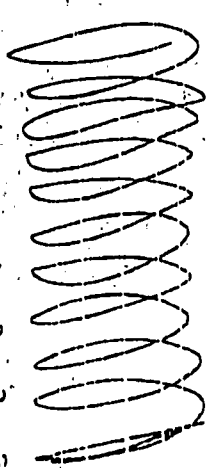
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Navdeep U. Raiman
Magistrate, Sessions Judge
District Court, Ludhiana
Punjab

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and witnessed the occurrence. Thereafter people of the locality and our relatives reached to the spot. They took us to the LRI Peshawar where at 07:30 AM I reported the matter to the casualty police wherein I charged the above named accused for the commission of offence. After my treatment in the hospital, I came back to the spot where the police were present, who prepared the site plan and also recovered 7 empties of 7.62 bore and 1 empty of .30 bore from the spot, alongwith CNIC card and service card of accused Saeed Ahmad. The police also took into possession blood stained earth from the spot. The site plan was prepared at my pointation as well as at the pointation of PW Muhammad Shafi. I charge the accused for the commission of offence.

PW-4 Israr ul Din SI stated that "during relevant days, I was posted as ASI in PS Chumkani. I am marginal witness to the recovery memo Ex.PW4/1 vide which the I.O in my presence took into possession blood stained earth from the places of deceased Syal Badshah and deceased Ghairat Shah and sealed the same in parcel No 1 & 2 Ex.P-1 & P-2 respectively. I am also marginal witness to the recovery memo Ex.PW4/2 vide which the I.O took into possession 04 empties of 7.62 bore from path-A and 03 empties of 7.62 bore from path-B freshly discharged and sealed the

Naved-Ur-Rahman
 Addl. District Sessions Judge
 District Court, Peshawar



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completion of investigation by the IO. I submitted complete challan u/s 512 Cr.PC against the accused".

PW-7 Arshad Iqbal ASI stated that "I remained with PW Sherhyar Khan SI who is now dead and I am well conversant with the handwriting and his signature.

Today I have perused the case file in which the dead PW Sherhyar Khan SI conducted investigation. Today I have seen the site plan Ex.PB, recovery memo regarding blood and blood stained earth already Ex.PW4/1, recovery memo of empty skull already Ex.PW4/2, search memo Ex.PW7/1, recovery memo of blood stained clothes of deceased already Ex.PW4/3, carbon copy of application to FSL Ex.PW7/2, recovery memo of CNIC Ex.PW7/3, recovery memo of blood stained garments of injured Ex.PW7/4, carbon copy of application to FSL regarding parcel No.6 & 7 Ex.PW7/5, application against the accused for departmental proceedings Ex.PW7/6, list of legal heirs of the deceased Ex.PW7/7 & Ex.PW7/8, Application for issuance of warrant u/s 204 Cr.PC Ex.PW7/9, and application for issuance of proclamation notice u/s 87 Cr.PC Ex.PW7/10, application for issuance notice u/s 88 Cr.PC is Ex.PW7/11. Application for issuance of zaima hay against accused Jan Muhammad as he was in judicial lockup to the learned JMJC

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Addl. District & Sessions Judge
Muzaffargarh District Court, Pakistan

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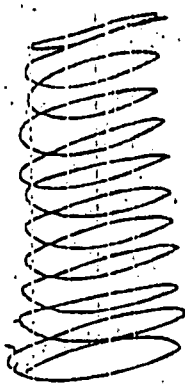
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Peshawar which is Ex.PW7/12. Application of obtaining police custody of accused Jam Muhammad Ex.PW7/13. application for further police custody to the learned JMJC Peshawar Ex.PW7/14. Similarly, he also received and placed on file the FSL reports Ex.PZ & Ex.PZ/1. All the above mentioned documents are in his handwriting and correctly bear the signatures of deceased PW Shuhran Khan."

PW-8 Muhammad Ali Constable stated that "I am marital witness to the pointation memo Ex.PW8/1 vide which the accused Jasin Khan (duly hand cuffed) led the police party to the place of occurrence and correctly pointed out the place of occurrence at Mehr Gul Kalay Ajlala Garay at about 17:10 hours to the I.O in our presence. In this respect the I.O prepared pointation memo which was signed by me along with PW Riaz All Shah constable No.12. (STO by the defence counsel that nothing incriminating was recovered or discovered during the said pointation, therefore, the said pointation is inadmissible in evidence). In this respect the I.O recorded our statement n/s 161 Cr.PC"

PW-9 Hafeez ur Rahman Inspector stated that "during the relevant days I was posted as SHO PS Chankant. On completion of investigation by the I.O against accused

Navod-Ul-Rahman
Asst. District & Sessions Judge
District Court Peshawar



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Jasim, I submitted supplementary challan against him, the challan form is Ex.PW9/1 which correctly bears my signature.

PW-10 Dr. Sulth Daid stated that "On 28.03.2012 at about 11:15 AM I conducted the autopsy on the dead body of the deceased Ghairat Shah S/O Zar Bacha aged about 45 ± 2 years R/O Dheri Kurami-Chankani, brought by Norang Shah FC No.5908, identified by Mohammad Rasliq and Aurangzeb and found the following:

EXTERNAL APPEARANCE:

An average built man, wearing Shalwar Qameez Mehrami Color white vest, clothes blood stained; RA and PM lividity developing.

INJURIES:

1. Fire arm entry wound on the right side front of chest .05x.05 cm in size, 4 cm from midlines, 10 cm below clavicle.
2. Exit wound on the right side back of chest, 2.5x1.5 cm in size, 3 cm from midline, 16 cm below base of neck.

THORAX:

Walls, pleurae, right lung, blood vessels were injured.

OPINION:

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Imdad-ur-Rehman,
Addl. Magistrate & Sessions Judge,
District Court Peshawar

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29 MAR 2012

(Examiner)
District Court Peshawar

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In my opinion, the deceased died due to injury to the right lung due to firearm.

Probable time between injury and death... Immediate.

Probable time between death and P.M.... 04 to 08 hours.

I have seen the P.M report alongwith pictorial consisting of 06 sheets which is Ex.P.M correctly bear my signatures. I have also endorsed injury sheet and inquest report prepared by the police.

On some day in about 11:45 AM I conducted the autopsy on the dead body of the deceased Siyal Bacha alias Khan S/O Zar Bacha aged about 55+-2 years R/O Dheri Korona Chamkani, brought by Norang Shah FC No.5908, identified by Mohammad Rafiq and Miranzeb and found the followings:-

EXTERNAL APPEARANCE:

A middle age man of average built, wearing white Shalwar Qamees white vest, A black waist coat and black sweater. Clothes are stained with blood. RM & PM lividity developing.

INJURIES:

1. Fire arm entry wound on the left side front of chest 0.5x0.5 cm in size, 2 cm from midlines, 4 cm below clavicle.

Naheed Ur-Rahman
Add. District & Sessions Judge
District Court, Peshawar

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2. FA exit wound on the right side back of chest, 2.5x1.5 cm in size, 1 cm from midline, 18 cm below base of neck.

THORAX

Walls, ribs, cartilages, pleurae, larynx, trachea, both lungs and blood vessels were injured.

OPINION:

In my opinion, the deceased died due to injury to both lungs due to firearm.

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

Probable time between death and P.M..... 05 to 08 hours.

I have seen the P.M report alongwith pictorial consisting of 06 sheets which is Ex-PM/1 correctly bear my signatures, I have also endorsed injury sheet and inquest report prepared by the police".

PW-11 Sher Rahman Khan SI stated that "during the days of occurrence I was posted as SI in police station Tarnab. I prepared inquest report of deceased Ghulam Shah Ex.PW11/1 and injury sheet Ex.PW11/2. Similarly, I also prepared the inquest report of deceased Syal Bacha Ex.PW11/3 and the injury sheet Ex.PW11/4. In this respect the I.O recorded my statement u/s 161 Cr.PC"

NAVEED UJ RAHMAN
M.D. District & Sessions Judge
Muzaffargarh District Court, Tarnab

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District Court Tarnab

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PW-12 Hamid Jan SI stated that "during the days of occurrence I was posted as ASI in police station Chamkani. On 28.3.2020 I received murasala from Casually LRI Peshawar. I correctly incorporated the contents of the murasala into FIR Ex.PW121"

PW-13 Muhammad Rinz Khan SI stated that "during the days of occurrence I was posted as SI in police station Chamkani. On 17.2.2020 HBA of accused Jusim was recalled thereafter, I arrested him and issued his writ of arrest Ex.PW131. On 18.10.2020 I vide my application Ex.PW 132 produced the accused before the learned JMHC Peshawar for obtaining his police custody which was accepted for two days. I interrogated the accused and during interrogation accused showed his willingness to point out the place of occurrence, resultant, he led the police party in official vehicle and made pointation of the place of occurrence, and in this respect I prepared pointation memo already Ex.PW133, (STO by the learned defence counsel that nothing was recovered or discovered during pointation therefore, Ex.PW133 is inadmissible in evidence). I recorded statements of PWs and the accused u/s 161 Cr.PC. After expiry of police custody, I vide my application Ex.PW133 produced the accused before the court concerned for recording his confessional statement

Naveed U-Rain
Addl. District & Sessions Judge
District Court Peshawar

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(Examiner)
District Court Peshawar

but he denied and was sent to the judicial lock up. After completion of investigation, I submitted case file to the SHO for submission of challan"

PW-14 Norang Constable No.5908 stated that "during the days of occurrence I was posted as constable in police station Chamkani. I escorted the dead body of deceased Ghairat Shuh and Syed Badshah from LRF Peshawar to the mortuary at KMC Peshawar. During escort nobody interfered with the dead bodies of the deceased. After PMT examination the doctor handed over to me the garments of both the deceased which I brought to the PS and handed over to the I.O. In this respect the I.O recorded my statement u/s 161 Cr.PC."

PW-15 Mukhtiar Ullah DFC stated that "during the days of occurrence I was posted as DFC in police station Chamkani. I was entrusted with the warrant issued against accused facing trial Jasin Khan and other accused. In this respect I visited the houses of accused but they were not present in their houses. In this respect I returned the warrant unexecuted. The warrant is Ex.PW15/1 while my report overleaf the said warrant is Ex.PW15/2. Similarly, I was also entrusted with the proclamation notices u/s 87 Cr.PC against the accused named above. I visited their houses and posted one copy

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Addl District Sessions Judge
District Criminal Trial Court, Peshawar

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District Court Peshawar

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on the outer door of the houses of deceased, pasted one copy on the notice board of the PS while returned the third copy alongwith my report and handed over to the I.O. In this respect the I.O recorded my statement u/s 161 Cr.PC. The notice u/s 87 Cr.PC is Ex.PW/15/3 and my report overleaf the said notice is Ex.PW/15/4 respectively"

PW-16 Muhammad Rafique stated that "deceased Ghairat Shah and Syed Bacha were my relatives as well as my co-villagers. I correctly identified their dead bodies before the police as well as before the doctor at the time of PM Examination. My statement u/s 161 Cr.PC was recorded"

PW-17 Daud Khan DFC stated that "I remained with PW Gul Shalizada Khan SI who is now paralyzed and unable to speak and walk and also cannot record his evidence. Today I have seen the mirasilla Ex.PW/17/1. I also see the injury sheets of injured which are Ex.PW/17/2 & Ex.PW/17/3 which are in the handwriting of PW Gul Shalizada and correctly bear his signatures"

Naveed-Ur-Rasheed
The District Sessions Judge
Muzaffargarh District Court, Faisalabad

5. Prosecution then closed its evidence thereafter statement of accused u/s 342 Cr.PC was recorded wherein the accused denied the charged and claimed his innocence.

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(Deputy Magistrate)
Muzaffargarh District Court, Faisalabad

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6. Arguments of learned Dy.P.P for State, assisted by learned private counsel for Complainant and learned counsel for accused have been heard.

7. Earlier my learned predecessor had convicted co-accused Jun Khan and Sald Khan through judgment dated OS/05/2019, however, they were ultimately acquitted by the august Peshawar High Court Peshawar in Criminal Appeal No-617-1/2019 through judgment dated OS/1/0/2019. The grounds, given by the august Peshawar High Court Peshawar for acquittal of the co-Accused, among others, are:

- a. In the site plan, the site of occurrence has been shown inside the house while in the inquest reports of the two deceased, it is shown as "thoroughfare of Meer Gul Kani Dheri Kuruni opposite the house of the deceased" and P.W-8 (of the previous trial) Narying Shih, F.C No-177 has also negated the version of the Complainant by stating that he escorted the dead bodies of the deceased from thoroughfare to the inquest and similar is the statement of P.W-9 (of the previous trial) Muhammad Raifq son of Sheer Meer regarding the place of occurrence in his cross-examination.
- b. The time of occurrence is mentioned in the two inquest reports as 0620hours while as per the FIR, it is 0530hours.
- c. The Complainant admitted to have made lodge first report at Police Post in which he didn't name the Accused, rather pinpointed them by reference to their family. In the subsequent

Naveed-Ur-Rahman
 Head, District Session Judge
 District Court, Peshawar

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(Examiner)
District Court Peshawar

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report in Hospital, he named all the Accused and at this time, the relatives of the Complainant had arrived to the hospital, thus making a room for consultation.

d. In view of the particular contradictions, the stamp of injuries doesn't necessarily mean that the Complainant is telling the truth.

e. From the dimensions and number of injuries on the persons of the deceased and injured, the occurrence seems to have been committed by a single or at the most by two persons and that the charge has been exaggerated.

f. Expert opinion has not been obtained as to the empty shells of 7.62 bore recovered from the spot in order to ascertain as to whether they had been fired from one or more guns?

g. The I.O cards of the Accused Saif Khan had been handed over by the Complainant to the I.O after his discharge from the hospital. The local police had raided the houses of the Accused on the same day (28/03/2012) and the possibility of taking those cards from their houses and then planting them as recoveries from the spot cannot be ruled out.

For these reasons, the august High Court held that the prosecution has failed to prove the guilt of the Accused beyond reasonable doubt and, consequently, the said two co-Accused were acquitted.

8. After the arrest of the Accused facing trial, namely Jusim, no incriminating piece of evidence has been added to the case, except the

Naib Magistrate
Khan Ghulam Saif Khan
Head Criminal Trial Court Peshawar

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29 MAR 2021

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District Court Peshawar

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evidence upon which the august High Court had earlier acquitted two co-Accused. The prosecution has only added a pointing memo, EXPW-8/1, according to which the Accused Jusim lead the I.O to the place of the occurrence and pointed it out; however, no fact has thereby been discovered. The Accused facing trial has been given a role similar to that of the acquitted co-Accused Jan Khan and Said Khan. The Accused has not confessed his guilt and no incriminating article has been recovered from his possession and the prosecution has lead the same evidence, which they relied upon in the case of acquitted co-Accused Jan Khan and Said Khan.

9. As stated earlier co-accused Jan Khan and Said Khan have been acquitted through judgment dated 08/10/2019. The said already collected evidence has once been disbelieved in the case of the two acquitted co-Accused. As per the worthy precedents of the august Supreme Court of Pakistan cited as 2019 SCMR 79 in case titled "Munir Ahmad vs. State", 2019 SCMR 274 in case title "Ahuf Hussain vs. State" and 2019 SCMR 1448 in case titled "Shah Wajiz Rasool vs. State", when evidence is disbelieved once in case of one accused, it cannot be believed against co-accused unless there has been independent and strong corroboration and that accused facing trial is to be treated alike with acquitted co-accused, in the absence of any distinction.

THE DISTRICT JUDGE
 DISTRICT COURT
 KARACHI EAST
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1. Hence, keeping in view the said principle of law, the accused facing trial namely Jusim Khan S/o She Ghulam is hereby acquitted!

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ADMITTED
 20 MAR 2019
 District Court

DIRECTORATE OF AGRICULTURAL ENGINEERING, KHYBERY**PARHTUNKHWA TARNAR, PESHAWAR**

No. 7084/DAE/Estt/1/565 dated Tarnab the 04.06.2021

To

The Section Officer (establishment)
Government of Khyber Pakhtunkhwa
Agriculture Livestock and cooperation operation Peshawar

Subject: **APPLICATION FOR RE-INSTATEMENT IN SERVICE**

Memo:

It is submitted for your kind information that;

1. Mr. Jasim Khan S/o Sher Ghulam was appointed as Junior Clerk (BPS-07) in Agricultural Engineering Wing of Agriculture, Livestock and cooperation department Khyber pakhtunkhwa by Director Agricultural Engineering, Khyber Pakhtunkhwa Tarnab Peshawar side office order No. 71/274/DAE/Estt dated 11.12.2009 (Annexure-A) as per recommendation of the Departmental Selection in its meeting held on 28.04.2009 and 10.04.2009.
2. The above named official submitted an application on 04.04.2012 for grant of 03 months leave with full pay with effect from 09.04 2012 for construction of his house (Annexure-B). the Director, Agricultural Engineering, Khyber pakhtunkhwa Tarnab Peshawar sanctioned the leave with fully pay with effect from 04.04.2012 to 03.05.2012 vide office No. 1278-80/DE/ES dated 08.05.2012 (Annexure-C). later on he further requested for two months leave through his application received on 28.05.2012 (Annexure-D) the period of leave was extended for further two months with effect from 04.05.2012 to 02.07.2012 by the Director, Agriculture Engineering, Khyber Pakhtunkhwa, Tarnab Peshawar vide office order No. 1890-92/DAE/Estt: dated 02.07.2012. (Annexure-E).
3. After expiry of his leave on 02 07 2012, the above named official not joint his duty and was found absent A notice was issued in him vide this office letter No 2082/DAE/Estt: dated 24.07.2012 to report for duty with in 10 stays, and also called him for explanation of his position (Annexure-F) with a reminder issued to his home address on dated 06.8.2012 and 16.08.2012 (Annexure-G), but he failed to join duty.
4. Finally a notice of advertisement through newspaper regarding his absented was furnished to the Director, information Government of Khyber Pakhtunkhwa, Peshawar vide letter No. 779/DAE/Estt:

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He is present in custody; therefore, be set free if not required in any other case.

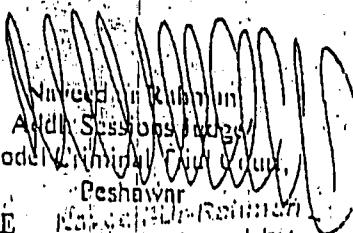
2. Co-Accused Irshad has already been declared proclaimed offender in the previous trial of the acquitted co-Accused Jan Khan and Said Khan through order dated 29/06/2013 (by the then learned ASJ XIII, Peshawar). Evidence is preserved against him within the meaning of section 512 Cr.P.C and his perpetual non-bailable warrant of arrested is issued.

3. The case properly be kept intact till the arrest and trial of the absconding co-Accused Irshad or appeal/revision, whichever is later.

4. Copy of this judgment is handed over to the accused being trial free of cost.

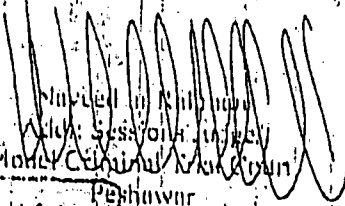
5. File be consigned to record room after necessary completion and compilation.

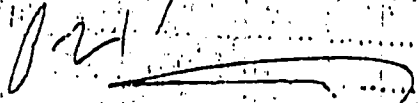
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Anwar-ur-Rahman
Addl. Sessions Judge
Model Criminal Trial Court,
Peshawar
Dist. & Sess. Judge
Model Criminal Trial Court, Peshawar

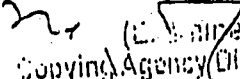
CERTIFICATE

Certified that this judgment consists of (18) pages, each and every page has been signed by me after making necessary correction therein.


Anwar-ur-Rahman
Addl. Sessions Judge
Model Criminal Trial Court,
Peshawar

No.	13901
Date of Application	29/3/21
Name of	Page 16 of 18
Worn	
For	
Signature	
Date of Preparation	29/3/21
Date of Delivery	29/3/21

CERTIFIED TO BE TRUE COPY


Copying Agency (District)
Peshawar.

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جناب عالی!

گزارش ہے کہ سائل ڈائریکٹوریٹ آف ایگریکلچر انجینئرنگ خیبر پختونخوا میں مورخہ 11 دسمبر 2009 کو بطور جونیئر کلرک بھرتی ہوا اور اپنی ذیلی پوری ٹگن اور محنت سے انجام دیتا رہا۔ آفس کے تمام افسران سائل سے خوش اور مطمئن تھے۔ سائل علامہ ترناب فارم پشاور میں ایک معزز اور شریف خاندان سے تعلق رکھتا ہے اور محنت دہن پاکستانی کی حیثیت سے پرائس اور پرسکین زندگی بسر کر رہا تھا۔

مورخہ 28 مارچ 2012 کو علاقے کے کچھ قانون شکن اور شرسد عناصر نے سائل آفس گھرت اور جمبولی واقعہ میں باوث کر کے 324 اور 302 دفعات لگا کر ایف آئی آر درج کروایا اور اسی طرح مجھے گھر اور دفتر سے بے دخل کر کے گھر اور تھلا لے کر باہر رہنے پر مجبور کر دیا۔ میرے مخالفین میرے تعلق اور نقصان پہنچانے کے درپے تھے میں اپنے تحفظ کے لئے در بدر رہا۔ اس دوران دفتر کی طرف سے جرحشیاں یا اخبار میں میری غیر عاضری کا جو اشتہار شائع کیا گیا ہے میں اس سے بالکل بے خبر رہا اور میرا رابطہ دفتر سے منقطع رہا، میرے ساتھ میری پوری فیملی اپنی فقط کے لئے گھر سے بے گھر رہی۔

جناب عالی! میں نے اپنی بے گناہی ثابت کرنے کے لئے مخالفین پر کی جرمے کے لیکن انہوں نے میری بے گناہی مننے کے لئے مجھے کوئی موقع نہیں دیا اور ہر حال میں نقصان پہنچانے کے درپے رہے۔ جب میں مخالفین کو منانے میں مایوس رہا تو قانون کے راستے پر چل کر میں نے اپنے آپ کو مورخہ 20 نومبر 2020 کو پولیس کے حوالے کیا۔ پولیس نے مجھے جیل بھجوا دیا۔ میں نے اپنی دفاع کے لئے ماڈل کریمنل ٹرائل کورٹ پشاور میں اپنا کیس شروع کیا۔ عدالت میں میرے مخالفین میرے خلاف کوئی ثبوت پیش نہ کر سکے اور میری بے گناہی کو دیکھتے ہوئے عدالت نے مجھے باعزت بری کر دیا۔

اس لئے آپ صاحبان سے مورد بانہ التماس ہے کہ میری غیر عاضری کی وجوہات کو دیکھتے ہوئے مجھے اپنی نوکری پر بحال کرنے کے احکامات جاری کئے جائیں تاکہ انصاف کا بدلہ والا ہوا اور میری پریشانیوں کا ازالہ ہو سکے۔

عین نواز شری ہوگی
 العارض

جاسم خان ولد شیر غلام خان (جونیئر کلرک)

ڈائریکٹوریٹ آف ایگریکلچر انجینئرنگ ترناب فارم پشاور خیبر پختونخوا

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	www.agrlengineering.kp.gov.pk	
	DIRECTORATE OF AGRICULTURAL ENGINEERING, KHYBER PAKHTUNKHWA, TARNAB, PESHAWAR	
P.O. S.T. Road, Tarnab Peshawar. Phone No. (91)-2964063 E-mail dne@kptarnab@gmail.com		

No. 7084 /DAE/Estt:1/565 dated Tarnab, the 04 / 06 /2021
To,

The Section Officer (Establishment),
Government of Khyber Pakhtunkhwa,
Agriculture, Livestock, and Cooperation Department, Peshawar.

Subject: APPLICATION FOR RE-INSTALEMENT IN SERVICE.

Memo:

It is submitted for your kind information that:-

1. Mr. Jasim Khan S/o Sher Gulistan was appointed as Junior Clerk (BPS-07) in Agricultural Engineering Wing of Agriculture, Livestock and Cooperation department Khyber Pakhtunkhwa by Director, Agricultural Engineering, Khyber Pakhtunkhwa, Tarnab Peshawar vide office order No. 7172-74/DAE/Estt: dated 11.12.2009 (Annexure-A) as per recommendation of the Departmental Selection Committee in its meeting held on 28.04.2009 and 30.04.2009.
2. The above named official submitted an application on 04.04.2012 for grant of 03 months leave with full pay with effect from 04.04.2012 for construction of his house (Annexure-B). The Director, Agricultural Engineering, Khyber Pakhtunkhwa, Tarnab Peshawar sanctioned the leave with fully pay with effect from 04.04.2012 to 03.05.2012 vide office order No. 1278-80/DAE/Estt: dated 08.05.2012 (Annexure-C). Later on, he further requested for two months leave through his application received on 28.05.2012 (Annexure-D), the period of leave was extended for further two months with effect from 04.05.2012 to 02.07.2012 by the Director, Agricultural Engineering, Khyber Pakhtunkhwa, Tarnab Peshawar vide office order No. 1890-92/DAE/Estt: dated 02.07.2012 (Annexure-E).
3. After expiry of his leave on 02.07.2012, the above named official not joint his duty and was found absent. A notice was issued to him vide this office letter No. 2082/DAE/Estt: dated 24.07.2012 to report for duty with in 10 days and also called him for explanation of his position, (Annexure-F), with a reminder issued to his home address on dated 06.08.2012 and 16.08.2012 (Annexure-G), but he failed to join duty.
4. Finally, a notice of advertisement through newspaper regarding his absence was furnished to the Director, Information Government of Khyber Pakhtunkhwa, Peshawar vide letter No. 779/DAE/Estt:

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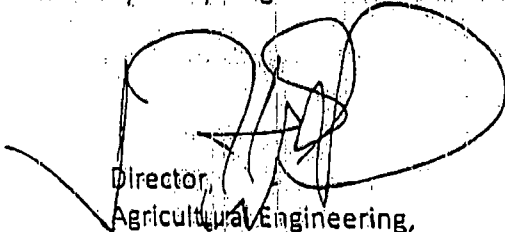
1/565 dated 13.03.2013 (Annexure-H), which was published in the Daily Express on dated 21.03.2013 through Adv. No. INF(P) 710 (Annexure-J),

5. Whereas the above named official neither reported/joined his duty nor responded to the above correspondence as well as final notice was also published in the newspaper mentioned above, but he failed to present himself for duty, therefore he was dismissed from service with effect from 03.07.2012 i.e. from the date of his absence from duty vide this office order No. 1325-27/DAE/Estt: dated 23.04.2013 (Annexure-K).

Now he submitted an application on dated 21.05.2021 (Annexure-L) along with judgment dated 22.03.2021 of the Hon: Additional Session Judge, Model Criminal Trial Court, Peshawar for reinstatement in service as Junior Clerk. He is also added that on 28.03.2012 he has been involved in a criminal case by someone as per FIR No.324 and No.302 and also stated that he was displaced with his family from his house since long for protection himself and his family therefore, he was absent from Government duty and absentee notices of office of the Director, Agricultural Engineering, Khyber Pakhtunkhwa, Tarnab Peshawar were not received. Now he has been acquitted as per judgment dated 22.03.2021 of the Hon: Additional Session Judge, Model Criminal Trial Court, Peshawar (Annexure-M).


In view of the above, necessary guidance may kindly be given to this office for appropriate action in the matter please.

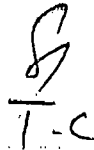
Encl: as above


Director,
Agricultural Engineering,
Khyber Pakhtunkhwa Tarnab, Peshawar

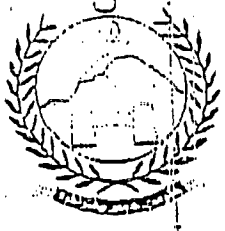
No. _____/DAE/Estt:1/565 dated Tarnab, the _____/2021

Copy of the above is forwarded to Mr. Jasim Khan S/o. Sher Ghulam Khan Ex-Junior Clerk of this office with reference to his application received on 20.05.2021 for information


Director,
Agricultural Engineering,
Khyber Pakhtunkhwa Tarnab, Peshawar


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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

(R)

No. SOR-III (E&AD)/1-3/2020
Dated Peshawar the August 04th, 2021

To

The Secretary to Govt. Khyber Pakhtunkhwa,
Agriculture Department.

Subject - APPLICATION FOR REINSTATEMENT IN SERVICE

Sir,

I am directed to refer to your letter No.SOE(AD)Service matters/Advice/AE/21/865 dated 25.06.2021 on the subject noted above and to state that under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 after fulfillment of all codal formalities removal from service should have been imposed instead of dismissal from service.

It is further stated that the request of Ex-official Mr. Jasim Khan may be examined under Rule-17 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 (copy enclosed), please.

Yours faithfully,

[Signature]
SECTION OFFICER (R-II)
Phone No. 9211793

Encl: A.A

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16. Procedure of inquiry against Government servant lent to other governments or organizations etc.---(1) Where the services of Government servant to whom these rules apply are transferred or lent to any other government department, corporation, corporate body, autonomous body, authority, statutory body or any other organization or institution, hereinafter referred to as the borrowing organization, the competent authority for the post against which such Government servant is posted in the borrowing organization may-

- (a) suspend him under rule 6; and
- (b) initiate proceedings against him/her under these rules:

Provided that the borrowing organization shall forthwith inform the authority which has lent his services, (hereinafter referred to as the lending organization) of the circumstances leading to the order of his suspension or the initiation of the proceedings, as the case may be.

Provided further that the borrowing organization shall obtain prior approval of the competent authority in the lending organization before taking any action under these rules against a Government servant holding a post in basic pay scale 17 or above.

(2) If, in the light of findings of the proceedings taken against the accused in terms of sub rule (1), the borrowing organization is of the opinion that a penalty may have to be imposed on him, it shall transmit the record of the proceedings to the lending organization, and the competent authority in the lending organization shall thereupon take action against the accused under rule 14.

(3) Notwithstanding anything to the contrary contained in sub-rules (1) and (2), the Chief Minister may, in respect of certain Government servant or class of Government servants to whom these rules apply, authorize any officer or authority in the borrowing organization to exercise all the powers of the competent authority under these rules.

17. Departmental appeal and review.---(1) An accused who has been awarded any penalty under these rules may, within thirty days from the date of communication of the order, prefer departmental appeal to the appellate authority:

Provided that where the order has been passed by the Chief Minister, the accused may, within the aforesaid period, submit a review petition directly to the Chief Minister.

(2) The authority empowered under sub-rule (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned department or

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...on consideration of the appeal or the review petition, as the case may be, by an order in writing-

- (a) uphold the order of penalty and reject the appeal or review petition; or
- (b) set aside the orders and exonerate the accused; or
- (c) modify the orders or reduce the penalty.

(3) An appeal or review petition preferred under these rules shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper and temperate language.

18. Appearance of counsel.---No party to any proceedings under these rules at any stage of the proceedings, except proceedings under rule 19, shall be represented by an advocate.

19. Appeal before Khyber Pakhtunkhwa Province Service Tribunal.---(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Province Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunals Act, 1974 (Khyber Pakhtunkhwa Act No. 1 of 1974).

(2) If a decision on a departmental appeal or review petition, as the case may be, filed under rule 17 is not communicated within a period of sixty days of filing thereof, the affected Government servant may file an appeal in the Khyber Pakhtunkhwa Province Service Tribunal within a period of [ninety] days of the expiry of the aforesaid period, whereafter, the authority with whom the departmental appeal or review petition is pending, shall not take any further action.

20. Exception.---Notwithstanding anything to the contrary contained in these rules, in cases where Government servants collectively strike work, wilfully absent themselves from duty or abandon their official work, the competent authority in respect of the senior most accused may serve upon them, through newspapers or any other mean, such notice as may be deemed appropriate to resume duty and in the event of failure or refusal to comply with the directive contained in the notice, impose upon the defaulting Government servants any of the major penalties prescribed in these rules.

21. Indemnity.---No suit, prosecution or other legal proceedings shall lie against the competent authority or any other authority for anything done or intended to be done in good faith under these rules or the instructions or directions made or issued there-under.

¹ The word "thirty" was substitute with the word "ninety" vide notification No. SC/Reg-VI/2-A/1/2-6/2010 dated 18.7.2012

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

(b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

~~Procedure in case of wilful absence.~~ Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for several more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, injudicial liability of removal from service may be imposed upon such Government servant.

~~Procedure to be followed by competent authority where inquiry is necessary.~~
(1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include-

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with appointment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defence to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary inquiry.

~~Procedure to be followed by inquiry officer or inquiry committee.~~ (1) On receipt of reply of the accused or of expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defence of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

(3) The inquiry officer or the inquiry committee, as the case may be, shall, hear the case on day to day and on adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representatives, if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be

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GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK FISHERIES &
COOPERATIVE DEPARTMENT

No. SOE(AD)Service Matters/Advice/AE/21/1111
Dated Peshawar, the 20th August, 2021

To

The Director,
Agriculture Engineering,
Khyber Pakhtunkhwa, Peshawar.

SUBJECT: - APPLICATION FOR RE-INSTATEMENT IN SERVICE

I am directed to refer to your letter, No.7084/DAE/Estt:1/565, dated 04-06-2021 P.195 on the subject noted above and to enclose herewith letter No.SOR-III(E&AD)/1-3/2020, dated 04-08-2021 received from Section Officer (R-II), Finance Department which is self-explicit and to state that Mr. Jasim Khan S/o Sher Ghulam Ex-Junior Clerk (BS-11) should have been removed from service instead of dismissal from service,

Moreover, the request of Mr. Jasim Khan S/o Sher Ghulam may be examined under Rule-17 of Khyber Pakhtunkhwa Govt Servants (E&D) Rules, 2011 (copy enclosed), please.

Encls. As Above.

~~SECTION OFFICER-ESTT:~~

Endst. of Even No. & Date.

Copy forwarded to the:

1. P.S to Secretary Agriculture, Livestock, Fisheries & Cooperative Department Khyber Pakhtunkhwa, Peshawar.
2. P.A to Deputy Secretary (Admn) Agriculture, Livestock, Fisheries & Cooperative Department Khyber Pakhtunkhwa, Peshawar.
3. Master File.

~~SECTION OFFICER-ESTT:~~

Office of The
Director, Agril. Engineering
K.P.K. Tarnab, Peshawar
Diary No. 4841
Dated: 26-8-21

DD/AGOP
Estt Admn
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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN. DEPARTMENT
(REGULATION WING)

No. SOR-III (E&AD)/1-3/2020
Dated Peshawar the August 04th, 2021

To

The Secretary to Govt. Khyber Pakhtunkhwa,
Agriculture Department.

Subject: - APPLICATION FOR REINSTATEMENT IN SERVICE

Sir,

I am directed to refer to your letter No. SOE(AD)Service matters/Advice/AE/21/865 dated 25.06.2021 on the subject noted above and to state that under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 after fulfillment of all codal formalities removal from service should have been imposed instead of dismissal from service.

It is further stated that the request of Ex-official Mr. Jasim Khan may be examined under Rule-17 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 (copy enclosed), please.

Yours faithfully,

SECTION OFFICER (R-III)
Phone No. 9211793

Encl: A.A

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16. Procedure of Inquiry against Government servant lent to other governments or organizations etc.---(1) Where the services of Government servant to whom these rules apply are transferred or lent to any other government department, corporation, corporate body, autonomous body, authority, statutory body or any other organization or institution, hereinafter referred to as the borrowing organization, the competent authority for the post against which such Government servant is posted in the borrowing organization may-

- (a) suspend him under rule 6; and
- (b) initiate proceedings against him/her under these rules:

Provided that the borrowing organization shall forthwith inform the authority which has lent his services, (hereinafter referred to as the lending organization) of the circumstances leading to the order of his suspension or the initiation of the proceedings, as the case may be:

Provided further that the borrowing organization shall obtain prior approval of the competent authority in the lending organization before taking any action under these rules against a Government servant holding a post in basic pay scale 17 or above.

(2) If, in the light of findings of the proceedings taken against the accused in terms of sub rule (1), the borrowing organization is of the opinion that a penalty may have to be imposed on him, it shall transmit the record of the proceedings to the lending organization, and the competent authority in the lending organization shall thereupon take action against the accused under rule 14.

(3) Notwithstanding anything to the contrary contained in sub-rules (1) and (2), the Chief Minister may, in respect of certain Government servant or class of Government servants to whom these rules apply, authorize any officer or authority in the borrowing organization to exercise all the powers of the competent authority under these rules.

17. Departmental appeal and review.---(1) An accused who has been awarded any penalty under these rules may, within thirty days from the date of communication of the order, prefer departmental appeal to the appellate authority:

Provided that where the order has been passed by the Chief Minister, the accused may, within the aforesaid period, submit a review petition directly to the Chief Minister.

(2) The authority empowered under sub-rule (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned department or

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office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing:

- (a) uphold the order of penalty and reject the appeal or review petition; or
- (b) set aside the orders and exonerate the accused; or
- (c) modify the orders or reduce the penalty.

(3) An appeal or review petition preferred under these rules shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper and temperate language.

18. Appearance of counsel:--No party to any proceedings under these rules at any stage of the proceedings, except proceedings under rule 19, shall be represented by an advocate.

19. Appeal before Khyber Pakhtunkhwa Province Service Tribunal:--(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Province Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunals Act, 1974 (Khyber Pakhtunkhwa Act No. 1 of 1974).

(2) If a decision on a departmental appeal or review petition, as the case may be, filed under rule 17 is not communicated within a period of sixty days of filing thereof, the affected Government servant may file an appeal in the Khyber Pakhtunkhwa Province Service Tribunal within a period of [ninety] days of the expiry of the aforesaid period, whereafter, the authority with whom the departmental appeal or review petition is pending, shall not take any further action.

20. Exception:--Notwithstanding anything to the contrary contained in these rules, in cases where Government servants collectively strike work, wilfully absent themselves from duty or abandon their official work, the competent authority in respect of the senior most accused may serve upon them, through newspapers or any other means, such notice as may be deemed appropriate to resume duty and in the event of failure or refusal to comply with the directive contained in the notice, impose upon the defaulting Government servants any of the major penalties prescribed in these rules.



21. Indemnity:--No suit, prosecution or other legal proceedings shall lie against the competent authority or any other authority for anything done or intended to be done in good faith under these rules or the instructions or directions made or issued there-under.

⁶ The word "thirty" was substitute with the word "ninety" vide notification No. SU/Reg-VIII&AI/2-6/2010 dated 18.7.2012

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	<p>www.agriengineering.kp.gov.pk DIRECTORATE OF AGRICULTURAL ENGINEERING, KHYBER PAKHTUNKHWA, TARNAB, PESHAWAR</p>	
	<p>G.T. Road, Tarnab Peshawar ☎ 091-2964063 E-mail daekpktarnab@gmail.com</p>	

No. 11405 /DAE/Estt:1/565 dated Tarnab, the 27 /08 /2021

To,

Mr. Jasim Khan S/o Sher Ghulam Khan
Ex-Junior Clerk of this office

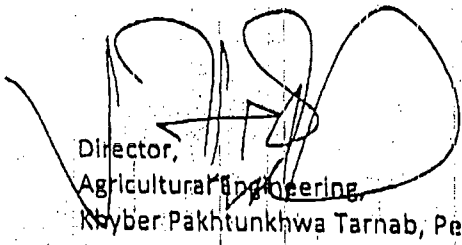
Subject: APPLICATION FOR RE-INSTATEMENT IN SERVICE.

Reference In continuation of this office Endst: No. 7085/DAE/Estt: 1/565 dated 04.06.2021

Memo:

Enclosed please find herewith a copy of the Section Officer (Establishment), Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Cooperation Department letter No. SOE(AD) Service Matters/Advice/AE/ 21/1111 dated 20.08.2021 on the subject noted above (which is self-explanatory) for information.


Encl: as above



Director,
Agricultural Engineering,
Khyber Pakhtunkhwa Tarnab, Peshawar

No. _____ /DAE/Estt:1/565 dated Tarnab, the _____ /2021

Copy of the above is forwarded to The Section Officer (Establishment), Government of Khyber Pakhtunkhwa, Agriculture, Livestock, and Cooperation Department, Peshawar with reference to his office letter No. quoted above for information.



Director,
Agricultural Engineering,
Khyber Pakhtunkhwa Tarnab, Peshawar

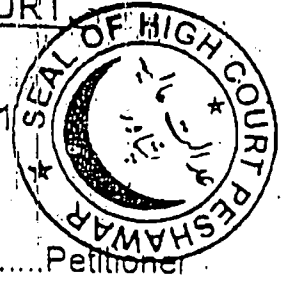
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BEFORE THE HON'BLE PESHAWAR HIGH COURT
PESHAWAR.

W.P No. 3584 - P/2021



Jasim Khan
S/O Sher Ghulam Khan

Petitioner

VERSUS.

1. Government of Khyber Pakhtunkhwa,
Through Secretary Agriculture, Livestock and Cooperation,
Civil Secretariat, Peshawar.
2. Section Officer (Establishment),
Agriculture, Livestock and Cooperation, Civil Secretariate,
Peshawar.
3. Director,
Directorate of Agriculture Engineering, Khyber Pakhtunkhwa,
Tarnab, Peshawar. Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth;

Having no alternate and efficacious remedy, the petitioner knocks the door of this Honorable Court by invoking the extraordinary constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 on inter alia the flowing amongst others facts and grounds;

FACTS LEADING TO THE WRIT PETITION:

1. That the petitioner is law abiding citizen of the Islamic Republic of Pakistan and bona fide resident of District Peshawar having all his rights guaranteed under the law and Constitution of the Islamic Republic of Pakistan, 1973.

Copy of CNIC of the petitioner is attached herewith and marked as Annexure-A.

2. That the petitioner was appointed as Junior Clerk (BPS-07) in the Directorate of Agriculture Engineering KP vide his appointment order

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No. Endst. No. 7172-74 /DAE/Estt; dated 11.12.2009.

Copies of appointment order dated 11.12.2009 & Service card of the petitioner are attached herewith and marked as Annexure-B & C respectively.

3. That petitioner vide case FIR No. 257 dated 28.03.2012 registered U/S 302, 324, 34 of PPC, PS Chankani whereby he was nominated in the above mentioned forged, fictitious and concocted FIR.

Copy of FIR is attached herewith and marked as Annexure-D.

4. That the petitioner intimated the department (respondent No. 3) in respect the above-mentioned situation vide his application for leave dated 09.04.2012 which was sanctioned on 04.05.2012 and another application for extension of the leave dated 28.05.2012 which was also accepted vide sanction dated 02.07.2012.

Copies of applications & sanctions are attached herewith and marked as Annexure-E, F, G & H respectively.

5. That on account of gravity of the matter the petitioner along with his family members have shifted to some unknown place and that the situation mentioned-above were beyond his control as such he could not attend his office whereby the department vide various notices of absence from duty dated 24.07.2012, 06.08.2012, 16.08.2012 & 13.03.2013 and lastly the publication in the newspaper were issued against him which were not received to him.

Copy notices are attached herewith and marked as Annexure-I, J, K, L & M respectively.

6. That although the respondent department was informed by the petitioner but even then, he was dismissed from service on account of his absence vide office order Endst. No. 1325-27/DAE/Estd. Dated Tarnab, the 23/04/2013 issued by respondent No. 3.

Copy of office order dated 23.04.2013 is attached herewith and marked as Annexure-N.

7. That after full-dressed trial by the court of worthy Additional District & Session Judge / Model Criminal Trial Court, Peshawar there petitioner

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was acquitted vide judgment in case No. 52/MC-SC of 2020 dated 22.03.2021.

Copy of judgment dated 22.03.2021 is attached herewith and marked as Annexure-O.

8. That after honorable acquittal by the learned trial court, the petitioner moved an application dated 20.05.2021 received in the office of respondent No. 3 vide dairy No. 3014 dated 21.05.2021 for re-instatement in service.

Copy of application dated 20.05.2021 is attached herewith and marked as Annexure-P.

9. That the above-mentioned application of the petitioner for re-instatement was forwarded by the respondent No. 3 to the respondent No. 2 vide his letter No. 7084/DAE/Estt:1/565 dated Tarnab, the 04/06/2021.

Copy of forwarding letter dated 04.06.2021 is attached herewith and marked as Annexure-Q.

10. That the respondent No. 2 has further forwarded the petitioner's application for re-instatement in service to the respondent No. 1 vide letter No. SOR-III(E&D)/1-3/2020 dated 04.08.2021, wherein it has been opined that petitioner should have been proceeded under rule 9 of the KP Government Servants (E&D) Rules, 2011 and after fulfilment of the codal formalities removal from service should have been imposed instead of dismissal from service.

Copy of letter dated 04.08.2021 is attached herewith and marked as Annexure-R.

11. That having no alternate and efficacious remedy the petitioner knocks the door of this honorable court on the following amongst other grounds;

GROUND:

- A. That the acts and omissions on the part of respondents are against the law, facts and in violation of the settled norms of justice, hence untenable.
- B. Because petitioner was nominated in the forged, fictitious and concocted case FIR No. 257 dated 28.03.2012, PS Chankani.

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- C. Since the petitioner has duly intimated the department (respondent No. 3) in respect the above-mentioned situation vide his applications for leave which were initially sanctioned and on account of gravity of the matter (lodging of FIR) the petitioner along with his family members were shifted to some unknown place in order to save their lives as the situation mentioned-above were absolutely beyond his control as such he could not attend his office whereby the department have served number of notices of absence from duty which have never been received to the petitioner, hence this writ petition.
- D. Although the respondent department was duly informed by the petitioner regarding the above-mentioned situation but even then, he was dismissed from service as such which is not justified as the petitioner was honorably acquitted by the learned Additional District & Session Judge / Model Criminal Trial Court, Peshawar after full dressed trial vide judgment in case No. 52/MC-SC of 2020 dated 22.03.2021 which is enough proof of the fact that the petitioner along with his family were facing the situation beyond their control, hence the dismissal order impugned herein is liable to set-aside.
- E. That after honorable acquittal by the learned trial court, the petitioner moved an application dated 20.05.2021 received in the office of respondent No. 3 vide dairy No. 3014 dated 21.05.2021 for re-instatement in service which application of the petitioner for re-instatement was forwarded by the respondent No. 3 to the respondent No. 2 and further forwarded the same for re-instatement in service to the respondent No. 1, wherein opinion was furnished that petitioner should have been proceeded under rule 9 of the KP Government Servants (E&D) Rules, 2011 and after fulfilment of the codal formalities removal from service should have been imposed instead of dismissal from service ignoring the ground reality that on account of honorable acquittal of the petitioner by the competent court of law nothing of the sort is left for opinion as such the impugned order is liable to be declared as illegal, null and void and ineffective upon the rights of the petitioner, hence this writ petition for appropriate writ

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directions.

F. That the case of the petitioner is covered under FR-54 which provides that:

"F.R.54----Where a Government Servant Has been dismissed or removed from is reinstated, the revising or appellate authority may grant to for the period of his absence from duty---

- a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or
- b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed:
- c) In a case falling under clause (a), the period of absence from duty will be treated as a period spend on duty unless the revising appellate authority so directs.

Since the petitioner has been Honorably acquitted in criminal case, therefore denied his reinstatement into service with all back benefits, is illegal, unlawful and without lawful authority and based on Mala fide intention.

G. That it has held by the Superior Courts in a number of reported cases that all acquittals are honorable and there can be no acquittal that can termed as dis-honorable, reliance is places on 1998 SCMR 1993 and 2001 SCMR 269.

H. That the petitioner has never committed any act or omission which could be termed as misconduct, Since the petitioner have honorably acquitted in the criminal case, therefore, the petitioner is also entitled to be reinstated in service with all back benefits.

I. That the petitioner is jobless since his illegal dismissal from service.

J. That the petitioner urges other grounds at the time of hearing of this writ petition with the kind permission of this honorable court, hence this writ

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petition with the following prayer;

Prayer:

It is, therefore, prayed that on acceptance of this writ petition, this Hon'ble court may kindly be pleased to;

- i. To declare and set-aside the impugned dismissal order Endst: No. 1325-27/DAE/Estd. Dated Tarnab, the 23/04/2013 issued by respondent, No. 3 as illegal, hence ineffective upon the rights of the petitioner.
- ii. Direct the respondent No. 3 to re-instate the petitioner in service with all back benefits.
- iii. Restraint the respondents from any adverse action against the petitioner.
- iv. Any other better relief/s which has not specifically been prayed for but is more conducive in the facts and circumstance of the case may also be granted in the best interest of justice, equity and the law.

Peshawar

Dated:- ____/08/2021

Petitioner,

Through:

Mukhtar Ahmad Maneri
 Advocate Supreme Court of Pakistan
 Office # 2, 2nd Floor, Juria Khan Plaza, Near
 Directorate of Health, KP, Warsak Road, Peshawar.
 Ph: 091-6200710, Mob: 0333-245-6000
 Email: mukhtarmadvocate@vsnl.com

&

Amaad Nasir Kundi
 Advocate High Court, Peshawar.

CERTIFICATE

Certified as per the instructions of the petitioner, this is the first writ petition between the parties and that no other writ petition has filed by the petitioner against the respondents before this honorable court or any other bench of this honorable court on the subject matter.

Advocate

BOOKS:

- 1. Constitution of the Islamic Republic of Pakistan 1973.
- 2. KP Government Civil Servants (E&D) Rules, 2011.
- 3. Any other Case law at the time of hearing of this writ petition.

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Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Writ Petition No. 3584-P/2021.

Jasim Khan

Vs.

Government of Khyber Pakhtunkhwa through Secretary
Agriculture, Livestock and Cooperation, Peshawar, etc.

JUDGMENT

Date of hearing: 10.11.2021.
Petitioner(s) by: Mr. Mukhtar Ahmad Maneri Advocate.
Respondent(s) by: Nemo (Motion).

S. M. ATTIQUE SHAH, J.:- Through instant petition

under Article 199 of the Constitution of Islamic Republic
of Pakistan 1973, petitioner Jasim Khan has prayed for
the following relief:-

*"That on acceptance of this Writ
Petition, this Hon'ble Court may
kindly be pleased to:-*

- i. *Declare and set aside the
impugned dismissal order
Endst: No.1325-27/DAE/Estd.
Dated Tarnab, the 23/04/2013
issued by respondent No.3 as
illegal, hence ineffective upon
the rights of the petitioner.*
- ii. *Direct the respondent No.3 to
reinstate the petitioner in
service with all back benefits.*

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- iii. *Restrain the respondents from any adverse action against the petitioner.*
- iv. *Any other better relief which has not specifically been prayed for but is more conducive in the facts and circumstances of the case may also be granted in the best interest of justice, equity and the law."*

2. In essence, petitioner was appointed as *Junior Clerk(BPS-07)* in the Directorate of Agriculture Engineering Khyber Pakhtunkhwa vide appointment order No.7172-74/DAE/Estt: dated 11.12.2009; who was later on, charged in a criminal case; due to which initially he applied and obtained leave till 2.7.2012 but thereafter, he remained absent from duty for long time without obtaining further leave; hence, after issuance of various notices coupled with publication in the newspaper, he was dismissed from service vide impugned office order dated 23.04.2013. After acquittal in the ibid criminal case by learned trial Court, petitioner moved application to the official respondents for his reinstatement; which was not considered; hence instant writ petition.

3. Heard. Record perused.

4. Indeed, the, petitioner was a civil servant and; the matter in question revolves around the terms and

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EXAMINER

POSTAL & TELEGRAPH OFFICE

conditions of his service, so provided by Section 11, Chapter-II of the Civil Servant Act 1973 and; certainly the jurisdiction of this Court qua the same is barred in terms of the explicit provisions of Article 212 of the Constitution 1973.

5. Therefore, the instant petition is dismissed for want of jurisdiction. However, petitioner would be at liberty to approach the proper/ competent forum for redressal of his grievance, if so advised.

Announced:
10.11.2021.

[Signature]
Senior Puisne Judge

~~JUDGE~~
JUDGE

"A. Qayum PS" (DR) Hon'ble Mr. Justice Rosh-e-Amin Khan & Mr. Justice S M. Atique Shah

No. 13758
 Date of Presentation of Application 12/11/2021
 No of Pages 9-12
 Copying fee
 Total 36/-
 Date of Preparation of Copy 15/11/2021
 Date of Delivery of Copy 15/11/2021
 Received By *[Signature]*

[Signature]
 AUTHORIZED BY: TRUE.COM
 15 NOV 2021
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Power of Attorney.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Suit
Application
Appeal
Case
Execution
Writ Petition

No. _____ of 2021

Jasim Khan

Plaintiffs
Applicants
Appellants
Appellant
D/H

VERSUS

Government of Khyber Pakhtunkhwa & Others


Defendants
Opponents
Respondents
J/D

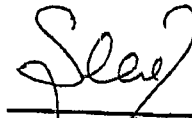
I/We do hereby appoint Mr. Mukhtar Ahmad Maneri, Advocate Supreme Court of Pakistan & Mr. Amaad Nasir Kundi, Advocate High Court, to appear and act for me/us in the above mentioned proceedings and to conduct, prosecute and/or defend and/or compromise the same and any other proceedings that may arise out of or be connected with the same, with full power and authority to sign all necessary pleadings, petitions, applications papers and documents, to pay all proper fees and costs, to file and withdraw all documents and to apply for and receive payment of all moneys that may be or become due and payable to me/us during the course or after the completion or conclusion of the said proceedings, and to settle, compromise or to withdraw the said proceedings.

Received on 23-11-2021 from Appellant


Signature

Accepted.


ADVOCATE


ADVOCATE

Mukhtar Ahmad Maneri & Associates
Advocates & Legal Consultants
CNIC # 16202-0997383-9
BC-11-1744

Office # 2, 2nd Floor, Juma Khan Plaza, Near Directorate of Health, Govt: of KPK, Opposite Super Gas CNG, Warsak Road,
Peshawar. Ph: 091-5200710. Mob: 0333-215-6006. Email: mukhtaradvocate@yahoo.com

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

S.B

No.

APPEAL No..... of 20

77 85

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Jasim Khan

Appellant/Petitioner

Versus

[Signature]
27.7/22

Govt. of KPK through Secy. Agriculture
RESPONDENT(S)

Notice to Appellant/Petitioner

Respondent No 1

Govt. of KPK through
Secretary Agriculture Livestock
Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on..... at.....

9/8/22

9:am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

copy of Appeal is
Attached
for Reply

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. P.B

No.

APPEAL No..... 7785 of 20 21

Jasim Khan

Appellant/Petitioner

Versus

[Handwritten signature]
27/7/22

Tax: of KPK through Secy. Agriculture

RESPONDENT(S)

Respondent No.2
Notice to Appellant/Petitioner

Section Officer (Establishment and
Agriculture livestock Secretariate
Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 9/8/22 at 9:30 am.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

copy of Appeal is Attached

for Reply

[Handwritten signature]
Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.