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**BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal no. 931/13

A.W.P. Peshawar
Case No. 933
Dated 15-5-13

Sher Afghan s/o *Ali Bahadar* Head Constable No.20, Investigation
Wing, District Police, Haripur.

Appellant

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Haripur.

Respondents

**SUBJECT: APPEAL UNDER SEC.4 KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE
ORDER OB NO.2177-78 DATED 18-03-2013,
PASSED BY THE REGIONAL POLICE OFFICER,
HAZARA RANGE, ABBOTTABAD AND DELIVERED
TO THE APPELLANT ON 16-04-2013 WHEREBY
THE APPELLANT HAS BEEN AWARDED WITH
MINOR PENALTY OF STOPPAGE OF INCREMENT
FOR A PERIOD OF 02 YEARS WITH CUMULATIVE
EFFECT.**

**PRAYER: ON ACCEPTANCE OF THE INSTANT APPEAL THE
IMPUGNED ORDER MAY GRACIOUSLY BE SET
ASIDE AND INCREMENT BE RESTORED WITH
BACK BENEFITS ON RENDITION OF ACCOUNT.**

Re-submitted to
and filed.

Registered

28/5/13

S.No. of proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	21.06.2016	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT ABBOTTABAD</u> APPEAL NO. 931/2013</p> <p style="text-align: center;">Sher Afghan Versus the Inspector General of Police, Khyber Pakhtunkhwa Peshawar and two others:</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u> Counsel for the appellant and Mr. Muhammad Zahoor, Inspector (Legal) alongwith Mr. Muhammad Siddique Sr.GP for respondents present.</p> <p>2. Mr. Sher Afghan S/O Ali Bahadar hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned order dated 18.03.2013 vide which punishment in the shape of stoppage of increments for a period of two years with cumulative effect was imposed against the appellant.</p> <p>3. We have heard arguments of learned counsel for the appellant and learned Senior Government Pleader for respondents and perused the record.</p> <p>4. During the course of arguments learned counsel for the appellant argued that the punishment imposed against the appellant is defective in</p>

the eyes of law as stoppage of increments with cumulative effect could not be passed. Placed reliance on 1989-SCMR-1415 wherein it has been observed by the august Supreme Court of Pakistan that stoppage of increments with cumulative effect is not permissible. Learned counsel for the appellant further argued that the appellant will be satisfied if the punishment is modified to the extent of stoppage of increments for a period of 2 years without cumulative effect. Learned Senior Government Pleader could not raise any valid objection to the afore-stated proposition.

5. In the light of the above the appeal is accepted and the punishment is modified as stoppage of increments for a period of 2 years without cumulative effect. Parties are left to bear their own costs. File be consigned to the record room.

Member

ANNOUNCED

21.06.2016

21.06.16.

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1	2	3
	21.06.2016	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT ABBOTTABAD</u></p> <p style="text-align: center;">APPEAL NO. 931/2013</p> <p style="text-align: center;">Sher Afghan Versus the Inspector General of Police, Khyber Pakhtunkhwa Peshawar and two others.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u> Counsel for the appellant and Mr. Muhammad Zahoor, Inspector (Legal) alongwith Mr. Muhammad Siddique Sr.GP for respondents present.</p> <p>2. Mr. Sher Afghan S/O Ali Bahadar hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned order dated 18.03.2013 vide which punishment in the shape of stoppage of increments for a period of two years with cumulative effect was imposed against the appellant.</p> <p>3. We have heard arguments of learned counsel for the appellant and learned Senior Government Pleader for respondents and perused the record.</p> <p>4. During the course of arguments learned counsel for the appellant argued that the punishment imposed against the appellant is defective in</p>

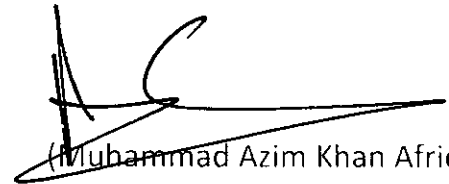
~~AS~~
21.06.16

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(Abdul Latif)
Member



(Muhammad Azim Khan Afridi)

Chairman
Camp Court, Abbottabad

21.06.16.

ANNOUNCED

21.06.2016

1989 S C M R 1414

Present: Muhammad Afzal Zullah and Usman Ali Shah, JJ

AMJAD H. MALIK--Petitioner

versus

Mst. RAZIA BEGUM and others--Respondents

Civil Petitions for Leave to Appeal Nos.1231 and 1232 of 1988, decided on 27 February, 1989.

(On appeal from the order of Lahore High Court, Lahore, dated 8-11-1988, passed in Civil Revisions Nos.1784/D-85, 1785/D-85 and 1786/D-85)
Appeal (Civil)--

--Appellate Court has to see and consider the evidence produced by the parties and thereafter give the reason for recording the judgment. Where documentary evidence in the form of exhibits and witnesses produced were not considered by the Appellate Court, it was a procedural irregularity justifying the remand. [p. 1414] A

Petitioner in Person.

Nemo for Respondents.

ORDER

USMAN ALI SHAH, J.--The petitioners seek leave in both the petitions against a single order of the Lahore High Court, Lahore, dated 8-11-1988, arising out of two suits filed by Amjad H. Malik, petitioner herein, for specific performance of a contract and the other filed by Mst. Razia Begum, the present respondent No.1, for declaration and permanent injunction. Both the suits were consolidated by the learned trial Judge, who after recording the evidence adduced by the parties, dismissed the suit of Amjad H. Malik petitioner and decreed the suit of Mst. Razia Begum, respondent No.1, vide judgment dated 17-11-1984. The petitioner filed two appeals before the learned District Judge, which were accepted by him vide his judgment dated 6-4-1985.

Being aggrieved Mst. Razia Begum filed two Revision Petitions Nos.1784-D/85 and 1785-D/85 and a third one by Ajmal Hayat Malik i.u. No.1786-D/85 before the High Court, praying for setting aside the judgment and decree of the lower appellate Court.

After hearing the petitioner who represented his case in person and perusal of the record in the light of the findings of the Courts below, we have observed some procedural irregularities committed by the lower appellate Court. While reversing the finding of the trial Court, the learned District Judge did not take into consideration the evidence produced by the respondent No.1 Mst. Razia Begum as the learned Judge ignored to examine the evidence adduced by her. The High Court has rightly observed that the 1st appellate Court under the law is to see and consider the evidence produced by the parties and thereafter give the reason for recording the judgment. The documentary evidence in the form of Exhs.P.1 to P.24 and also the examination of 7 witnesses produced by her has not been considered by the learned lower appellate Court. The petitioner herein in person argued that evidence of Mst. Razia was not of such a quality which needs discussion. But under the circumstances we agree with the learned High Court that due to non-consideration of the evidence of the respondents the appeal for rehearing was rightly remanded.

The result is that there is no force in both the petitions and are hereby dismissed. Leave refused.

M.B.A./A-480/S

Petitions dismissed

1989 S C M R 1415(1)

Present: Muhammad Afzal Zullah and Saad Saood Jan, JJ

MUHAMMAD ALI KHAN--Petitioner

versus

MUHAMMAD ASHRAF--Respondent

Civil Petition No.692 of 1984, decided on 7th September, 1988.

(Against the judgment and order of the Lahore High Court, Lahore, dated 7-4-1984 in R.S.A. No.535 of 1971).

Mohammadan Law--

--Constitution of Pakistan (1973), Art.185(3)--Gift--Validity and genuineness--Concurrent findings of Courts below with regard to the validity and genuineness of gift were recorded against the petitioner--Petitioner tried to assail the findings of fact by advancing various arguments none of which was convincing--Leave to appeal refused. [p. 1415] A

Ahmed Waheed Khan, Advocate Supreme Court and Mahmood A. Qureshi, Advocate-on-Record for Petitioner.

Nemo for Respondent.

Date of hearing: 7th September, 1988.

ORDER

MUHAMMAD AFZAL ZULLAH, J.--The defendant in a declaratory suit relating to a gift, has sought leave to appeal against the dismissal by the High Court of his Regular/Second Appeal--he had failed before the learned lower Court.

The learned Judge in the High Court has upheld the concurrent findings of the Courts below with regard to the validity and genuineness of gift which go against the petitioner. The learned counsel in respect of this petition has tried to assail the findings of fact by advancing various arguments none of which has impressed us. No justification has been made out for interference by this Court for re-examination of the evidence. Leave to appeal accordingly is refused.

Leave refused.

M.B.A./M-861/S

1989 S C M R 1415(2)

Present: Ghulam Mujaddid and Saad Saood Jan, JJ

ABDUL WAHEED--Petitioner

versus

SECRETARY TO GOVERNMENT OF THE PUNJAB LOCAL
GOVERNMENT AND RURAL DEVELOPMENT
DEPARTMENT--Respondent

Civil Petition No.286 of 1983, decided on 2nd August, 1988.

(From the judgment of Punjab Service Tribunal dated 15-1-1983 in Appeal No.19/968 of 1981).
Civil service--

--- Stoppage of increments with cumulative effect is not permissible. [p. 1416] A

Ch. Mushtaq Masood, Advocate Supreme Court for Petitioner.
Nemo for Respondent.

Date of hearing: 2nd August, 1988.

ORDER

GHULAM MUJADDID, J.--Abdul Waheed, Officiating Assistant Municipal Engineer, Lahore Municipal Corporation, Lahore, seeks leave to appeal against the judgment of Punjab Service Tribunal dated 15-1-83 whereby his appeal against the order dated 27-11-80 passed by the respondent relating to stoppage of his three increments with cumulative effect, was dismissed. However, the Tribunal made a little variation that no increment can be stopped with cumulative effect. Stoppage of three increments was considered without cumulative effect.

This relief was in accordance with law. Hence we don't think that the order of the Tribunal is contrary to law. Therefore, the petition for special leave to appeal filed by Abdul Waheed against the judgment of Punjab Service Tribunal is dismissed.

M.B.A./A-475/S

Petition dismissed.

1989 S C M R 1416

Present: Muhammad Afzal Zullah and Javid Iqbal, JJ
Dr. ABDUL MAJID--Petitioner

versus

Mst. HUMAIRA BIBI and 2 others--Respondents
Civil Petition for Leave to Appeal No.1081 of 1988, decided on 1st March, 1989.

(On appeal from the judgment and order of the Lahore High Court Lahore dated 16 October, 1988 in W.P. No.4137 of 1988).

Muhammadan Law--

---Divorce--Maintenance--Liability to maintain wife till the end of Iddat period on the husband. [p. 1417] A

Ch. Muhammad Anwar Khan, Advocate Supreme Court instructed by
Ch. Mehdi Khan Mehtab, Advocate-on-Record for Petitioner.

Nemo for Respondents.

Date of hearing: 1st March, 1989.

ORDER

JAVID IQBAL J.--This petition for leave to appeal is directed against judgment of the Lahore High Court, Lahore dated 16 October, 1988 whereby writ petition of the petitioner was dismissed.

Briefly the facts are that the petitioner married respondent No.1 (Mst. Humaira Bibi) on 4 January, 1986 but three days thereafter on 7 January 1986 left

for Iran. He then divorced the aforesaid respondent on 25 September, 1986 and Talq became effective on 27 September, 1986. Thereafter the respondent made an application to the Arbitration Council which granted maintenance to her at the rate of Rs.2,000 p.m. for a period of one year from 5 January, 1986 to 27 December, 1986. The total amount of maintenance awarded came to Rs.24,000. The petitioner challenged the order of the Arbitration Council before the District Collector in revision but he was unsuccessful. Thereafter he filed writ petition against the same which as stated above was dismissed. Hence the present petition.

We have heard learned counsel for the petitioner. It is evident that the liability to maintain the respondent till the end of the Iddat period is on the petitioner. Therefore the respondent is entitled to receive the maintenance as ordered by the High Court. In that view of the matter no interference is called for. As a result this petition is dismissed.

M.B.A./A-470/S

Petition dismissed.

1989 S C M R 1417

Present: Ghulam Mujaddid and Saad Saood Jan, JJ
ABDUR RASHID--Petitioner

versus

C.S.C. and another--Respondents

Civil Petition No.852 of 1984, decided on 1st March, 1989.

(From the judgment of the Punjab Service Tribunal dated 24-5-1984 in Appeal No.432/410 of 1983).

Civil service--

---Civil servant had been favourably commented upon by the Enquiry Officer--Authorised Officer and the Authority are under no obligation to agree with the recommendations. [p. 1417] A

Tanvir Ahmad Khan, Advocate-on-Record for Petitioner.

Nemo for Respondents.

Date of hearing: 1st March, 1989.

ORDER

GHULAM MUJADDID, J.--Abdur Rashid, Junior Clerk, Writ Branch, Headquarters Office, Board of Revenue, S & R Wing, Lahore, has filed this petition for leave to appeal against the judgment of the Punjab Service Tribunal dated 24-5-1984.

We have heard learned counsel for petitioner who was unable to assail the finding of the Tribunal that "...Undoubtedly the appellant has been favourably commented upon by the Enquiry Officer but under the Rules the Authorized Officer and the Authority are under no obligation to agree with the recommendations..."


This finding of the Tribunal is in accordance with law. Hence no case is made out for leave to appeal. Dismissed.

M.B.A./A-469/S

Petition dismissed.

16.12.2015

Appellant with counsel and Mr. Abdur Rashid, ASI (legal) alongwith Mr. Muhammad Siddique, Sr.GP for respondent present. Rejoinder submitted. Due to non-availability of D.B, appeal adjourned for final hearing before D.B to 21.6.2016 at Camp Court A/Abad.


Chairman
Camp Court A/Abad

8 17.6.2015

Appellant with counsel and Mr. Sher Afzal, H.C alongwith Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Requested for adjournment. To come up for written reply on 18.8.2015 before S.B at camp court A/Abad.


Chairman
Camp Court A/Abad

18.08.2015

Counsel for the appellant and Mr. Sher Afzal, HC alongwith Mr. Muhammad Tahir Aurangzeb, GP for respondents present. Written reply submitted . The appeal is assigned to D.B for rejoinder and final hearing for 16.12.2015 at camp court A/Abad.


Chairman
Camp Court Abbottabad

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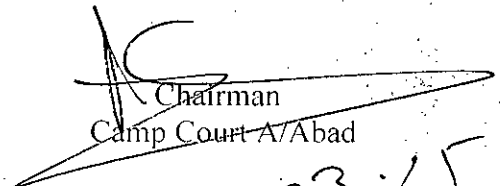
6 17.03.2015

Counsel for the appellant present. Learned counsel for the appellant argued that vide impugned order dated 24.8.2011 appellant was awarded major punishment of reduction in rank from Head Constable to Constable on the allegations of not conducting the investigation fairly and professionally. That against the impugned order dated 24.8.2011 appellant preferred departmental appeal (copy not attached) which was decided on 18.3.2013 but communicated to the appellant on 16.4.2013 against which the present service appeal was preferred by the appellant on 15.5.2013. Appellant has also submitted application for condonation of delay.

Appellant Deposited
Security & Process Fee



Points urged need consideration. Admit, subject to limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 20.5.2015 before S.B at camp court A/Abad.


Chairman
Camp Court A/Abad
17.03.15

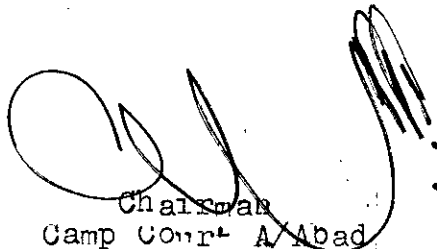
7 20.5.2015

Appellant with counsel and Mr. Muhammad Zahoor, Inspector (legal) alongwith Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Requested for adjournment. To come up for written reply/ comments on 17.6.2015 at camp court A/Abad.


Chairman
Camp Court A/Abad


14.4.2014

Neither appellant nor counsel for the appellant present. Notices be issued to the appellant and his counsel for preliminary hearing at camp court A/Abad on 20.10.2014.


Chairman
Camp Court A/Abad

5- 20.10.2014




Appellant with counsel present. Since appeal against impugned order dated 18.3.2013 has been lodged on 15.5.2013, the learned counsel for the appellant is going to file application for condonation of delay, which may be moved in the meantime, with copy for the respondents for preliminary hearing at camp court A/Abad on 17.3.2015.


Chairman
Camp Court A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 931/2013

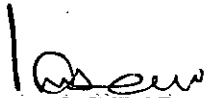
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28/05/2013	<p>The appeal of Mr. Sher Afghan resubmitted today by Mr. Mohammad Aslam Tanoli Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-6-13	<p>This case is entrusted to Touring Bench Abbottabad for preliminary hearing to be put up there on <u>18-11-13</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	18.11.2013	<p>No one is present on behalf of the appellant. To come up for preliminary hearing at Camp Court Abbottabad on 14.4.2014.</p> <p style="text-align: right;"> CHAIRMAN Camp Court Abbottabad.</p>

The appeal of Mr. Sher Afghan son of Ali Bahadar Head Constable NO.20 received today i.e. on 15/05/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of departmental appeal against the impugned order is not attached with the appeal which may be placed on it.

No. 782 /S.T,

Dt. 15/5 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Aslam Tanoli Adv.

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 931/2013

Sher Afghan S/O Ali Bahadar, Head Constable No.20, Investigation Wing, District Police, Haripur

Appellant

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Haripur.

Respondents

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4.	Copy of Mad No.24 .	"C"	12
5.	Copy of order dated 24-08-2011	"D"	13
6.	Copy of letter/Departmental Appeal	"D-1"	14-20
7.	Copy of order dated 01-12-2011	"E"	21
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9.	Copy of application dated 02-04-13	"G"	35
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11.	Wakalatnama		

[Signature]
APPELLANT

Through:

[Signature]
(Mohammad Aslam Tanoli)
Advocate High Court
At District Bar Haripur

Dated.....

15/5/13

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1091 /ST

Dated 29/6/2016


To

The Regional Police Officer,
Abbottabad.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 21.6.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

①

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal no. 931/13

K.W.P. Province
Lahore
No. 933
Dated 15-5-13

Sher Afghan s/o Ali Bahadar Head Constable No.20, Investigation
Wing, District Police, Haripur.

Appellant

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
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SUBJECT: APPEAL UNDER SEC.4 KHYBER PAKHTUNKHWA
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ORDER OB NO.2177-78 DATED 18-03-2013,
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15/5/2013,

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IMPUGNED ORDER MAY GRACIOUSLY BE SET
ASIDE AND INCREMENT BE RESTORED WITH
BACK BENEFITS ON RENDITION OF ACCOUNT.

Re-submitted to
and filed;

28/5/13.

Respectfully sheweth,

FACTS:

1. That the appellant was enrolled in the Police Force on 01-07-1991 as a Constable and as such the appellant has served the police department for more than 22 years.
2. That since his appointment the appellant ever rendered his assigned duties with zeal, zest, devotion to the entire satisfaction of his Officers and never gave them any chance of reprimand.
3. That appellant always earned good/very good ACRs (Annual Evaluation Reports) during his entire service due to his excellent performance. That in recognition of his tremendous outstanding and meritorious services rendered in the Police Department, the appellant was awarded with Commendation Certificates time and again including cash awards by different Police High-ups as well as by the worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar on 04-10-2010. **(Copy of Certificate is attached as Annex-A).**
4. That the appellant has been raised from the rank of Constable to the Head Constable and is now well versant with the police rules and regulations and has under gone almost all departmental trainings/courses relevant to his profession and he

stands as qualified for promotion to the rank of Asstt. Sub. Inspector in very near future.

5. That while posted as IHC-Investigation Police Station, Hattar Haripur, on 02-09-2010 an occurrence took place in village Khedoo (Islampur) Hariur within the limits of Police Station Hattar, Haripur wherein one Mst. Saira Bibi wife of Mushtaq Ahmed of the same village was injured with 12 bore short gun fire by her husband Mushtaq Ahmed.
6. That the complainant Ghulab Khan S/O Lal Khan caste Gujar (Father-in-law of the injured Mst. Saira Bibi) R/O village Khedoo (Islampur) Haripur alongwith one Younis Majaz reported the occurrence to Riasat Khan, ASI in DHQ Hospital, Haripur on 02-09-2010.
7. That Riasat Khan ASI on his turn, who was on duty in DHQ Hospital Haripur, prepared injury sheet and sent the injured to the Doctor for medical examination. He also prepared Murasila and sent it to the Police Station for registration of the case.
8. That a case FIR No.248 dated 02-09-2010 was registered U/S 337-H PPC at Police Station, Hattar Haripur and Mohammad Aslam, Sub. Inspector Police (Operational) Police Satiation Hattar, Haripur was entrusted with investigation of the matter.
(Copy of FIR No.248 is attached Annex-B).

9. That on 02-09-2010, Mohammad Aslam Sub-Inspector took over the investigation of the case, arrested the accused and recorded statements of complainant, injured lady, accused and all other relevant witnesses of the case. In short, the entire investigation was carried out and ultimately completed by him.
10. That the injured lady remained under medical treatment till she expired on 07-09-2010 in Ayub Medical Hospital Abbottabad. Her death was reported to Mohammad Aslam S.I. and Sarfraz Khan SHO PS Hattar through Moharrir vide D.D. No.24 (1630 hours) dated 07-09-2010 by the complainant, who also made an application seeking exemption from postmortem which was granted by the Sarfraz Khan, SHO concerned. *(Copy of Mad No.24 is attached as Annex-C).*
11. That on 08-09-2010 i.e. after having recorded statements of complainant, injured lady, accused, all other relevant witnesses and even after death of injured lady, exemption of postmortem, receipt of dead body of the deceased and her burial, the investigation file was handed over to the appellant by Operational Staff, without routing it through a Senior Officer of the DTV Staff, for further investigation.
12. That the appellant on his turn went on with his job strictly in accordance with law, honesty, care and caution; after completing rest of the investigation and compiling all the relevant papers, he put-up the

case file to his superiors/seniors for further disposal in the matter. They on their turn put-up complete challan of the case before the concerned Honourable Court for trail.

- 13.** That after 05 months of death of injured lady, her father made a complaint dated 07-02-2011 to the Addl. Inspector General of Police, Peshawar alleging therein that his daughter was murdered by her husband, upon which an inquiry was conducted and the responsibility was fixed upon the appellant, keeping aside the Officers (Mohamamd Aslam Sub-Inspector and Sarfraz Khan SHO) who had actually carried out investigation of the case and awarded the appellant with the penalty of reversion from the rank of Head Constable to that of Constable by the District Police Officer, Haripur vide his order OB No.619 dated 24-08-2011. **(Copy of order dated 24-08-2011 is attached as Annex-D).**
- 14.** That appellant vide his departmental appeal dated 10-09-2011 challenged the above mentioned order of the District Police Office Haripur before the worthy Dy. Inspector General Police, Hazara Range, Abbottabad. *(copy of Deptt. Appeal is attached as Annex D-1)*
- 15.** That accepting the above mentioned referred departmental appeal, impugned order dated 24-08-2011, was declared as "**Held in abeyance**" and a De-novo Inquiry against the appellant (including Mohammad Aslam Sub-Inspector and Sarfraz Khan Inspector who had actually conducted the

investigation in the case FIR No.248 dated 02-09-2010) was ordered to be held vide order No.7127-28 dated 01-12-2011 by the worthy Regional Police Officer, Hazara Range, Abbottabad. **(Copy of order dated 01-12-2011 is attached as Annex-E).**

16. That no such De-novo Enquiry was ever conducted nor any Show Cause Notice, Charge Sheet, Statement of Allegations etc. issued to the appellant. Even opportunity of personal hearing was never provided to the appellant.
17. That the accused Mushtaq Ahmed charged in FIR NO.248 DATED 02-09-2010 has since been convicted and sentenced for 05 years R.I. and payment of Diyat by the learned Seccession Judge Haripur vide judgment and order dated 15-11-2012. **(Copy of the judgment dated 15-11-2012 is attached as Annex-F).**
18. That without conducting any De-novo inquiry, the Enquiry Officer submitted report, comprising upon surmises, conjectures and with arbitrariness, against the facts & record, to the worthy Regional Police Officer, Hazara Region, Abbottabad. On receipt of the said inquiry report the appellant has been awarded penalty of **"Stoppage of increment for a period of two years with cumulative effect"** by the worthy Regional Police Officer, Hazara Region, Abbottabad vide impugned order dated 18-03-2013, delivered on 16-04-2013 on specific application by

the appellant, (Copy of application/~~is~~ attached
as Annex-G^HH”

order dt 18/3/13

Hence instant appeal, inter alia, on the following grounds:-

GROUND:

- a) That the impugned order is illegal, unlawful, passed against the mandatory statutory provisions of law and the procedure set forth for the dispersion of justice at preliminary stages of the departmental inquiries hence liable to be set aside.
- b) That the impugned order is against the facts, material available on record and departmental rules and regulations.
- c) That **no** de-novo inquiry was conducted by the Inquiry Officer, as ordered by the worthy Regional Officer, Hazara Range, Abbottabad vide his order No.7127-28 dated 01-12-2011.
- d) That no show causes notice was ever issued to the appellant as a result of de-novo inquiry, if any, conducted by the Inquiry Officer.
- e) That the appellant was never served with any charge sheet, statement allegations etc. which were mandatory and necessary before awarding any penalty to a Government Servant, as


8

envisaged by the Khyber Pakhtunkhwa Government Servants (E&D) Rules 1973.

- f) That neither any witness was produced against the appellant nor was he granted any chance to cross examine the witness.
- g) That even appellant was not provided with the opportunity of personal hearing.
- h) That entire investigation in the case FIR NO.248 dated 02-09-2010, registered at Police Station Hattar, Haripur was carried out by Mohammad Aslam Sub-Inspector and Sarfraz Khan SHO Police Station Hattar Haripur and the appellant had nothing to do with the investigation thus does not come into picture, hence the penalty awarded to the appellant on the basis of negligence in the investigation is against the facts and law hence liable to be set aside.

PRAYER: It is, therefore, humbly prayed that this Honourable Court be pleased and on acceptance of instant appeal the order dated 18-03-2013 passed by the Regional Police Officer, Hazara Region, Abbottabad may graciously be set aside and the increment be restored to the appellant with consequential benefit on rendition of account.

Through:

APPELLANT

(Mohammad Aslam Tanoli)
Advocate High Court
District Bar Haripur

Dated: 15-05-2013

(9)

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Sher Afghan S/O Ali Bahadar Head Constable No.20,
Investigation Wing, District Police, Haripur

Appellant

VERSUS

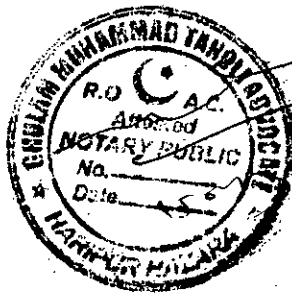
1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Haripur.

Respondents

AFFIDAVIT

I, Sher Afghan, the appellant do hereby declare on oath that the contents of above titled complaint are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Sher Afghan
S/O
Deponent



Dated: 15-05-2013

Identified by :

M. Aslam

(Mohammad Aslam Tanoli)
Advocate High Court
At District Bar Haripur

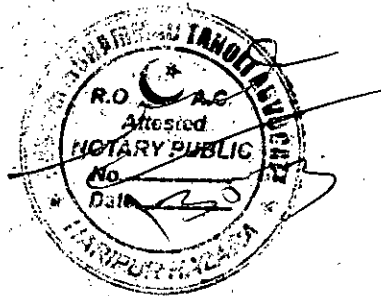
NOTE:

1. It is certified that no such appeal is ever presented before this Honourable Tribunal.
2. The addresses of the parties given in the heading are correct for the purposes of service.
3. The summon forms alongwith duly postal stamped envelopes for service of respondents are also annexed.

M. Aslam
Counsel.

(*Mohammad Aslam Tanoh*)
Advocate High Court
at Hampir

Date: 15-5-13



50

(10)

Annex 'A'

North West Frontier Province Police



Commendation Certificate

CLASS I

Granted by

The Honourable MR. FIAZ AHMED TOURO

Inspector General of Police, N-W.F.P

To MR. SHER AFGHAN I.H.C INVESTIGATION PS SADDAR HARIPUR
 Son of MR. ALI BAHADUR
 District HARIPUR

in Recognition of

OF HIS BEST PERFORMANCE IN CONNECTION WITH ARREST OF A NAWA ACCUSED
 IN CASE FIE NO.219 DATED: 13.05.2010 U/S 355-A/b/7 NSA/427 PPC PS SADDAR/ HARIPUR
 REWARD IN SHAPE OF CASH RS.2000/- ALSO PAID

Dated 04 / 10 /2010

[Signature]
 Inspector General of Police

[Handwritten mark]

ضلع ہولار

تعداد شمار

تعداد شمار 24 روز نامہ 9/10 2 شمار شمار

24 آفد سٹیٹ فون اطلاع ASHO 7/10 وقت 16:30 جم رپورٹ جسٹس

اپورٹ سٹیٹ گلاب خان ودرسل خان قوم گجر سٹیٹ گھنڈ والا سٹیٹ گورنمنٹی
قوتہ ورا اوتہ عدت 248 حورم 2/10 جرم 337-11 شمار شمار
سے بندر سٹیٹ فون اطلاع دی ہے کہ قوتہ اندا میں خود بہ حسابہ سائبر جانی
ہوئے جو اپنے خاوند سٹیٹ آفد سے اجاگت فائر ہو کر گولی لگنے سے زخمی
ہو کر زینہ علاج کیمیکس ایٹ آباد تھی۔ جو زخمیوں کی تاب نہ لا کر
خان ہونے ہو چکی ہے جسکو ہم نے سائبر جانیہ ادا سٹیٹ کے بندر دفن
کر دی ہے۔ آپ کو اطلاع دے رہا ہوں۔ آفد اطلاع درج روز نامہ
کی جاتی ہے۔ قوتہ اندا کی نقیشت جرم سٹیٹ خان ایٹ جرم کر رہے ہیں۔
جورم جرم 23 مارا سٹیٹ سٹیٹ علاقہ میں ہیں۔ کو اور جانیہ
میں، اور ان مارا کو ہی بندر سٹیٹ فون اطلاع دی جا رہا ہے۔ قوتہ اندا
میں صورت جرم 337-11 شمار کی کلنگی اور 319 شمار سٹیٹ سٹیٹ
51 شمار کو آفد کا گناہ ہے۔ تاکہ وہ سٹیٹ قوتہ جرم نقیشت
کے لیے جواز انوسی گشتی سٹاف کریں۔ رپورٹ اطلاع درج روز نامہ

جان عالی!

تعلیم سٹیٹ اصل

mm/ps Hallad 9-2-11

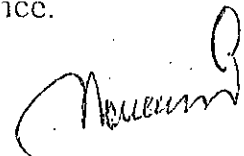
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Head Constable Sherafgan while posted at Police Station Hattar being IO of case vide FIR No.248 dated 02.09.2010 u/s 319 PPC PS Hattar did not conduct the investigation fairly and professionally. Hence he was charge sheeted.

Mr. Arif Javed DSP/Haripur was deputed as Enquiry Officer, conducted an enquiry and submitted his findings, who in his findings reported that postmortem of the deceased was not conducted, and Inspector Sarfraz Khan SHO PS Hattar accepted the application for exemption of postmortem. Deadbody receipt duly signed by IHC Sherafgan is also found fake and mala fide similarly the IHC did not recorded the statements of the real heirs of deceased i.e father, mother, brother, sister, grandfather and the real witness of the occurrence a minor ~~insane~~ child. In these circumstances exhumation proceeding should have been conducted with the help of OII/INV. The case is still pending adjudication in the honorable court of Sessions Judge Haripur and the case should be reinvestigated and postmortem should also be made. Many deficiencies in the investigation of cited case were observed by the Enquiry Officer who recommended the IHC Sherafgan for suitable punishment.

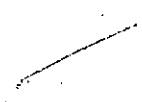
He was called in orderly room on 24.08.2011, heard in person and the undersigned came to conclusion that in the light of report of Enquiry Officer and perusal of the case file, it transpires that IHC Sherafgan being IO of the case did not conduct investigation professionally and honestly. He failed to involve the father and grandfather of the deceased Saira Bibi in the course of investigation, while they were running from pillar to post to seek justice for alleged murder of their daughter, they even had recording of the deceased stating that she was intentionally shot by her husband. Keeping in view the above facts, IHC Sherafgan is awarded the major punishment of reduction in the rank to constable.

Order announced in his presence.
OB No.619/24.08.2011


District Police Officer
Haripur

No: /

Copy of above is submitted to the Deputy Inspector General of Police Hazara Region Abbottabad for favour of information please.


District Police Officer
Haripur


SA
2/10

(14)

Annex - D-1

From: The Sr. Superintendent of Police,
Investigation Haripur.

To: The Dy. Inspector General of Police,
Hazara Region-II Abbottabad.

No. 3515 Investigation Haripur Dated, the 10 - 09 - /2011.

Subject: REPRESENTATION AGAINST THE ORDER OB NO.619 DATED 24-08-2011 PASSED BY THE DPO HARIPUR WHEREBY THE REPRESENTATIONIST WAS AWARDED WITH MAJOR PENALTY OF REDUCTION IN RANK FROM "D"LIST CONFIRMED HEAD CONSTABLE TO CONSTABLE UNDER RMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000.

Memo:

Enclosed please find herewith an appeal of constable Sher Afghan No.20 of this unit for further necessary action.

Encl: 01

my safe

11/8
Sr. Superintendent of Police,
Investigation Haripur.

(15)

BEFORE THE DIG HAZARA REGION AT ABBOTTABAD

REPRESENTATION AGAINST THE ORDER OB NO. 619 DATED 24.08.2011 PASSED BY THE DPO HARIPUR WHEREBY THE REPRESENTATIONIST WAS AWARDED WITH MAJOR PENALTY OF REDUCTION IN RANK FROM "D" LIST CONFIRMED HEAD CONSTABLE TO CONSTABLE UNDER REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000.

=====
Prayer: On acceptance of the instant Representation the impugned order may graciously be set aside and the representationist be reinstated in his rank of confirmed Head Constable from the date of reversion.

=====
Respected Sir,

1. With most reverence I beg to submit that I have been awarded with the subject mentioned major penalty by the DPO Haripur vide OB No. 619 dated 24.08.2011 (Copy is attached as Annexure "A").
2. The allegations leveled in the charge sheet against me are that while posted at Police Station Hattar being Investigating Officer the investigation in case FIR No. 218 dated 02.09.2010 U/S 319 PPC was not conducted fairly and professionally by me.
3. After having been charge sheeted vide No. 557-58 PA dated 17.06.2011 Mr. Arif Javed, DSP Haripur was appointed as Inquiry Officer to scrutinize the allegation leveled in the charge sheet and submit his report to the competent authority. (Copy attached as Annexure "B")
4. The aforementioned charge sheet was duly responded with correct, convincing, true, rebutting the allegations a detailed statement to the inquiry officer, which was not given due consideration and instead the Inquiry Officer went ahead with the departmental inquiry against me. (Copy of reply is annexed as Annexure "C").

FACTS

- (a) That brief facts of the case are that on 02.09.2010 an occurrence took place in Village Khedo (Islampur) Haripur within the limits of Police Station Hattar, Haripur wherein one Mst. Saira Bibi wife of Mushtaq Ahmed of the same village was injured with 12 bore short gun fire by her husband.
- (b) That complainant Ghulab Khan S/O Lal Khan caste Gujar (Father-in-law of the injured Mst. Saira Bibi) R/O the Village Khedo (Islampur) Haripur alongwith one Younis

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Majaz reported the occurrence to Riasat Khan, ASI in DHQ Hospital Haripur on 02.09.2010, stating that he was living in a separate room in the same house alongwith his son Mushtaq Ahmed (accused) and his family, at 0900 hours (PM), he was available in his room when he heard shot of a fire arm from the room of his son Mushtaq Ahmed. He rushed to his son's room and found Mst. Saira Bibi in injured condition, while his son Mushtaq Ahmed was not available. His grand son Muazzam aged 10 year told him that his father Mushtaq Ahmed was cleaning his 12 bore short gun which went off and injured Mst. Saira Bibi, whom the complainant had brought to the hospital for medical treatment. According to complainant the occurrence had taken place due to negligence of his son Mushtaq Ahmed (accused).

- (c) That Riasat Khan ASI, who was on duty in the DHQ Hospital, Haripur prepared the injury sheet and sent it to the Doctor. He also wrote down Murasila and sent it to the Police Station Hattar for registration of the case.
- (d) That upon this a case FIR No. 248 dated 02.09.2010 was registered U/S 337-H, PPC and Mohammad Aslam, Sub Inspector (Operational staff) Police Station Hattar was entrusted the investigation.
- (e) That on 03.09.2010, Mohammad Aslam, Sub Inspector (I.O) visited the place of occurrence, on the pointation of complainant (Ghulam Khan) he got prepared the site plan, recorded the statement of eye witness of the occurrence Muazzam aged 10 years (son of injured Mst. Saira Bibi & Mushtaq Ahmed) U/S 161 Cr.P.C. He also took in possession blood stained kameez of injured Mst. Saira Bibi through recovery memo. Mohammad Aslam SI also arrested Mushtaq Ahmed accused on 05.09.2010, and recovered 12 bore gun double barrel alongwith 03 live cartridges and one empty through recovery memo to which Ghulam Hussain S/O Ghulam Sarwar (real father of the injured Mst. Saira Bibi) is a recovery witness. Mushtaq Ahmed accused could not produced license of the crime weapon (12 bore shot gun double barrel) at that time, a separate case U/S 13 of Arms Ordinance was also registered against him. Later on Mushtaq Ahmed accused was released on his personal bond by the Sub Inspector (IO) Mohammad Aslam. (Copies of recovery memo of crime weapon, arrest card of accused and statement of witnesses are attached as **Annexure B1 to B3**).
- (f) That on 06.09.2010, Mohammad Aslam S.I visited Ayub Medical Complex, Abbottabad, where injured Mst. Saira Bibi was admitted for medical treatment, and made application to the concerned Medical Officer for recording of statement of injured Mst. Saira Bibi U/S 161 Cr.P.C which was allowed by the Doctor with his remarks that she was conscious and able to record her

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statement. Mohammad Aslam Sub Inspector (IO) then recorded her statement U/S 161 Cr.P.C in the presence of witnesses (1) Ghulam Sarwar S/o Said Ahmed (real grandfather of deceased) (2) Ghulam Jaffar S/O Ghulam Sarwar which was attested by the Doctor available on duty. Mst. Saira Bibi stated in her statement that she was injured by her husband Mushtaq Ahmed accused negligently, and she did not want to carry on any proceeding against her accused husband.

- (g) That on 07.09.2010, the injured Mst. Saira Bibi succumbed to her injuries and expired in Ayub Medical Hospital, Abbottabad. The complainant Ghulam Khan (father-in-law of deceased Saira Bibi) informed Moharrir Police Station Hattar about the expiry of Saira Bibi, who inserted the information in Daily Diary Mad No. 24 at 1630 hours on 07.09.2010. Moharrir further passed on the said information to Mohammad Aslam SI (IO) and Sarfraz Khan SHO, Police Station Hattar. Mohammad Aslam SI (I.O) arrested Mushtaq Ahmed accused and put him in judicial lockup. Meanwhile complainant of the case submitted an application to the SHO Police Station for exemption of the deceased from postmortem which was accepted by SHO. (Copy of Mad No.24 of daily diary dated 07.09.2010 attached as Annexure "E").
- (i) That on 08.09.2010 after the death of injured Saira Bibi Mohammad Aslam S.I. (the then IO) Police Station Hattar converted Section 337-H PPC into 319-PPC and then handed over the case File to the Investigation Staff, Police Station Hattar.
- (j) That then the stage comes, i.e after ¹⁹ hours of the death and burial of Mst. Saira Bibi, when the investigation of the case U/S 319PPC was handed over to me on 08.09.2010. I started the investigation to ahead from the stage where the same was left by Mohammad Aslam S.I (earlier I.O) and entrusted to me, *vide mad no.28 (E-1)*.
- (k) That on 08.09.2010 already arrested accused Mushtaq Ahmed, recovered crime weapons, the copy of weapon's license were produced before the concerned court by me. I recorded statements of the witnesses U/S 161 Cr.PC, put the accused in judicial lockup under Judicial remand, also prepared the list of heirs of the deceased, and after completion of remaining investigation the case file submitted to SHO Police Station for further disposal.
- (L) That on 28.09.2010 Sarfraz Khan SHO Police Station Hattar submitted the complete challan to the concerned court. On 08.10.2010 chemical examiner FSL report was received the same with supplementary challan was also submitted to the concerned court at Haripur on 05.11.2010.
- (m) That the above mentioned facts reveal that almost entire investigation from 02.09.2010 to 08.09.2010 was conducted by Mohammad Aslam S.I (the Then IO). After

W.M. S.I.

the death and burial of the deceased Saira Bibi, the investigation was entrusted to me, which I carried with utmost honesty, care and caution, zeal and zest, devotion and dedication, fairly and professionally and no stone was left unturned in discharge of my duties.

(n) That I do not come in the picture for the responsibility of investigation to be fixed against me, while the entire investigation from its preliminary stages to the end had been carried out by Mohammad Aslam Sub Inspector (IO) a very senior most officer, who had arrested the accused, effected the recoveries of crime weapon, recorded the statements of recovery witnesses, eye-witnesses of occurrence, as well as statement of injured Mst. Saira Bibi (who later on expired) and had prepared site plan, samples for FSL Laboratories etc.

(o) That so far as the recording of statements of father and mother, sister and brothers of the injured are concerned, the same could have been recorded as soon as possible after occurrence when Mohammad Aslam SI (IO) was conducting the investigation of the case at his level during the period he recorded the statements of other witnesses from 02.09.2010 to 08.09.2010.

(p) That a crucial question is that if there was any speech of his daughter Mst. Saira Bibi injured/deceased recorded through video cassettes by her father when she was conscious and able to make speech during the period from 02.09.2010 to 07.09.2010, why the applicant remained mum and did not bring the matter to the knowledge of high ups of the police department and even at least after assumption the investigation by me on 08.09.2010, enabling me to have steered the direction of investigations in the light of information. He submitted application on 07.02.2011 for re-investigation after 5 months of the occurrence, for no reason referring therein.

(q) That it was an inquiry conducted on the application dated 07.02.2011 addressed to DIG by Ghulam Hussain F/O of the injured Saira Bibi (deceased) after 5 months of her death, the applicant remained silent for such a long period without mentioning reason thereof. I have been made the escape goat being a low rank employee by the inquiry officer to satisfy remarks of the DIG on the application of Ghulam Hussain father of deceased and to save those of the legal consequences for their negligence who were really responsible and had conducted the investigation. Hence this representation, inter alia on the following grounds:-

(Copy of application is attached as Annexure "F")

GROUND

(i) That the impugned order is illegal, unlawful, against the facts, contrary to the procedure

set forth for the dispersion of justice at preliminary stages during the departmental inquiries, against the rules and regulation, passed in slipshod manner, arbitrary, perfunctory, cursory, based on malafide, hence liable to be set aside.

- (ii) That I have been served with no final *show cause* notice, along with inquiry report which is mandatory under the rule.
- (iii) That I am under the administrative control of SP investigation Haripur whereas the subject punishment has been awarded by the DPO which is without jurisdiction, against the laid down procedure and law, merits to be turned down.
- (iv) That the inquiry was conducted one sided and I being absolutely innocent was not reported accordingly, although the inquiry officer was convinced verbally that I was bound to support the initial investigation of senior officer. I have gone quit fairly in the completion of investigation of the case.
- (v) That I have not been given full chance of self defense and was treated blindly during inquiry of the case.
- (vi) That I was charge sheeted and awarded harsh major punishment under removal from service (Special Powers) Ordinance 2000 which has since been repealed from 05.03.2010 and no more applicable.
- (vii) That during the cross examination by me on the applicant Ghulam Hussain father of the deceased that when he was convinced that his daughter was murdered and not incidentally injured by her husband, why he had not reported to the 1.O or the police station. He responded that he had told the SHO about this whereas the SHO in his statement deposed that he never approached to him in this context.
- (viii) That occurrence took place on 02.09.2010 whereas the applicant submitted the application direct to Additional IGP Investigation on 07.02.2011 for reinvestigation. The applicant did not advance any reason with regard to delay of five months for not submitting any complaint or request to the local officers for reinvestigation.

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(ix) The inquiry officer has not recorded the statement of Doctor who is important PW of attesting the statement of injured Mst. Saira Bibi (deceased). Similarly the alleged video statement of the deceased was without any verification, to confirm whether the voice has of the deceased or otherwise. The video was not verified by Doctor or any other responsible PW and as such can not be relied upon.

(x) That the statement of deceased u/s 161 Cr.PC was taken in the hospital by SI Muhammad Aslam in the presence of Ghulam Sarwar grand father of the deceased who admitted the said statement.

5. That I am young educated and on promotion list HC near to promotion to the rank of ASI, I have undergone 20 years with untarnished record. I have always rendered useful service for the image of the department. Besides numerous commendation certificate I had recently earned commendation certificate class first from IGP K.P.K Peshawar for the arrest of main two accused/P.O from wanted in Kidnapping for Ransom case vide FIR No. 219 dated 13.05.2010 u/s 365-A, PPC PS Sadar Haripur. (Copy of commendation certificate is attached as Annexure "G")

6. That the punishment of reduction of rank is very harsh and in-humanitarian which has not only spoiled my whole service career but it has thrashed me back financially, I have six school going children's and large family to support and this financial loss is beyond my capacity.

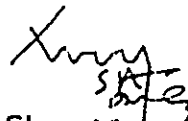
PRAYER

In view of above facts and circumstances it is earnestly prayed that my case may kindly be given sympathetic consideration and I may kindly be reinstated in my original rank of HC from the date of reversion after set-aside the impugned punishment order.

I shall be thankful for this act of kindness and prosperity.



Yours sincerely,



Sher Afghan
H.C. No. 20
Investigation Wing PS Ghazi
District Haripur

Dated: 10-09-2011

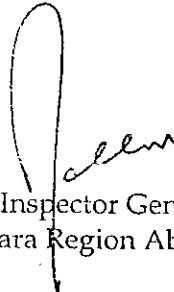
(99)

Annex - 'E'

ORDER

Two separate departmental enquiries conducted by Mr. Arif Javed DSP Haripur separately against SI Muhammad Aslam & HC Sher Afghan respectively for poor investigation in case FIR No.248 dated 02-08-2010 U/S 319 PPC Police Station Hattar have been perused by the undersigned. There are also allegations against Inspector Sarfaraz Khan who has not been associated in the enquiries conducted by DSP Arif Javed. The enquiry against Inspector Sarfaraz Khan was conducted by Mr. Najeeb-ur-Rehman Bugvi Additional Superintendent of Police Haripur, separately.

To ensure uniformity, a single officer for the matter-in-issue in all of three enquiries is required to be appointed. Therefore, all three enquiries are ordered to be held in abeyance and Mr. Ali Zia Superintendent of Police Hqr Abbottabad is appointed as an enquiry officer to conduct "denovo enquiry" against all the officials involved in the above cited case (i.e. Inspector Sarfaraz Khan, SI Muhammad Aslam & HC Sher Afghan etc) and submit findings within stipulated period for further action.


Deputy Inspector General of Police
Hazara Region Abbottabad

01/12/2011

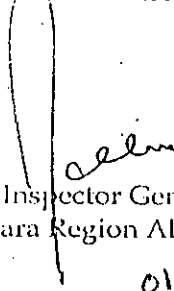
7127-28

No. /PA dated Abbottabad the 01-12 /2011

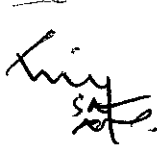
1. Copy of above alongwith departmental enquiry files against the following officials containing the pages mentioned against each is sent to Mr. Ali Zia Superintendent of Police Hqr Abbottabad for information and necessary action.

- File No.19 against Inspector Sarfaraz Khan containing 183 pages.
- File No.18 against SI Muhammad Aslam containing 73 pages.
- File No.92 against HC Sher Afghan containing 45 pages.

✓ 2. The District Police Haripur for information and necessary action.


Deputy Inspector General of Police
Hazara Region Abbottabad

01/12/2011



BEFORE THE COURT OF MR. AYMUN ZIA,
SESSIONS JUDGE, HARIPUR

No: _____
 Date of presentation of Application _____
 No of Words _____
 Copying Fee _____
 Stamp Fee _____
 To be _____
 Name of Court _____
 Date of receipt of F.R. _____
 Date of presentation of C.P. _____
 Date of delivery of C.P. _____

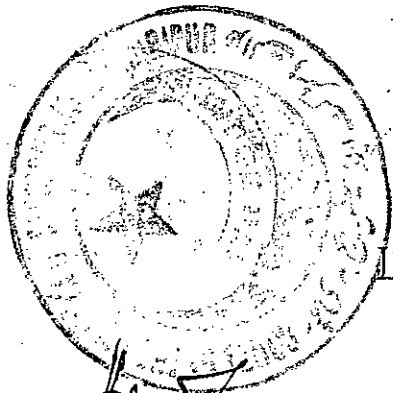
SESSIONS CASE NO. 135/7 OF 2010
 DATE OF INSTITUTION: 25/11/2010
 DATE OF DECISION: 15/11/2012

THE STATE

... VS ...

- 1) Mushtaq Ahmed s/o Gulab Khan, aged about 50/51 years, Caste Gujjar, r/o Khidoo Islam Pur, Tehsil & District Haripur. (ACCUSED)

CHARGE UNDER SECTION 319 PPC, VIDE F.I.R NO. 248 DATED 02/09/2010 POLICE STATION HATTAR, HARIPUR.



JUDGMENT:

Accused Mushtaq Ahmed was sent to face trial in case FIR No. 248, dated 02/09/2010 u/s 319 PPC, Police Station Hattar, Tehsil & District Haripur.

On 02/09/2010 at 21:45 hours, complainant Gulab Khan brought mst. Saira Bibi wife of Mushtaq Ahmed aged 30 years in injured condition to the Emergency Ward of DHQ hospital Haripur and reported to the police that Mushtaq Ahmed his son was residing with his wife mst. Saira Bibi in a nearby separate house. On the day and time of occurrence, he was present in his house when he heard the sound of fire from the house of his son Mushtaq/accused. He rushed to his house and saw mst. Saria Bibi, his daughter-in-law, lying in injured condition. Her husband Mushtaq accused was not present in the house but his grandson minor Mohazzam aged 10 years informed him that Mushtaq Ahmad was cleaning his .12 bore shotgun when suddenly it went

Received to the file copy
 Authorized by the J of
 District Haripur, 15/11/2012

Date 17-11-12

Signature
 District Sessions Judge
 Haripur

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off and hit mst. Saira Bibi on chest as a result of which she fell down. Mst. Saira Bibi was brought to the hospital and reported the above incident to the police. He alleged that the occurrence had taken place due to the negligence of his son Mushtaq. The murasila was reduced into the FIR the same day at 2245 hours.

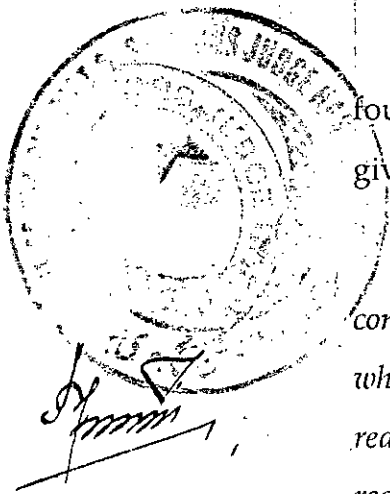
Mst. Saira Bibi due to her critical condition was referred to ATH, Abbottabad where she succumbed to her injuries on 07/09/2010. The accused was charged for committing the Qatl-e-Khata of his wife. After submission of challan, the accused was summoned by the Court.

The prosecution in order to prove its case has examined fourteen (14) witnesses. Brief summary of their depositions is given below:

PW-01 Riasat Khan ASI stated that on 02/09/2010 at 2145 hours, complainant Gulab Khan alongwith Mst. Saira w/o Mushtaq Ahmad who was injured and un-conscious, reported the matter to him. He reduced the report of complainant in shape of murasila Ex.P.A. After reducing the report of complainant, he read over the same to the complainant who after admitting it correct, thumb impressed it and one Younas Majaz signed the same as a verifier. He then prepared injury sheet of injured Mst. Saira which is Ex.PW.1/1 and produced her before the Doctor for medical examination. He dispatched the murasila to the Police Station through Constable Abdur Razzaq No. 155 for registration of case FIR.

PW-02 Sarfraz Khan stated that he was posted as SHO in Police station Hattar, Haripur. After completion of investigation, he submitted complete challan against the accused in the instant case. The same is Ex.PW2/1.

PW-03 Javed No. 544 is the marginal witness to recovery memo which is Ex.PW3/1 vide which the accused facing trial produced a copy of license Ex.P-1 of .12 bore double barrel bearing



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Authorised Officer of
Cantonment Haripur, Haripur, FSD
17-11-10
Signature
Inspector
Cantonment Haripur

No. 238 dated 11-07-1993 in respect of double barrel short gun .12 bore bearing No. B-2892 issued by District Magistrate, Haripur in the court of Judicial Magistrate to the I.O and the same was taken into possession vide above said recovery memo in the presence of marginal witnesses. He was examined by the I.O u/s 161 Cr.P.C.

PW-04 Arshad No. 535 stated that during the relevant days, he was posted at PS Hattar. Moharrir of PS handed over to him parcel No.1 containing .12 bore rifle and empties and parcel no.2 containing garments in the instant case vide road receipt No. 80/21 & 81/21 for onward submission to the arms expert and FSL. After submission of parcels he returned the slip carrying receiving signature of the concerned officers of the FSL to the Moharrir of PS for record. He was examined u/s 161 Cr.P.C.

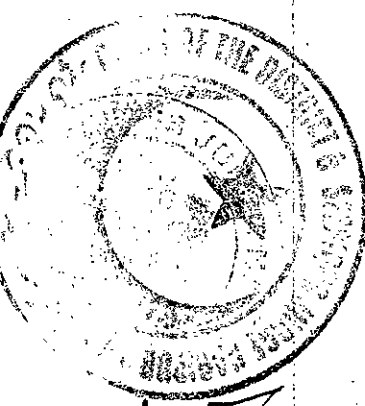
PW-05 Lady Dr. Shabana Naz, WMO stated that on 02/09/2010 at 9:45 P.M vide MLC No. 770/2011, he medically examined Mst. Saira w/o Mushtaq Ahmed, Caste Gujar, aged about 30 years, female, r/o Islam Pur, Khidu within the criminal jurisdiction of PS Hattar. She was brought by a relative. On examination she found the following:

1. Firearm entry wound on chest 2 cm below clavicle bone, size 1 1/2 inch with excessive bleeding with inverted margins. Breast tissues and breast lobules coming out of the wound.
2. Firearm exit wound 2 1/2 inch size below left scapula angle, lung tissues coming out of wound. Margin everted.
3. Distal phalanx of left middle finger shattered browsing seems in little finger and distal phalanx.

Firearm injury on both sides tearing clothes, no blackening noted on corresponding clothes.

Kind of weapon: firearm.

Duration of injury: 30 to 45 minutes.



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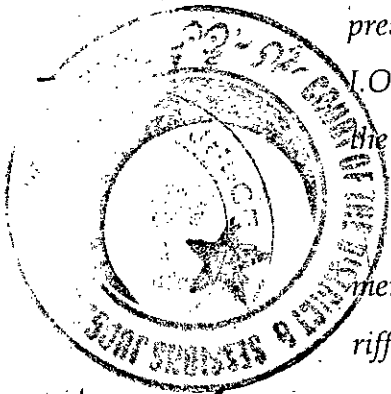
Emergency treatment given and patient referred to ATH Abbottabad on request. Dying declaration not given because of unstable condition. Patient was in chock and unable to talk. Medical report is Ex.PW5/1.

PW-06 Naseeb LHC No. 438 is the marginal witness to recovery memo Ex.PW6/1 vide which the I.O took into his possession one printed shirt of silk stained with blood Ex.P-2 which was produced by gulab Khan complainant belonging to the deceased then injured in AMC Surgical Ward, Abbottabad. There were corresponding bullets cut-marks present on the shirt. I.O packed and sealed the shirt into parcel No.2. The I.O prepared recovery memo in this respect in his presence as well as in the presence of other marginal witness.

PW-07 Ghulam Hussain is also the marginal witness to recovery memo Ex.PW7/1 vide which the I.O took into his possession one .12 bore riffle double barrel bearing No. A-2892 alongwith one empty of .12 bore and three live cartridges of .12 bore. The accused at the time of his arrest produced the said riffle to the I.O by stating this fact that with the said riffle her wife mst. Saira sustained injuries. The I.O put his signature on the body of the riffle and on empty cartridges with sharp edge nail. The I.O packed and sealed the recovered riffle alongwith one empty cartridge of .12 bore into parcel No. 1 and affixed monogram in the name of PA on it. The I.O prepared recovery memo in this respect which bears his signature. He was examined by the I.O u/s 161 Cr.P.C. He charged the accused for committing Qatl-e-Amad of mst. Saira bibi.

PW-08 constable Babar No. 128, stated that on 22/09/2010 he handed over parcel No.1 and parcel no.2 to constable Arshid No. 533 vide road receipt No. 80/21 and 81/21 for onward submission to FSL and arms expert at Peshawar. After depositing the same the constable Arshid returned the road slip to him which he annexed with the relevant register.

PW-09 Gulab Khan (complainant) stated that on 02/09/2010 at 21:45 hours, he alongwith injured mst. Saira bibi in unconscious condition reported the matter to the police at Emergency Ward DHQ



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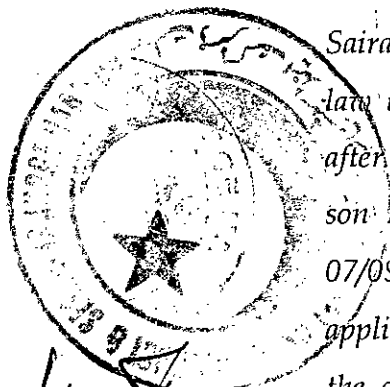
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Qanoun-e-Shahadat order, 1988

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Mag. & Session J. P. P.
Muzaffargarh

hospital Haripur in the presence of Younas Majaz. Accused Mushtaq Ahmed is his real son, he is residing in separate Haveli however, Mushtaq Ahmed his real son was residing with his wife mst. Saira in a separate residence. On the day of occurrence, he was present at his house and it was about 9:00 P.M when he heard/noticed the voice of fire from the house of Mushtaq Ahmed on which he suddenly rushed to the house of his son where mst. Saira (wife of his son) was lying in injured condition however, his son was not present at his house. His grandson namely Lal Moazam told him that his son Mushtaq Ahmed who was cleaning his riffle .12 bore which suddenly went off due to which mst. Saira bibi sustained firearm injury on her chest. He took his daughter in law to the hospital, however, his son was not found present anywhere after the occurrence. The occurrence took place due to negligence of his son Mushtaq Ahmed. Mst. Saira bibi succumbed to her injuries on 07/09/2010 at Ayub Teaching hospital Abbottabad. He has submitted an application for obtaining permission for exemption of PM examination on the dead body of the deceased on the pretext that it is their domestic issue/matter and being the LR's they do not want to conduct PM examination. His application to SHO in this respect is Ex.PW9/1 which bears his thumb impression. He also received the dead body of deceased mst. Saira bibi vide application Ex.PW9/2. The present case was registered by him against the negligent act of his son due to which his daughter-in-law sustained firearm injury and succumbed to her injuries.

PW-10 Lal Moazam s/o Mushtaq Ahmed stated that on the day of occurrence he was playing in his house, My father Mushtaq Ahmed was cleaning his riffle 12 bore. It was about 9:00 P.M suddenly he heard a fire shot. He noticed his mother was lying in injured condition who sustained injury on her chest. My father Mushtaq Ahmed decamped from the spot due to fear, in the meanwhile his grandfather came to their house and he narrated the occurrence to him who took my mother to the DHQ hospital Haripur. He was examined by the police u/s 161 Cr.P.C.

PW-11 Sher Afghan IHC stated that on 08/09/2010, he was entrusted with the investigation of the instant case. He formally arrested

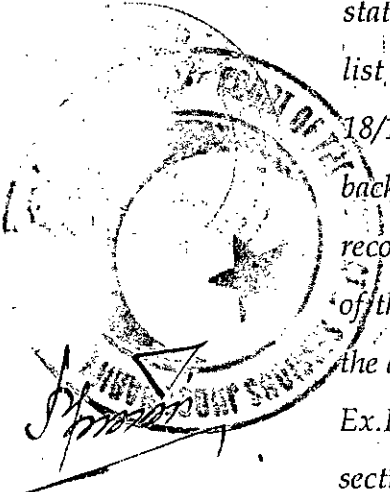


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 Date: 02-11-12
 Examiner
 Exam & Session Judge
 Haripur

the accused Mushtaq Ahmed who was already arrested by the SI Aslam Khan on 07/09/2010. He prepared formal card of arrest of the accused Ex.PW11/1 and on 08/09/2010 vide application Ex.PW11/2 he produced the accused before the concerned magistrate for obtaining judicial remand on which the accused was sent to judicial lock up due to non-submission of bail bonds. On the same day the accused produced one copy of license Ex.P-1 bearing No. 238 of .12 bore double barrel riffle (weapon of offence) he took into possession the same license vide recovery memo already Ex.PW3/1 in the presence of marginal witnesses. He has recorded the statements of PWs as well as accused u/s 161 Cr.P.C. He prepared the list of legal heirs of the deceased mst. Saira bibi Ex.PW11/3. On 18/10/2010 he annexed the FSL report with he case file which received back from the FSL Peshawar as positive which is Ex.PW11/4. He has recorded the statements of all the PWs concerned with the investigation of the instant case u/s 161 Cr.P.C. On 26/11/2010 he has also annexed the arms expert report received from the arms expert Peshawar as positive Ex.PW11/5. He also issued memo for changing the section of law from section 337-H PPC to section-319 PPC. Memo is Ex.PW11/6. After completion of investigation he handed over the case file to the SHO for submission of complete challan against the accused.

PW-12 Muhammad Aslam S.I, stated that during the relevant days, he was posted as ASHO at Police Station Hattar. On receipt of murasila through constable Abdur Razzaq No. 155, he had recorded the report while incorporating the same contents of murasila already Ex.P.A into FIR which Ex.PW12/1. He conducted the preliminary investigation in the instant case. He visited the spot and during spot inspection prepared site plan Ex.PW12/2 on the pointation of eye-witness Lal Moazam. On 03/09/2010, complainant Gulab Khan produced the printed shirt already Ex.P-2 blood stained belonging to deceased then injured mst. Saira bibi having bullet cut-marks corresponding to the injuries. He packed and sealed the shirt into parcel No. 2 and prepared recovery memo already Ex.PW6/1 in the presence of marginal witnesses. On 05/09/2010, at the time of arrest of the accused at his house situated at village Khidu,



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Islampur, he produced one .12 bore double barrel riffle bearing No. A-2892 alongwith one empty of .12 bore and 3 live cartridges of .12 bore to him which he took into possession vide recovery memo already Ex.PW7/1 in the presence of marginal witnesses. The riffle alongwith empty of .12 bore are already Ex.P-3, he packed and sealed the same into parcel No.1 and affixed monogram in the name of BA on it. The accused disclosed that with said riffle sudden fire was made by him due to which his wife mst. Saira bibi sustained injuries. (STO by the defence counsel that the statement recorded before police is inadmissible under article-30 of Qanun-e-Shahadat). The accused failed to produce any valid license or permit in respect of recovered riffle, therefore, a separate case u/s 13 A.O was registered against the accused. On 05/09/2010, he drafted application Ex.PW12/3 for sending the recovered riffle .12 bore and one empty cartridge of .12 bore to arms expert. On 06/09/2010, he also drafted application Ex.PW12/4 for sending the parcel No.2 containing the blood stained shirt of deceased then injured to FSL for its chemical examination. On 06/09/2010 vide application Ex.PW12/5, he drafted application for recording the statement of deceased then injured mst. Saira bibi to doctor M.O, I.C.U Ward Ayub Medical Complex Abbottabad in respect of obtaining opinion with the question that whether the deceased then injured is capable of giving her statement being conscious or not? He after his reply recorded her statement u/s 161 Cr.P.C alongwith other PWs. After completion of investigation up to his extent he handed over the case file to investigation staff through Moharrir of PS Hattar for further investigation. He has recorded the statement of all the concerned PWs u/s 161 Cr.P.C..



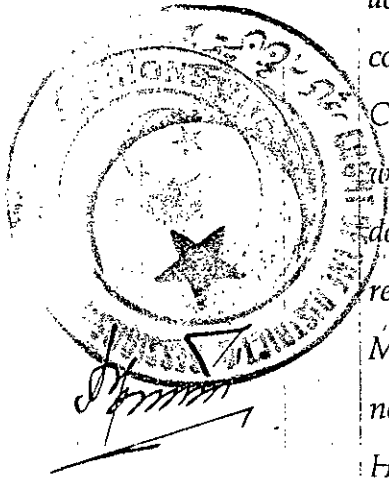
PW-13 Dr. Ijaz Hussain Shah stated that on 06/09/2010, S.I of Police Station Hattar submitted an application already Ex.PW12/5 in respect of obtaining his opinion in respect of physical/mental condition of the injured mst. Saira that as to whether she was in conscious state of mind for recording her statement or not. He replied in affirmative to the question put by the S.I to him. His opinion is Ex.PW12/5. He has also attested the statement of the injured recorded by the S.I u/s 161 Cr.P.C in

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which the deceased then injured had stated that her husband/accused was cleaning the riffle when suddenly it fired and hit her and that she did not want to prosecute her husband.

Before further examining the witness, the learned APP and the learned defence counsel assisted the court at length on the question of declaring a witness as hostile as enunciated u/s 150 Qanun-e-Shahadat Order. The stand of learned APP is that the witness may be declared hostile to the extent of his verification of the fact of exoneration of the accused by the deceased. I have heard them at length and it is my considered view that the present witness was never examined u/s 161 Cr.P.C by the I.O, nor his name was mentioned in the calendar of witnesses. His statement is only to the effect that he has examined the deceased then in injured condition and that she was in a position to record her statement. The statement was in fact recorded by S.I Muhammad Aslam who has already been examined. Therefore, there is nothing to suggest that by giving the statement on 19/09/2012, Dr. Ijaz Hussain Shah, M.O, ATH Abbottabad had gone against the interest of the prosecution as a whole. The prosecution was in a position to expect him to testify in line with the statement of Muhammad Aslam S.I. Therefore, there is no occasion for this court to declare the witness as hostile. The request is turned down and the witness is opened for cross-examination.



PW-14 Ghulam Sarwar Stated that on 06/09/2010, I was present at Ayub Teaching Hospital Abbottabad where Aslam S.I alongwith other constable were present. S.I Aslam recorded statement of mst. Saira bibi deceased then injured. Mst. Saira bibi deceased then injured stated in her statement that her husband namely Mushtaq Ahmed intentionally opened fire on her due to which she sustained injuries. Similarly, she also stated that she will prosecute against her husband. My statement was recorded by the S.I u/s 161 Cr.P.C.

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Thereafter, the statement of accused u/s 342 Cr.P.C was recorded wherein he neither opted to depose on oath nor to produce any evidence in his defence.

Learned counsel for the parties present. APP present. I have heard the arguments and perused the record.

Gulab Khan PW-09 is incidentally the father of the accused facing trial and father-in-law of deceased mst. Saira. After hearing the sound of fire he rushed to the adjacent house of his son where he found mst. Saira lying in injured condition. His grandson Lal Muazam PW-10 informed him that his (Lal Muazam) father i.e. accused Mushtaq was cleaning his DB shot gun when it accidentally went off hitting his mother Saira on the chest. Gulab Khan did not find Mushtaq in the crime house who had apparently escaped out of fear. He took the injured to DHQ hospital Haripur but was referred to ATH Abbottabad due to her critical condition. Muhammad Aslam S.I who was then posted as ASHO. PS Hattar recorded the statement of mst. Saira u/s 161 Cr.P.C at ATH Abbottabad in the presence of medical officer Dr. Ijaz Hussain Shah PW-13 wherein she expressed her desire not to charge her husband, as the incident was not intentional. She eventually expired on 07/09/2010.

Learned counsel for the accused contended that the statement was attested by the medical officer and would thus be considered as admissible in evidence, that the accused could not be charged or convicted in light of concession given by Saira in her dying declaration. He next contended that the post mortem report is not available and since cause of death could only be known through P.M examination, therefore, to say that mst. Saira died due to the firearm injuries inflicted upon her by the accused, would be beyond the scope of evidence. This argument has no-legs to stand on.



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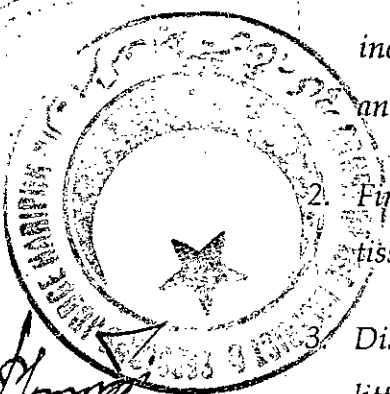
Both the pleas are contradictory to each other. The defence relies on dying declaration to the extent of exoneration of the accused and at the same times does not believe that the fire was made by the accused.

Secondly, according to the initial medical report by Dr. Shabana Naz of DHQ Hospital Haripur (Ex.PW5/1) mst. Saira then injured was unstable, in a state of shock and unable to talk. She had received the following firearm injuries:-

1. Firearm entry wound on chest 2 cm below clavicle bone, size 1 1/2 inch with excessive bleeding with inverted margins. Breast tissues and breast lobules coming out of the wound.
2. Firearm exit wound 2 1/2 inch size below left scapula angle, lung tissues coming out of wound. Margin everted.
3. Distal phalanx of left middle finger shattered browsing seems in little finger and distal phalanx.

Firearm injury on both sides tearing clothes, no blackening noted on corresponding clothes.

Dr. Shabana could not record dying declaration of mst. Saira due to her unstable condition. There is nothing available on record to show as to what specialized treatment was given to mst. Saira during her 5 days at ATH Abbottabad to revive her from unconscious state of mind to enable her to talk and give a statement to the police. This essentially discredits the dying declaration. One single .12 bore fire had pierced the left chest, exiting from below left scapula. The breast tissues, breast lobules and lung tissues all coming out of the wounds. With the fire arm injuries explained above, her unstable condition and unconscious state of mind coupled with the fact that no proof of her revival is available, I have reason to believe that mst. Saira could not have lived to give a dying statement to the police and that the only



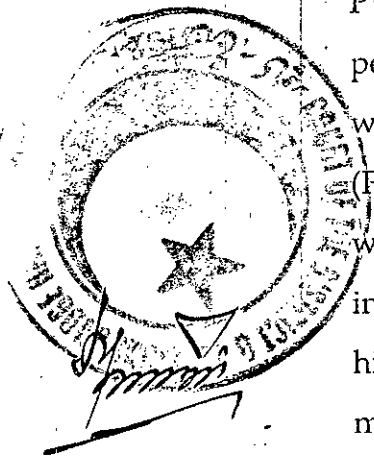
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probable cause of her death was the fire arm injury attributed to the accused. Thirdly, Gulab Khan complainant got exemption from post mortem (Ex.PW9/1) on the ground that he being the real LR did not wish so. Firstly, he is not an LR. Secondly, parents of mst. Saira were not consulted on this issue. The fact that Ghulam Hussain (PW-7) father of the deceased mst. Saira later charged the accused of murder should be enough to neutralize the effect of lack of P.M report.

Gulab Khan complainant (father of the accused) testified as PW-09. Though he himself did not see the occurrence, he persistently charged his son of Qatl-e-Khata on the basis of eye witness account furnished to him by his grandson Lal Moazam (PW-10). Lal Moazam aged 12 years was playing in his house when he heard a fire shot. He noticed that his mother was lying in injured condition due to firearm injury on her chest. He stated that his father decamped from the house due to fear. Lal Moazam is the minor son of the accused, could have easily given concessional statement but he too has not resiled. Learned counsel for the accused referred to the cross-examination of Lal Moazam (PW-10) in which he stated that he was playing in the room. Site plan Ex.PW12/2 shows his location in the Veranda. He emphasized that there is obvious contradiction between the ocular account given by Lal Moazam and the site plan. He further contended that Lal Moazam was present in the room and thus could not have seen the occurrence, his testimony as an eye-witness was thus not reliable.

I do not agree with this argument. Even if Lal Moazam was present in the room he had a clear view of the courtyard and could see and sense the presence of his parents. That is why he stated that he saw his father cleaning his .12 bore. The fire shot would have undoubtedly raised enough alarm for him to rush towards his parents where he witnessed his father decamping from the



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spot. Lal Moazam has nowhere stated that he did not see the occurrence with his own eyes. It is not the case of the accused that occurrence was committed by someone else and that the present accused has been falsely charged. The presence of the accused on the spot, the act of cleaning of riffle, accidental fire shot hitting his wife on the day and time of occurrence as alleged by the prosecution are facts that are glaring and self evident and consequently lead me to the only conclusion that the accused is guilty of the offence charged with. He is in any case liable to Diyat u/s 319 PPC. Whether he is also liable to imprisonment according to proviso to section- 319 PPC is a question that requires little space.



Immediately after the occurrence, Mushtaq Ahmed left the house and became fugitive from law. As if by malicious intent he abandoned his injured wife to die a painful death. He knew the extent of damage he had done. He was arrested on 05/09/2010 after 3 days of occurrence. During this period he never visited the DHQ hospital Haripur or ATH Abbottabad to inquire whether his wife was dead or alive. His conduct clearly spells out cruelty and wickedness that should earn him sentence of imprisonment also. No person having a residue of kindness in his heart would allow even an animal or a pet to die in a manner mst. Saira was left unattended. No wonder he has been charged for murder by father of mst. Saira.

The proof with regard to the guilt of the accused is enormous, fully corroborated by recovery of crime empty, weapon of offence, positive FSL report Ex.PW11/5, blood stained clothes of mst. Saira with cut mark corresponding to the injury and medical report. Consequently, I convict the accused u/s 319 PPC and sentence him to payment of Diyat. He shall be confined in the Jail till he has paid Diyat. He is further sentenced to 5 years R.I under proviso to section- 319 PPC. Benefit of section-382 Cr.P.C is also

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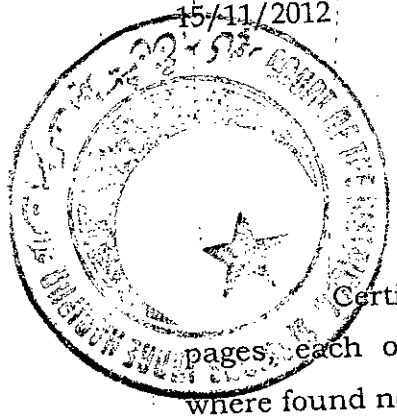
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extended to the accused. A copy of this judgment is provided to the accused free of cost.

Case property, if any be kept intact till the expiry of period of appeal/revision and thereafter the same be disposed of in accordance with law. File of this court be consigned to the record room after necessary completion and compilation.

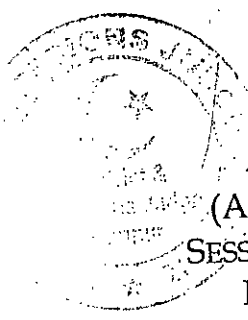
ANNOUNCED
15/11/2012

(AYMON ZIA)
SESSIONS JUDGE,
HARIPUR



CERTIFICATE

Certified that this judgment consists of Thirteen (13) pages, each of which bears my seal signature and correction where found necessary.



(AYMON ZIA)
SESSIONS JUDGE,
HARIPUR

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درخواست برائے حصول نقل (فیصلہ اپیل)

جناب عالی!

مودبانہ گزارش ہے کہ سائل کو بحوالہ مقدمہ علت نمبر 248 مورخہ 02.09.10

جرم PPC 319 تھانہ حطار۔ میں جناب ریجنل پولیس آفیسر صاحب ایٹ آباد نے

Stoppage of increments for a period of two years with cumulative effect.

کی سزا دی ہے۔ فیصلہ کے خلاف سائل اپیل کرنا چاہتا ہے۔

لہذا جناب سے بزرگیہ درخواست استدعا ہے کہ فیصلہ کی نقل دی جاوے۔ تاکہ

سائل RPO صاحب کے فیصلہ کے خلاف اپیل کر سکے۔

العارض

شیر افگن نمبر 20/HC ریڈر جناب دفتر DSP صاحب

انوسٹی گیشن ہری پور

المقوم۔۔۔ 02.04.2013

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SRU
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Haripur
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Wing Haripur H

ORDER

No. 20

This is an order on the representation of *Constable Sher Afghan* of Investigation Wing Haripur against the order of major punishment i.e. reduction in rank from HC to constable under P.R 1975 by the District Police Officer, Haripur vide his OB No. 619 dated 24-08-2011.

Facts leading to his punishment are that in case FIR No. 248 dated 2-09-2010 U/S 319 PPC Police Station Hattar District Haripur, he being an IO of the case did not conduct the investigation fairly and professionally.

A departmental enquiry was conducted by Mr. Arif Javed DSP Haripur. On recommendation of the EO, he was awarded major punishment i.e. reduction in rank from Head Constable to Constable by DPO Haripur.

After receiving the appeal, the comments of DPO Haripur were obtained. The enquiry file, appeal & the comments of the DPO were perused. He was heard in OR and two separate departmental enquiries conducted by two different EOs were perused and to ensure uniformity a single EO (the then SP HQrs Abbottabad) was appointed to conduct "Denovo enquiry" against all the three officials involved in the said case vide this office Order No. 7127-28/PA dated 01-12-2011.

The EO after completion of "Denovo enquiry" submitted his findings. He was also heard in person during the Orderly Room held on 13-03-2013.

Keeping in view the above, I take a lenient view and convert the order passed by the District Police Officer Haripur i.e. major punishment of "reduction in rank from Head Constable to Constable" into minor punishment i.e. "stoppage of increments for a period of two years with cumulative effect".

[Signature]
Regional Police Officer
Hazara Region Abbottabad

No. 2177-78/PA Dated Abbottabad the 18/03/2013.

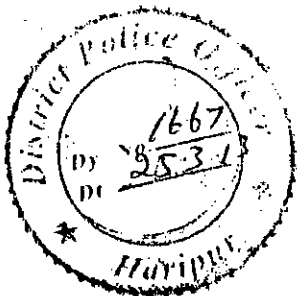
1. Copy of above is forwarded to the District Police Officer, Haripur for information and necessary action with reference to his Memo: No.8045 dated 29-08-2011. The Service Roll alongwith Fauji Missal containing Enquiry File of the appellant are returned herewith.

2. SP Investigation Haripur for information + n/ action pl.

[Signature]
Regional Police Officer,
Hazara Region Abbottabad.
(C.O Wajid Mehmood)

OB/SRC

For necessary
action
[Signature]
20/3/13



OB No: 155
DT: 25-3-13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Sher Afghan S/O Ali Bahadar, Head Constable No.20, Investigation Wing, District Police, Haripur.

Appellant

VERSUS

1. The Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Haripur

Respondents

SERVICE APPEAL

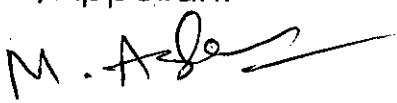
APPLICATION FOR CONDONATION OF DELAY IN FILING THE APPEAL
BEFORE THIS HONOUR SERVICE TRIBUNAL.

Respectfully Sheweth:

- 17-03-14
1. That the Applicant/Appellant has filed the Service Appeal, which may be considered as part and parcel of this application, against the order dated 18-03-2013 passed by the Regional Police officer, Hazara Rang, Abbottabad and the Provincial Police Officer, KPK, Peshawar whereby the Respondents have awarded the appellant with penalty of stoppage of increment for period of 02 years with cumulative effect.
 2. That the above order dated 18-03-2013 of the Regional Police officer, Hazara Rang, Abbottabad was delivered to the Applicant/Appellant on 16-04-2014 and that too on the specific application dated 02-04-2013 submitted by the Applicant.

3. That the delay, if any, was not due to Applicant/Appellant rather the order of the Regional Police Officer, Hazara Region, Abbottabad were delivered with delay by the Department itself.
4. That instant condonation application is being filed in compliance with the direction issued by this Honourable Tribunal to the Applicant/Appellant on 20-10-2014 previous date of hearing.
5. That the instant application is being filed as an abundant caution for the condonation of delay, if any.

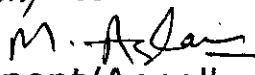
It is therefore respectfully prayed that on acceptance of the instant application the delay, if any, in the filing of the above titled appeal may graciously be condoned.

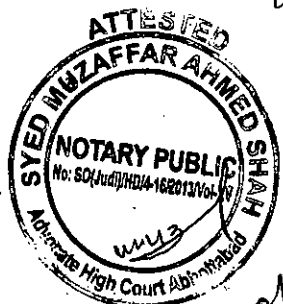
Through: Applicant/Appellant

(Mohammad Aslam Tanoli)
Advocate High Court
At District Bar Haripur

Dated: 17-03-2015

AFFIDAVIT:

It is solemnly declare and affirm on oath that the contents of the instant application/appeal are true and correct to the best of my knowledge and belief. *as information provided by my client*


Deponent/Appellant



17/3/2015

- (2)
4. Incorrect, although the appellant has been promoted to the rank of ASI by the police department yet he could not prove himself as professional and efficient officer, during investigation of criminal case vide case Fir No.248 dated 02.09.2010 U/S 337/H/319/ PPC PS Hattar, he could not turn out the real picture of offence and suppressed the facts and let the case of murder into Qatal-e-Khata case, which displayed his non professionalism and inefficiency, for which proper departmental enquiry was conducted and being found guilty of charges, he was awarded major punishment of reduction in rank (copy of FIR is attached as annexure A).
 5. In reply to this Para it is submitted that on 02.09.2010 accused Mushtaq Ahmed s/o Gulab Khan r/o Khiddu, Islampur injured his wife Mst: Saira Bibi with 12 Bore short gun for committing the intentional murder of his wife, during those days the appellant was posted as IHC in PS Hattar, Criminal case was got registered by the complainant Gulab Khan S/O Lal Khan R/O Khiddu U/S 337/H PPC PS Hattar father of accused by concealing the facts. The case was investigated by appellant and he could not reveal the real facts of case and conducted the investigation as per version of complainant who was the father of accused, later on it was transpired that accused Mushtaq Ahmed intentionally attempted to commit the murder of his wife, therefore, the allegations were proved and the appellant was awarded lawful punishment in consequence of departmental enquiry.
 6. Pertains to record.
 7. Correct, to the extent of registration of FIR.
 8. Pertains to record.
 9. Incorrect, the criminal case was initially investigated by SI Aslam Khan of preventive staff of PS Hattar who partially investigated the case u/s 337-H PPC, when the injured Mst: Saira Bibi died at Hospital, the case was entrusted to investigation staff and IHC Sher Afghan started the investigation in which he displayed inefficiency and non professionally, he finalized the investigation and sent final report to the competent court, in the investigation the appellant followed the lines of SI Aslam Khan, he ought to have dig out the matters and prepared the criminal case as per its merits. Favoursim by the appellant to the accused Mustaq is not justified by any canon of law. It is pertinent to mention the appellant failed to investigate the case professionally, had he investigated the case fairly, he could have prepared the case under relevant law i.e. section 302/PPC for which the culprit could have been punished by the competent court as per gravity of offence, the favoring conduct of appellant changed the nature of case from murder to Qatl-a-Khita.
 10. Incorrect, injured Mst: Saira Bibi died in Ayub teaching Hospital, Abbottabad, and the appellant attested the receipt of dead body which signified the role of appellant's assumption of investigation (copy receipt dated 07.09.2010 is attached as annexure B) all this was done by the accused party incanivence with the appellant.
 11. Incorrect, the appellant claims to be a literate police officer, However, he rendered the defective investigation, so long as the matter was not brought into notice of senior police officers the appellant did one sided investigation favoring accused.

- 12. Incorrect, the appellant malafidely investigated the case, and submitted the challan before competent court for which the accused could not be punished for his actual offence and he was punished u/s 319 PPC.
- 13. Incorrect, the real facts were kept hidden by the appellant inconnivance with other staff until the matter was brought into notice of senior officers, who probed the allegations which were found correct, therefore, the appellant was awarded major punishment, so for the rest of police officers are concerned, they were also dealt with in accordance with law.
- 14. Incorrect.
- 15. Incorrect, the appellant leveled certain allegations in his representation before the departmental appellate authority, so for sifting the allegations denovo enquiry was order by the then Regional Police Officer, Hazara Region, Abbottabad, in which, the misconduct of appellant was also proved, hence, there were concurrent findings of both enquiries regarding the guilt of appellant.
- 16. Incorrect, there was no need of charge sheet and show cause notice in denovo enquiry as it originated on appellate forum on the plea of appellant, moreover, the appellant was given every opportunity to defend himself and he was also heard in Orderly Room by the authorities.
- 17. In reply to this Para it is submitted that the accused was given undue advantage by the appellant by conducting defective Investigation, had he investigated the case fairly and professionally the accused could have been punished u/s 302 PPC.
- 18. Incorrect, on basis of denovo enquiry lenient view was taken towards appellant and the major punishment of reduction in rank was converted into minor punishment of stoppage of increment for 02 years with cumulative effect by the then Regional Police Officer, Hazara Region, Abbottabad vide order Endst: No.2177-78/E dated 18.03.2013, the instant appeal is badly time barred and not maintainable.

GROUNDS:

- a. Incorrect, the order of punishment is quite legal in accordance with law and maintainable.
- b. Incorrect, the appellant converted a murder case into Qatal-e-Khita case and thereby served the purposes of accused, hence his acts and omissions were gross misconduct for which punishment was awarded.
- c. Incorrect, case file vide FIR No. 248, dated 02.09.2010 is itself a sufficient evidence which transpired the malafide of appellant.
- d. Incorrect, in the initial enquiry all the legal requirements were fulfilled at denovo enquiry, however, it was not essential to issue separate show cause notice on the same ground to appellant as the misconduct of the appellant was fully proved and issuance of show cause notice time and again was not requirement of law.
- e. Incorrect, the appellant was proceeded against under the removal from service special power ordinance and the legal requirement of enquiry were fulfilled under the law.
- f. Incorrect, as explained as above.
- g. Incorrect, the appellant was personally heard in Orderly Room and he was granted every right to defend himself but he miserably failed to prove his innocence

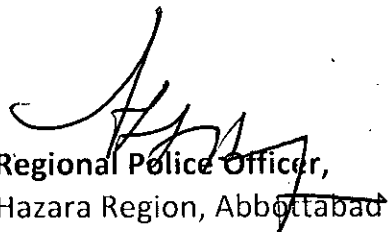
h. Incorrect, it was the appellant who assumed the investigation when section 319 PPC was added and section 337/H PPC was deleted, so the appellant followed the same line of his predecessor investigation officer who suppressed the facts of intentional attempt to commit murder of the victim, who succumbed to injuries and died, the appellant turned the case into Qatal-e-Khita, the acts of appellant were culpable and required departmental action under the law, hence the punishment is quite legal and maintainable.

Any other point may be argued during the hearing of case with the permission of Honourable tribunal.

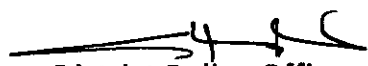
In view of above it is therefore, requested that the instant appeal does not hold any legal force, which may kindly be dismissed.



Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
Respondent No. 01



Regional Police Officer,
Hazara Region, Abbottabad
Respondent No. 02



District Police Officer,
Haripur
Respondent No. 03

(5)

**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR
ABBOTTABAD BENCH ABBOTTABAD**

Service appeal No. 931/2013

ASI Sher Afghan No.20 of Investigation Wing Haripur presently posted at
District Upper Kohistan

(Appellant)

Vs.

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and Others

(Respondents)

COUNTER AFFIDAVIT

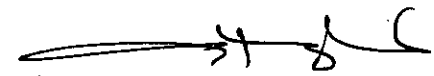
We the following respondents do hereby solemnly affirm and declare that all the contents of reply/comments are true and correct to the best of our knowledge and belief and nothing has been concealed from the Hon'ble Tribunal.



Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
Respondent No. 01



Regional Police Officer,
Hazara Region, Abbottabad
Respondent No. 02



District Police Officer,
Haripur
Respondent No. 03

Annexure "A"

کراچی پولیس کے ایس ڈی ایف کے رپورٹ نمبر 540/19 نمبر 23 ڈی 2006 (15 مارچ 2006) (2006) نمبر 15 (15)

ابتدائی اطلاع نسبت جرم قابل دست اندازی ایس ڈی ایف رپورٹ نمبر 152 مجموعہ ضابطہ نو جداری
 29/10 9 بجے رات

29/10 21:45 بجے	خلع
29/10 2 بجے	حاکم بدای پور
ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)	
ریجنل انسپکشن	
رپورٹ نمبر 331-H	
ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)	
ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)	
ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)	

ملاقات کرنے سے پہلے اطلاع درج کرنے میں وقفہ دراز وقت بیان کر کے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

29/10 2 بجے 21:45 بجے

چارج
 ملا بہ خان دارو خان سوم گیسٹرنگ سٹیشن گندم اسلام آباد (03010817551126)

Annexure B

رہبر صوبی نقش

5378
بجٹ 248 نومبر 2/10ء ص 319

قید عالی

بجٹ سمیان گلڈن فان ولہ سل فان قوم گجر
سکنہ گندو (الہم لہ) گجر پرنس ولہ گندو
قوم اعوان سکنہ گاندھارا (الہم لہ) -
گجر برصا کی رو سے گندو کہہ دیتے ہیں
کہ بتوینہ سماہ ماہرہ زارج مشتاق احمد
قوم گجر سکنہ گندو (الہم لہ) کی تعلقہ
مراٹھوں کے وقت اسے راج سے ریت ڈال
سے بغیر پورے علاقے درست حد پھر مہراٹھ
کر لی ہے۔ اور گجر برصا مسند ملک

ATTESTED
14-10-2010
Haji Muhammad

المسرقوم 7/10

گجر پرنس ولہ گندو
قوم اعوان سکنہ
گاندھارا (الہم لہ)
شناختی گاندھارا

گلڈن فان ولہ سل فان
قوم گجر سکنہ گندو (الہم لہ)
شناختی گاندھارا

13302-1574806-5 13302-0493390-7

Handwritten signature

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Sher Afghan

V/S

IGP & others

SERVICE APPEAL

APPLICATION FOR CORRECTION IN PRAYER CLAUSE.

Respectfully Sheweth:


1. That in the prayer clause of titled appeal the words "to the extent of penalty awarded" have been omitted inadvertently and due to typing mistake.

Prayer:

It is therefore humbly prayed that the words "to the extent of penalty awarded" may graciously be allowed to be inserted in prayer clause after 'be set aside and before and increment be restored'.


APPELLANT

Through:


(Mohammad Aslam Tanoli)
Advocate High Court
At Haripur

Dated: 18-08-2015

Affidavit:

I, Sher afghan S/O Ali Bahadar do hereby solemnly declare and affirm on oath that contents of the instant application are true and correct to the best of my knowledge and belief.

Dated: 18-08-2015


DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 931/2013

Sher Afghan
(Appellant)

VERSUS

Inspector General of Police & others
(Respondents)

RE-JOINDER ON BEHALF OF THE APPELLANT (SHER AFGHAN)
AGAINST THE COMMENTS FURNISHED BY RESPONDENTS NO. 1
TO 3.

PRELIMINARY OBJECTION:

Preliminary objections incorporated in para-1 to 6 are incorrect, hence vehemently denied.

OBJECTION ON FACTS:

1. Para-1 is incorrect hence denied. Appellant was appointed on 01-07-1991, he always performed his assigned duties with utmost care caution and never committed any misconduct the penalty awarded vide order 24-08-2011 was without reason which was converted into stoppage of increment for the period of 02 years with cumulative effect vide order 18-03-2013, the same was still contrary to the law as well as against the facts.
2. Para-2 being incorrect vehemently denied. That since his appointment the appellant ever rendered his assigned duties with zeal, zest, devotion to the entire satisfaction of his Officers/Seniors and never gave any chance of reprimand. Warnings are not penalties. Quarter guard is passed and closed chapter and has no nexus with the instant matter.

3. Para-3 is incorrect hence denied. Appellant, always earned good/very good ACRs (Annual Evaluation Reports) during his entire service due to his excellent performance. That in recognition of his tremendous outstanding and meritorious services rendered in the Police Department, the appellant was awarded with Commendation Certificates time and again including cash awards by different Police High-ups as well as by the worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar on 04-10-2010.
4. Para-4 is incorrect hence vehemently denied. The appellant has been raised from the rank of Constable to the Head Constable/Asstt. Sub. Inspector and is now well versant with the police rules and regulations and has under gone almost all departmental trainings/courses relevant to his profession and he stands as qualified for further promotion.
5. Para-5 is denied being incorrect. While posted as IHC- Investigation Police Station, Hattar Haripur, on 02-09-2010 an occurrence took place in village Khedoo (Islampur) Hariur within the limits of Police Station Hattar, Haripur wherein one Mst. Saira Bibi wife of Mushtaq Ahmed of the same village was injured with 12 bore short gun fire by her husband Mushtaq Ahmed accused.
6. Para-6 is incorrect hence denied. The complainant Ghulab Khan S/O Lal Khan caste Gujar (Father-in-law of the injured Mst. Saira Bibi) R/O village Khedoo (Islampur) Haripur alongwith one Younis Majaz reported the occurrence to Riasat Khan, ASI in DHQ Hospital Haripur on 02-09-2010.

7. Para-7 denied being incorrect. Riasat Khan ASI on his turn, who was on duty in DHQ Hospital Haripur, prepared injury sheet and sent the injured to the Doctor for medical examination. He also prepared Murasila and sent it to the Police Station for registration of the case.
8. Para-8 is incorrect hence denied. A case FIR No.248 dated 02-09-2010 was registered U/S 337-H PPC at Police Station, Hattar Haripur and Mohammad Aslam, Sub. Inspector Police (Operational) Police Station Hattar, Haripur was entrusted with the investigation of the matter.
9. Para-9 is also incorrect hence vehemently denied. On 02-09-2010, Mohammad Aslam Sub-Inspector, took over the investigation of the case, arrested the accused and recorded statements of complainant, injured lady, accused and all other relevant witnesses of the case. In short the entire investigation was carried out and ultimately completed by him.
10. Para-10 denied being incorrect. The injured lady remained under medical treatment till she expired on 07-09-2010 in Ayub Medical Hospital Abbottabad. Her death was reported to Mohammad Aslam S.I. and Sarfraz Khan SHO PS Hattar through Moharrir vide D.D. No.24 (1630 hours) dated 07-09-2010 by the complainant, who also made an application seeking exemption from postmortem which was granted by the Sarfraz Khan, SHO concerned.

11. Para-11 is incorrect hence denied. On 08-09-2010 i.e. after having recorded statements of complainant, injured lady, accused, all other relevant witnesses and even after death of injured lady, exemption of postmortem, receipt of dead body of the deceased and her burial, the investigation file was handed over to the appellant by Operational Staff, without routing it through a Senior Officer of the DTV Staff, for further investigation.
12. Para-12 incorrect hence denied. The appellant on his turn went on with his job strictly in accordance with law, honesty, care and caution, after completing and compiling all the relevant papers, he put-up the case file to his superiors/seniors for further guidance, necessary and disposal in the matter. They on their turn put-up complete challan of the case before the concerned Honourable Court for trial.
13. Para-13 is also incorrect hence denied. After 05 months of death of injured lady, her father made a complaint dated 07-02-2011 to the Addl. Inspector General of Police, Peshawar alleging therein that his daughter was murdered by her husband, upon which an inquiry was conducted and the responsibility was fixed upon the appellant, keeping aside the Officers (Mohammad Aslam Sub. Inspector and Sarfraz Khan SHO) who had actually carried out investigation of the case and awarded the appellant with the penalty of reversion from the rank of Head Constable to that of Constable by the District Police Officer, Haripur vide his order OB No.619 dated 24-08-2011.

14. Para-14 denied being incorrect. Appellant vide his departmental appeal dated 10-09-2011 challenged the above mentioned order of the District Police Office Haripur before the worthy Dy. Inspector General Police, Hazara Range, Abbottabad. *(copy of appeal is attached)*.
15. Para-15 as narrated is false hence denied. Accepting the above mentioned referred departmental appeal, impugned order dated 24-08-2011, was declared as "**Held in abeyance**" and a De-novo Inquiry against the appellant (including Mohammad Aslam Sub-Inspector and Sarfraz Khan Inspector who had actually conducted the investigation in the case FIR No.248 dated 02-09-2010) was ordered to be held vide order No.7127-28 dated 01-12-2011 by the worthy Regional Police Officer, Hazara Range, Abbottabad.
16. Para-16 incorrect hence denied. No such De-novo Enquiry was ever conducted nor any Show Cause Notice, Charge Sheet, Statement of Allegations etc. issued to the appellant. Even opportunity of personal hearing was never provided to the appellant.
17. Para-17 is denied being incorrect. The accused Mushtaq Ahmed charged in FIR NO.248 DATED 02-09-2010 has since been convicted and sentenced for 05 years R.I. and payment of Diyat by the learned Seccession Judge Haripur vide judgment and order dated 15-11-2012.
18. Para-18 incorrect hence denied. Without conducting any De-novo inquiry, the Enquiry Officer submitted report, comprising upon surmises, conjectures and with arbitrariness, against the

facts & record, to the worthy Regional Police Officer, Hazara Region, Abbottabad. On receipt of the said inquiry report the appellant has been awarded penalty of "Stoppage of increment for a period of two years with cumulative effect" by the worthy Regional Police Officer, Hazara Region, Abbottabad vide impugned order dated 18-03-2013, delivered on 16-04-2013 on specific application by the appellant.

GROUNDS:

- a) Incorrect. The impugned order to the effect of awarding of stoppage of increments with cumulative effect is illegal, unlawful, passed against the mandatory statutory provisions of law and the procedure set forth for the dispensation of justice at preliminary stages of the departmental inquiries hence liable to be set aside.
- b) Incorrect. FIR was not recorded by the appellant and the entire investigation was carried by SI Alsam Khan and Sarfraz Khan SHO, hence question of conversion of case of murder into Qatl-e-Khata by appellant does not arise. The impugned penalty is against the facts, material available on record and departmental rules and regulations.
- c) Incorrect. No de-novo inquiry was conducted by the Inquiry Officer, as ordered by the worthy Regional Officer, Hazara Range, Abbottabad vide his order No.7127-28 dated 01-12-2011.

- d) Incorrect. No Show Causes Notice was ever issued to the appellant as a result of de-novo inquiry, if any, conducted by the Inquiry Officer.
- e) Incorrect. Appellant was never served with any Charge Sheet, Statement of Allegations etc. which are mandatory and necessary before awarding any penalty as envisaged by the departmental rules & regulations.
- f) Incorrect. As explained above.
- g) Incorrect. Even appellant was not provided with the opportunity of personal hearing by the inquiry officer.
- h) Incorrect. The entire investigation in the case FIR NO.248 dated 02-09-2010, registered at Police Station Hattar, Haripur was carried out by Mohammad Aslam Sub-Inspector and Sarfraz Khan SHO Police Station Hattar Haripur and the appellant had nothing to do with the investigation thus does not come into picture, hence the penalty awarded to the appellant on the basis of negligence in the investigation is against the facts and law hence liable to be set aside.

Any other ground will be argued with the permission of Honourable Service Tribunal at the time of hearing of appeal.

BEFORE THE DIG HAZARA REGION AT ABBOTTABAD

REPRESENTATION AGAINST THE ORDER OB NO. 619 DATED 24.08.2011 PASSED BY THE DPO HARIPUR WHEREBY THE REPRESENTATIONIST WAS AWARDED WITH MAJOR PENALTY OF REDUCTION IN RANK FROM "D" LIST CONFIRMED HEAD CONSTABLE TO CONSTABLE UNDER REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000.

=====
Prayer: On acceptance of the instant Representation the impugned order may graciously be set aside and the representationist be reinstated in his rank of confirmed Head Constable from the date of reversion.

=====
Respected Sir,

1. With most reverence I beg to submit that I have been awarded with the subject mentioned major penalty by the DPO Haripur vide OB No. 619 dated 24.08.2011 (Copy is attached as Annexure "A").
2. The allegations leveled in the charge sheet against me are that while posted at Police Station Hattar being Investigating Officer the investigation in case FIR No. 218 dated 02.09.2010 U/S 319 PPC was not conducted fairly and professionally by me.
3. After having been charge sheeted vide No. 557-58 PA dated 17.06.2011 Mr. Arif Javed, DSP Haripur was appointed as Inquiry Officer to scrutinize the allegation leveled in the charge sheet and submit his report to the competent authority. (Copy attached as Annexure "B")
4. The aforementioned charge sheet was duly responded with correct, convincing, true, rebutting the allegations a detailed statement to the inquiry officer, which was not given due consideration and instead the Inquiry Officer went ahead with the departmental inquiry against me. (Copy of reply is annexed as Annexure "C").

FACTS

- (a) That brief facts of the case are that on 02.09.2010 an occurrence took place in Village Khedo (Islampur) Haripur within the limits of Police Station Hattar, Haripur wherein one Mst. Saira Bibi wife of Mushtaq Ahmed of the same village was injured with 12 bore short gun fire by her husband.
- (b) That complainant Ghulam Khan S/O Lal Khan caste Gujar (Father-in-law of the injured Mst. Saira Bibi) R/O the Village Khedo (Islampur) Haripur alongwith one Younis

Majaz reported the occurrence to Riasat Khan, ASI in DHQ Hospital Haripur on 02.09.2010, stating that he was living in a separate room in the same house alongwith his son Mushtaq Ahmed(accused) and his family, at 0900 hours (PM), he was available in his room when he heard shot of a fire arm from the room of his son Mushtaq Ahmed. He rushed to his son's room and found Mst. Saira Bibi in injured condition, while his son Mushtaq Ahmed was not available. His grand son Muazzam aged 10 year told him that his father Mushtaq Ahmed was cleaning his 12 bore short gun which went off and injured Mst. Saira Bibi, whom the complainant had brought to the hospital for medical treatment. According to complainant the occurrence had taken place due to negligence of his son Mushtaq Ahmed (accused).

- (c) That Riasat Khan ASI, who was on duty in the DHQ Hospital, Haripur prepared the injury sheet and sent it to the Doctor. He also wrote down Murasila and sent it to the Police Station Hattar for registration of the case.
- (d) That upon this a case FIR No. 248 dated 02.09.2010 was registered U/S 337-H, PPC and Mohammad Aslam, Sub Inspector (Operational staff) Police Station Hattar was entrusted the investigation.
- (e) That on 03.09.2010, Mohammad Aslam, Sub Inspector (I.O) visited the place of occurrence, on the pointation of complainant (Ghulab Khan) he got prepared the site plan, recorded the statement of eye witness of the occurrence Muazzam aged 10 years (son of injured Mst. Saira Bibi & Mushtaq Ahmed) U/S 161 Cr.P.C. He also took in possession blood stained kameez of injured Mst. Saira Bibi through recovery memo. Mohammad Aslam SI also arrested Mushtaq Ahmed accused on 05.09.2010, and recovered 12 bore gun double barrel alongwith 03 live cartridges and one empty through recovery memo to which Ghulam Hussain S/O Ghulam Sarwar (real father of the injured Mst. Saira Bibi) is a recovery witness. Mushtaq Ahmed accused could not produced license of the crime weapon (12 bore shot gun double barrel) at that time, a separate case U/S 13 of Arms Ordinance was also registered against him. Later on Mushtaq Ahmed accused was released on his personal bond by the Sub Inspector (IO) Mohammad Aslam. (Copies of recovery memo of crime weapon, arrest card of accused and statement of witnesses are attached as **Annexure B1 to B3**).
- (f) That on 06.09.2010, Mohammad Aslam S.I visited Ayub Medical Complex, Abbottabad, where injured Mst. Saira Bibi was admitted for medical treatment, and made application to the concerned Medical Officer for recording of statement of injured Mst. Saira Bibi U/S 161 Cr.P.C which was allowed by the Doctor with his remarks that she was conscious and able to record her

statement. Mohammad Aslam Sub Inspector (IO) then recorded her statement U/S 161 Cr.P.C in the presence of witnesses (1) Ghulam Sarwar S/o Said Ahmed (real grandfather of deceased) (2) Ghulam Jaffar S/O Ghulam Sarwar which was attested by the Doctor available on duty. Mst. Saira Bibi stated in her statement that she was injured by her husband Mushtaq Ahmed accused negligently, and she did not want to carry on any proceeding against her accused husband.

- (g) That on 07.09.2010, the injured Mst. Saira Bibi succumbed to her injuries and expired in Ayub Medical Hospital, Abbottabad. The complainant Ghulam Khan (father-in-law of deceased Saira Bibi) informed Moharrir Police Station Hattar about the expiry of Saira Bibi, who inserted the information in Daily Diary Mad No. 24 at 1630 hours on 07.09.2010. Moharrir further passed on the said information to Mohammad Aslam SI (IO) and Sarfraz Khan SHO, Police Station Hattar. Mohammad Aslam SI (I.O) arrested Mushtaq Ahmed accused and put him in judicial lockup. Meanwhile complainant of the case submitted an application to the SHO Police Station for exemption of the deceased from postmortem which was accepted by SHO. (Copy of Mad No.24 of daily diary dated 07.09.2010 attached as **Annexure "E"**).
- (i) That on 08.09.2010 after the death of injured Saira Bibi Mohammad Aslam S.I. (the then IO) Police Station Hattar converted Section 337-H PPC into 319-PPC and then handed over the case File to the Investigation Staff, Police Station Hattar.
- (j) That then the stage comes, i.e after ¹⁹ hours of the death and burial of Mst. Saira Bibi, when the investigation of the case U/S 319 PPC was handed over to me on 08.09.2010. I started the investigation to ahead from the stage where the same was left by Mohammad Aslam S.I (earlier I.O) and entrusted to me, *vide mad no. 28 (E-1)*.
- (k) That on 08.09.2010 already arrested accused Mushtaq Ahmed, recovered crime weapons, the copy of weapon's license were produced before the concerned court by me. I recorded statements of the witnesses U/S 161 Cr.PC, put the accused in judicial lockup under Judicial remand, also prepared the list of heirs of the deceased, and after completion of remaining investigation the case file submitted to SHO Police Station for further disposal.
- (L) That on 28.09.2010 Sarfraz Khan SHO Police Station Hattar submitted the complete challan to the concerned court. On 08.10.2010 chemical examiner FSL report was received the same with supplementary challan was also submitted to the concerned court at Haripur on 05.11.2010.
- (m) That the above mentioned facts reveal that almost entire investigation from 02.09.2010 to 08.09.2010 was conducted by Mohammad Aslam S.I (the Then IO). After

the death and burial of the deceased Saira Bibi, the investigation was entrusted to me, which I carried with utmost honesty, care and caution, zeal and zest, devotion and dedication, fairly and professionally and no stone was left unturned in discharge of my duties.

- (n) That I do not come in the picture for the responsibility of investigation to be fixed against me, while the entire investigation from its preliminary stages to the end had been carried out by Mohammad Aslam Sub Inspector (IO) a very senior most officer, who had arrested the accused, effected the recoveries of crime weapon, recorded the statements of recovery witnesses, eye-witnesses of occurrence, as well as statement of injured Mst. Saira Bibi (who later on expired) and had prepared site plan, samples for FSL Laboratories etc.
- (o) That so far as the recording of statements of father and mother, sister and brothers of the injured are concerned, the same could have been recorded as soon as possible after occurrence when Mohammad Aslam SI (IO) was conducting the investigation of the case at his level during the period he recorded the statements of other witnesses from 02.09.2010 to 08.09.2010.
- (p) That a crucial question is that if there was any speech of his daughter Mst. Saira Bibi injured/deceased recorded through video cassettes by her father when she was conscious and able to make speech during the period from 02.09.2010 to 07.09.2010, why the applicant remained mum and did not bring the matter to the knowledge of high ups of the police department and even at least after assumption the investigation by me on 08.09.2010, enabling me to have steered the direction of investigations in the light of information. He submitted application on 07.02.2011 for re-investigation after 5 months of the occurrence, for no reason referring therein.
- (q) That it was an inquiry conducted on the application dated 07.02.2011 addressed to DIG by Ghulam Hussain F/O of the injured Saira Bibi (deceased) after 5 months of her death, the applicant remained silent for such a long period without mentioning reason thereof. I have been made the escape goat being a low rank employee by the inquiry officer to satisfy remarks of the DIG on the application of Ghulam Hussain father of deceased and to save those of the legal consequences for their negligence who were really responsible and had conducted the investigation. Hence this representation, inter alia on the following grounds:-

(Copy of application is attached as **Annexure "F"**)

GROUND

- (i) That the impugned order is illegal, unlawful, against the facts, contrary to the procedure

set forth for the dispersion of justice at preliminary stages during the departmental inquiries, against the rules and regulation, passed in slipshod manner, arbitrary, perfunctory, cursory, based on malafide, hence liable to be set aside.

- (ii) That I have been served with no final *show cause* notice, along with inquiry report which is mandatory under the rule.
- (iii) That I am under the administrative control of SP investigation Haripur whereas the subject punishment has been awarded by the DPO which is without jurisdiction, against the laid down procedure and law, merits to be turned down.
- (iv) That the inquiry was conducted one sided and I being absolutely innocent was not reported accordingly, although the inquiry officer was convinced verbally that I was bound to support the initial investigation of senior officer. I have gone quit fairly in the completion of investigation of the case.
- (v) That I have not been given full chance of self defense and was treated blindly during inquiry of the case.
- (vi) That I was charge sheeted and awarded harsh major punishment under removal from service (Special Powers) Ordinance 2000 which has since been repealed from 05.03.2010 and no more applicable.
- (vii) That during the cross examination by me on the applicant Ghulam Hussain father of the deceased that when he was convinced that his daughter was murdered and not incidentally injured by her husband, why he had not reported to the I.O or the police station. He responded that he had told the SHO about this whereas the SHO in his statement deposed that he never approached to him in this context.
- (viii) That occurrence took place on 02.09.2010 whereas the applicant submitted the application direct to Additional IGP Investigation on 07.02.2011 for reinvestigation. The applicant did not advance any reason with regard to delay of five months for not submitting any complaint or request to the local officers for reinvestigation.

(ix) The inquiry officer has not recorded the statement of Doctor who is important PW of attesting the statement of injured Mst. Saira Bibi (deceased). Similarly the alleged video statement of the deceased was without any verification, to confirm whether the voice has of the deceased or otherwise. The video was not verified by Doctor or any other responsible PW and as such can not be relied upon.

(x) That the statement of deceased u/s 161 Cr.PC was taken in the hospital by SI Muhammad Aslam in the presence of Ghulam Sarwar grand father of the deceased who admitted the said statement.

5 That I am young educated and on promotion list **HC** near to promotion to the rank of ASI, I have undergone 20 years with untarnished record. I have always rendered useful service for the image of the department. Besides numerous commendation certificate I had recently earned commendation certificate class first from IGP K.P.K Peshawar for the arrest of main two accused/P.O from wanted in Kidnapping for Ransom case vide FIR No. 219 dated 13.05.2010 u/s 365-A, PPC PS Sadar Haripur. (Copy of commendation certificate is attached as **Annexure "G"**)


6. That the punishment of reduction of rank is very harsh and in-humanitarians which has not only spoiled my whole service carrier but it has thrash me back financially, I have six school going children's and large family to support and this financial loss is beyond my capacity.

PRAYER

In view of above facts and circumstances it is earnestly prayed that my case may kindly be given sympathetic consideration and I may kindly be reinstated in my original rank of HC from the date of reversion after set-asideing the impugned punishment order.

I shall be thankful for this act of kindness and prosperity.

Yours sincerely,



Sher Afghan
H.C. No. 20

Investigation Wing PS Ghazi
District Haripur

Dated=10-09-2011

①

Before the Khyber Pakhtunkhwa, Service Tribunal Peshawar

Service appeal No. 931/2013

ASI Sher Afgan No.20 of Investigation Wing Haripur presently posted in
District Upper Kohistan

.....(appellant)

Vs.

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & Others

.....(respondents)

Respectfully Sheweth:

The requisite Para-wise comments on the behalf of respondents are as under:-

Preliminary Objections:

1. The instant appeal is badly time barred and not maintainable under the law.
2. The appellant has not come to the honorable Tribunal with clean hands.
3. The appellant has no locus standi to file the appeal.
4. The appellant has suppressed material facts from the Honorable Tribunal.
5. The appellant is estopped by his own conduct.
6. That the instant appeal is not maintainable for non-joinder/mis-joinder of necessary parties.

Objections on facts:

1. That the appellant ASI Sher Afgan No.20 was enrolled in police department on 01.08.1991 as constable and while posted as IHC PS Hattar, District Haripur he committed gross misconduct for which he was awarded major punishment of reduction in rank from HC to Constable, vide OB No. 619, dated 24.08.2011 by the then District Police Officer, Haripur, the appellant filed departmental representation against the order of punishment to appellate authority, and the punishment of reduction in rank from HC to Constable was converted into stoppage of increment for the period of 02 years with cumulative effect by the appellate authority i.e. the then Regional Police Officer, Hazara Region, Abbottabad vide order Endst: No 2177-78/PA, dated 18.03.2015.
2. In correct, the appellant committed several misconducts during his service for which he was awarded following punishments.
 - (i) 05 days Quarter Guards vide OB No.495 dated 25.10.1992.
 - (ii) 07 days Quarter Guards with Extra Drill vide OB No.298 dated 27.11.2004
 - (iii) Fine Rs.200 and Censure vide OB No,360 dated 06.12.2004.
 - (iv) Censure vide OB NO.96 dated 02.12.2009.
 - (v) Warning vide OB No.20 dated 19.03.2010.
 - (vi) Warning vide OB No.49 dated 27.07.2011.
3. Incorrect, the appellant has also been awarded so many punishments for his misconduct, moreover, any commendation certificate does not impose restriction for initiating the proceedings of misconduct against the defaulter civil servant.

وکالت نامہ

کورٹ فیس

قیمتی

بعدالت جناب جسٹریٹ جج صاحب نے فیصلہ سنایا ہے کہ اس کیس میں درخواست گزار کو جیتا جاتا ہے۔

مخانب
 سید اختر علی
 سید اختر علی
 دعویٰ یا جرم

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام

ایڈووکیٹ بدین شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص
 . رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی
 پیشی پر مظہر حاضر نہ ہوا۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ
 ہونگے۔ نیز وکیل صاحب موصوف صدر مقام پچھری کے علاوہ کسی اور جگہ یا پچھری کے مقرر اوقات سے پہلے یا بروز
 تعطیل پیروی کرنے کے مجاز نہ ہونگے۔ اگر مقدمہ مقام پچھری کے کسی اور جگہ سماعت ہونے یا بروز پچھری کے اوقات
 کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے
 بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کل ساختہ پرواختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب
 موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق
 کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرنے اور ہر قسم کارروپیہ وصول کرنے اور رسید دینے اور داخل کرنے
 کا ہر قسم کا بیان دینے اور سپروٹائشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعویٰ کا اختیار ہوگا۔ اور بصورت اپیل و
 برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا ڈگری فیصلہ اجراءے ڈگری بھی صاحب موصوف کو
 بشرط ادائیگی علیحدہ پیروی مختار نامہ کرنیکا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر
 کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیار حاصل ہونگے جیسے صاحب
 موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ
 کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا لہذا مختار نامہ لکھ دیا ہے کہ مندرجہ مضمون
 مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

مورخہ: 15 مئی 2013ء

ال بعد ال بعد ال بعد

سید اختر علی
 سید اختر علی
 سید اختر علی

Signature

0333-5958997