

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7147/2021

Date of Institution ... 04.08.2021
Date of Decision ... 14.09.2022

Amjad Khan S/O Hameed Ullah, Ex-Constable R/O Cast Ali
Khel, Tapa Sher Khel, Tehsil Upper District Orakzai.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home &
Tribal Affairs, Civil Secretariat, Peshawar and three others.

... (Respondents)

Muhammad Ilyas Orakzai,
Advocate ... For appellant.

Kabir Ullah Khattak,
Additional Advocate General ... For respondents.

Rozina Rehman ... Member (J)
Fareeha Paul ... Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction
of this Tribunal through above titled appeal with the prayer as copied
below:

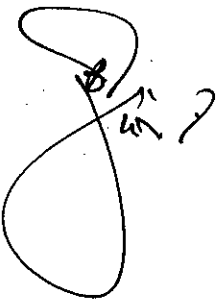
“On acceptance of this Service Appeal, the
impugned dismissal order dated 28.12.2020 of
respondent No.4 as well as the appellate order dated
12.07.2021 of respondent No.3 may kindly be set
aside and the appellant may kindly be reinstated into
service with all back benefits.”

2. Brief facts of the case are that appellant joined Khasadar Force
as Sepoy in the year 2011. After 25th Amendment in the Constitution
of Islamic Republic of Pakistan, 1973, the then Orakzai Agency also

merged in Khyber Pakhtunkhwa Province and after merger, Khasadar Force was absorbed in Khyber Pakhtunkhwa Police Force in the year 2019. Appellant was involved in a case FIR No.475 dated 28.09.2019 at Police Station Doaba District Hangu U/S 302/324/427/148/149/109 PPC. He then surrendered before the Law and remained behind the bars till conclusion of trial and later on was acquitted by the learned ASJ-II Hangu vide judgment dated 26.03.2021. After acquittal, he approached the respondents but his dismissal order was handed over to him on 27.03.2021. He therefore, preferred departmental appeal which was rejected, hence the present service appeal.

3. We have heard Muhammad Ilyas Orakzai Advocate, learned counsel for appellant and Kabir Ullah Khattak, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Ilyas Orakzai Advocate, learned counsel for appellant submitted that the impugned order is against law and facts and norms of justice, therefore, not tenable and liable to be set aside. It was argued that the impugned dismissal order as well as the order of the appellate authority are void ab-initio, unwarranted and are liable to be set aside. That the charges of the alleged crime were not proved and that as per law, every acquittal is honorable acquittal but the respondents instead of giving benefit of acquittal, dismissed the appellant which is not allowed by the law. Further submitted that no show cause notice or charge sheet with statement of allegation were personally served upon the appellant, thus he remained unheard and the impugned order has no legal effect. Lastly he submitted that under the principle of natural justice, fair play and equity, the appellant is entitled to reinstatement into service with all back benefits.



5. Conversely, learned AAG submitted that the impugned order passed by the respondents is based on facts, evidence and in accordance with the relevant rules. He submitted that criminal and departmental proceedings are distinct in nature, can run side by side and that the appellant was proceeded against departmentally by the respondents under the relevant rules and after completion of all codal formalities, he was punished according to law.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant was performing his duty in accordance with law when in the meanwhile, he was charged in a murder case vide FIR No.475 dated 28.09.2019 registered U/S 302/324/427/148/149/109 PPC at Police Station Doaba. The appellant remained behind the bars right from his arrest i.e. 08.06.2020 till his acquittal on 26.03.2021. The entire record is silent in respect of any proper inquiry inside the jail premises as he was not granted bail and he was behind the bars till his acquittal. Neither the competent authority nor the appellate authority tried to keep pending the inquiry till the decision of criminal case by a competent court of Law and it was on 26.03.2021 when the appellant was acquitted by learned Additional Sessions Judge-II Hangu and after getting acquittal, he filed departmental appeal on 26.04.2021 which was rejected. Hence, the present service appeal.

7. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Involvement of the appellant in criminal case was the

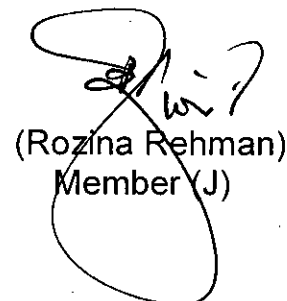
only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

8. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. For what has been discussed above, this appeal is accepted and the impugned order dated 28.12.2020 is set aside and the appellant is reinstated in service from the date of his dismissal from service and is entitled to all back benefits from his date of his arrest till his reinstatement in service. However, he remained absent from the date when FIR was registered on 28.09.2019 till the date of his arrest. This period i.e. from 28.09.2019 to 07.06.2020 is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
14.09.2022


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

ORDER

14.09.2022


Appellant present through counsel.

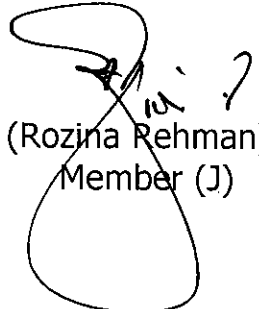
Kabir Ullah Khattak, Additional Advocate General alongwith Kashif Malik Focal Person for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today of this Tribunal placed on file, this appeal is accepted and the impugned order dated 28.12.2020 is set aside and the appellant is reinstated in service from the date of his dismissal from service and is entitled to all back benefits from his date of his arrest till his reinstatement in service. However, he remained absent from the date when FIR was registered on 28.09.2019 till the date of his arrest. This period i.e. from 28.09.2019 to 07.06.2020 is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

14.09.2022



(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

27.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, learned Addl. AG for respondents present.

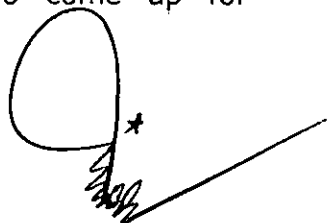
Reply/comments on behalf of official respondent are still awaited. Learned AAG sought time for submission of reply/comments. Granted. To come up for reply/comments before the S.B on 29.03.222.


(Atiq-Ur-Rehman Wazir)
Member (E)

29.03.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Written reply/comments on behalf of respondents have already been submitted through office vide diary No. 415 dated 08.02.2022 which is placed on file. Copy of the same was also handed over to the clerk of learned counsel for the appellant. Today Learned counsel for the appellant submitted rejoinder which is also placed on file. Adjourned. To come up for arguments on 30.06.2022 before D.B.


(MIAN MUHAMMAD)
MEMBER(E)


30.06.2022

Learned counsel for the appellant present.

Mr. Kashif Malik Focal Person alongwith Mr. Naser Ud Din Shah, Assistant Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation of brief of the instant case. Adjourned. To come up for arguments on 14.09.2022 before D.B.


(Rozina Rehman)
Member (J)


(Salah Ud Din)
Member (J)

Amjad Khan 7147/2021

17.09.2021

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant argued that the major penalty of "dismissal from service" was awarded to the appellant vide office order dated 28.12.2020 due to the reason that he was involved/nominated in FIR No. 475 dated 28.09.2019. He was acquitted by the court of ASJ-II/JMCTC, Hangu on 26.03.2021. He, therefore, submitted his departmental appeal on 26.04.2021 which did not find favourable consideration and was also rejected on 12.07.2021, hence, the instant service appeal instituted in the Service Tribunal on 04.08.2021. It was further contended that the appellant was behind the Bar in the said criminal case under 302/324/427/148/149 PPC Police Station Doaba, District Hangu and the departmental proceedings, if any, were carried out on back of the appellant. No proper enquiry was held and no charge sheet/statement of allegations or show cause notice issued to the appellant. He was rather required to have been placed under suspension till culmination of criminal proceedings against him by the competent court of jurisdiction. Since no ends of justice fulfilled and ^{no} opportunity of fair trial provided to the appellant, the impugned order dated 28.12.2020 and appellate order dated 12.07.2021 may be set aside and the appellant reinstated in service with all back benefits. In support of his arguments he relied on 2019 PLC (CS) 255, 2007 PLC (CS) 997 and judgement of this Tribunal in service appeal No. 1025/2017 dated 03.07.2018 titled Farman Ali-vs-PPO and others.

Points raised need consideration. The appeal is provisionally admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time or extension of time is not sought, the office shall submit the file with a report of non-compliance. File to come up for arguments on 27.01.2022 before the D.B.

Appellant Deposited
Security & Process Fee



(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 714 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/08/2021	<p>The appeal of Mr. Amjid Khan presented today by Mr. Muhammad Ilyas Orakzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Amjad Khan v/s Govt of KPK & others

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: <u>Muhammed Ilyas Orakzai</u>	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?		
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	-	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	-	
16	Whether appeal contains cutting/overwriting?	-	
17	Whether list of books has been provided at the end of the appeal?	-	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	-	
24	Whether Security and Process Fee deposited? On	-	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On	-	
26	Whether copies of comments/reply/rejoinder submitted? On	-	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On	-	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Muhammad Ilyas Orakzai

Signature:

[Signature]

Dated:

04-08-2021

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2. *That after 25th amendment, the appellant's district i.e. Orakzai the then Orakzai Agency was also merged like other agencies in Khyber Pakhtunkhwa Province, after merger the Khasadar Force are absorbed in Khyber Pakhtunkhwa Police Force in the year, 2019.*
3. *That after being inducted into service, the appellant has been the most obedient, hardworking & sincere subordinate and never left any stone unturned in fulfillment of his duties and responsibilities.*
4. *That throughout his service carrier, the appellant has never been awarded minor or major punishment.*
5. *That unfortunately the appellant was enroped in a false and concocted case vide FIR No 475 dated 28/09/2019 u/s 302/324/427/148/149/109 PPC, Police Station Dawaba, District Hangu. (Copy of FIR is attached as annexure "A").*
6. *That after lodging the ibid case the appellant being a law abiding citizen and a member of police department, had surrendered before the law.*
7. *That after surrendering, the appellant was behind the bars, till the conclusion of trial, that after conclusion of trial the*

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appellant was acquitted by the learned ASJ-II/JMCTC, Hangu vide judgment dated 26/03/2021. (Copy of the judgment dated 26/03/2021 is attached as annexure "B").

8. That after acquittal and release from jail, the appellant wants to resume his duty and approach to the office of respondent No 4 on 27/03/2021, but astonishingly the office of respondent No 4 handed over a dismissal order dated 28/12/2020 to the appellant. (Copy of dismissal order is attached as annexure "C").
9. That against the above impugned order dated 28/12/2020 of respondent No 4, the appellant preferred an appeal before the respondent No 3 on 26/04/2021, which was rejected on 12/07/2021, whereby upheld the punishment awarded by the respondent No 4. (Copy of appeal and order dated 12/07/2021 are attached as annexure "D").
10. That feeling aggrieved from both the impugned orders of respondents No 3 & 4, the appellant filed the instant Service Appeal on the following grounds, inter alia:-

Grounds:-

- A. That the both the impugned dismissal orders of respondents No 3 & 4 are illegal, against the facts and law, liable to be set aside.

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- B. *That the impugned dismissal order as well as that order of the appellate authority are cubical, void ab-initio, unwarranted and are liable to be set aside.*

- C. *That after acquittal of the appellant, the charges of the alleged crime is not proved, as per settled law every acquittal is Honourable acquittal, but the respondents instead of giving benefit of acquittal, dismissed the appellant representation which is not allowed by the law.*

- D. *That in case of the appellant, no show cause notice or statement of allegation or charge sheet were personally served upon the appellant, thus appellant remained unheard and the order consequent to such a legally defective order as of no legal effect, the law treats such order illegal, void ab-initio.*

- E. *That the appellant has served the department for more than nine years, while the appellant is deprived from his bread and butter alongwith his family on the basis of alleged criminal case, the competent court of law after considering the evidence, acquitted the appellant from the charges, but for unknown reasons, the respondents have refused to give benefit of acquittal on technical ground.*

⑤

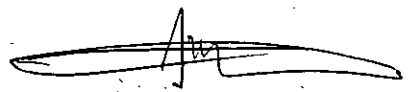
- F. That the under the principle of natural justice, fair play and equity, the appellant is entitled for restoration into service.
- G. That from all prospective, the dismissal order as well as that of the appellate authority's order are illegal, wrong, unwarranted, hence liable to be set aside.
- H. That the appellant reserves the right to agitate any other ground at the time of arguments.

It is, therefore, respectfully prayed that on acceptance of this Service Appeal, the impugned dismissal order dated 28/12/2020 of respondent No 4 as well as the appellate order dated 12/07/2021 of respondent No 3 may kindly be set aside and the appellant may kindly be re-instated on his service with all back benefit.

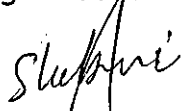
Dated:- 03/08/2021


Appellant

Through:-


Muhammad Ilyas Orakzai
Advocate High Court

&


Muhammad Shabir Khalil
Advocate High Court

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. _____/2021

Amjad KhanPetitioner

VERSUS

Govt of KP & othersRespondents

AFFIDAVIT

I, Amjad Khan S/o Hameed Ullah R/o Qoum Ali Khel, Tapa Sher Khel, District Upper Orakzai, do hereby solemnly affirm and declare on oath that contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Amjad Khan

DEPONENT

ATTESTED
IMRAN KHAN ADVOCATE
Auth.
Commissioner
High Court Peshawar
28/1/2021

Annex "A"

<p>کونٹری</p> <p>(فائل) ابتدائی اطلاع نسبت مجرم قابل دست افزاری پولیس بلورٹ شروع ہونے پر ۱۰۲ مجموعہ متاثرہ قریبی</p> <p>روا کیہ</p> <p>Suppl</p> <p>تاریخ وقت وقوع 28/2019 وقت 13:25</p>	<p>مقام</p> <p>تاریخ وقت بلورٹ 28/2019 وقت 15:35</p> <p>جاگہ گ بریج 28/19 وقت 16:55</p>
<p>ام و سکونت اطلاع دہندہ و متاثر</p> <p>تعداد و نوع فاصلہ مقام سے اندر سمیت زرگری</p> <p>نام و سکونت ملزم 1) مل ٹوانا 2) روبرا</p> <p>روا کیہ جو تفتیش کے متعلق کی گئی اگر اطلاع درج</p> <p>ہوئے ہیں تو وقت پر ہوا تو وجہ بیان کرو۔</p>	<p>تعداد سے روا کیہ کی تاریخ و وقت</p> <p>نام و سکونت ملزم 1) مل ٹوانا 2) روبرا</p> <p>روا کیہ جو تفتیش کے متعلق کی گئی اگر اطلاع درج</p> <p>ہوئے ہیں تو وقت پر ہوا تو وجہ بیان کرو۔</p>
<p>تعداد سے روا کیہ کی تاریخ و وقت</p> <p>نام و سکونت ملزم 1) مل ٹوانا 2) روبرا</p> <p>روا کیہ جو تفتیش کے متعلق کی گئی اگر اطلاع درج</p> <p>ہوئے ہیں تو وقت پر ہوا تو وجہ بیان کرو۔</p>	<p>تعداد سے روا کیہ کی تاریخ و وقت</p> <p>نام و سکونت ملزم 1) مل ٹوانا 2) روبرا</p> <p>روا کیہ جو تفتیش کے متعلق کی گئی اگر اطلاع درج</p> <p>ہوئے ہیں تو وقت پر ہوا تو وجہ بیان کرو۔</p>

ابتدائی اطلاع تھے درج گو و ایک قریبی دراصل معائنہ لفظ علی ASI

درخت کسٹری لکھتے اللہ 95 فیصل پور درج ذیل ہے۔ ۲۰۰۰ فیصلہ فارم قائمہ روا کیہ الملکم علی

کے مقام زرگری خلیفہ کوچ پر نام نہ تک پور جس کے نتیجے میں کئی کسان جان بحق و زخمی ہوئے ہیں

جن کو قریبی اطلاع حاصل ہے کہ DHQ ہنگو کے گئے ہیں۔ الملکم پر میں ہم لفظی پولیس کے

ایم جی ر۔ DHQ ہنگو آکر ایمر جنوں پر میں لفظی آئے آذان حقولین 1) صیب شاہ ولد

سلطان محمد عمر 65 سال 2) عیبت ولد صاحبی بادشاہ عمر 75 سال 3) مسعود بلالہ جانیہ زویہ

نور خان عمر 40 سال 4) مسعود عیبت جانی زویہ نور خان عمر 75 سال 5) بادشاہ مار زور بادشاہ

عمر 76 سال 6) جوین خان و زور بادشاہ خان عمر 45 سال اور قریہ میں 1) مسعود شریف علی

زویہ ذالغ خان عمر 35 سال 2) ذالغ خان ولد زویہ خان عمر 42 سال 3) صیب اللہ

ولد صیب خان عمر 17 سال 4) رسم ایمر ولد صیب ایمر عمر 37 سال 5) شہزاد خان ولد حضرت باد

عمر 36 سال 6) ڈاکٹر زور ملک ملک کوچ سلطان شہنشاہ علی اللہ بادشاہ آرزوی وجود یا کہ بہت سے متاثرین

قریب میں ہیں۔ قریہ د اللہ ولد ایمر ایمر ایمر 21 سال تمام شخص ایمرین نا اندہ زرگری N12

599-11775-14101 برائیل نمبر 93 633703000 بلورٹ کرنا ہے کہ ہمارے اور شہلیں وغیرہ

ماورے دارگان کسب کسبہ تمل مقام کی دشمنی چل رہی ہے۔ اسی سلسلے میں آج عدالت

ایڈیشنل سیشن جج صاحب ہنگو میں پیشی تھی۔ مارچ پیشی کے لئے جج صاحب دادا ام فقیر

کلیت شاہ۔ یہاں دارام قریہ رسم آکر کچھ مسئلہ آئے۔ بعد جج صاحب نے مارچ پیشی میں ایمر

صاحبان دیاتے پورے قریہ میں ایمرین نا اندہ مشہد سے ملد تک کوچ قریہ 1) 2) برتد

سورہ میں سوار پورے۔ ملد تک کوچ آ کر ڈاکٹر ملک قریہ فقیرت خان کر دم تھا۔ جس کے

واقعہ 13:25 مقام بالا ہوئے۔ ملد تک کوچ کے سامنے کی طرف سے طلحہ جان 1) مل ٹوانا

2) روبرا لہان عیبت کے خان 3) احسان اللہ ولد شہزاد اللہ 4) امجد ولد امجد اللہ

ATTESTED

(Signature)

⑧ 'A'

INVO
Room
Room
Abd
M

مقامی اور خارجی اداروں کے ذریعہ ملنے والے پیسے اور فراڈ کی رقم
 کے بارے میں اطلاع کے تحت ایک سنگھ کی طرف سے ایک فراڈ کی رقم
 کی اطلاع دینے کے لئے فراڈ کی رقم کے بارے میں ایک فراڈ کی رقم
 کی اطلاع دینے کے لئے فراڈ کی رقم کے بارے میں ایک فراڈ کی رقم
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 کی اطلاع دینے کے لئے فراڈ کی رقم کے بارے میں ایک فراڈ کی رقم
 کی اطلاع دینے کے لئے فراڈ کی رقم کے بارے میں ایک فراڈ کی رقم

ملاحظہ
 28/09/2019

ATTESTED

[Handwritten Signature]

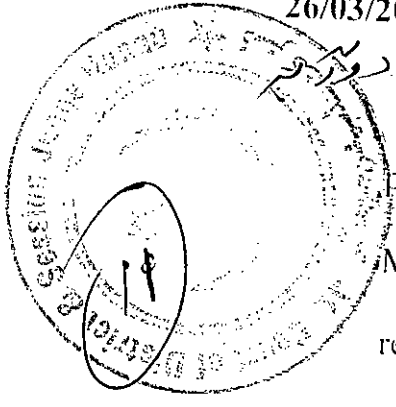
اس حوالے سے تین اطلاع دینے کا دستاویز یا اس کی ہر باخبر کو اطلاع دینے کا دستاویز
 اور فراڈ کی رقم کے بارے میں ایک فراڈ کی رقم کے بارے میں ایک فراڈ کی رقم

9) لاء الوضو صواب، ريسٽر اسٽيشن ۾ صوبائي ٽربيونل

SC 61/II P 26/3/21 عند 18/9/20

AMEX B

Order:
26/03/2021



Sr.PP for the State present. Accused Mujahid Azam on bail

present, while accused Rab Nawaz, Ihsan Ullah, Amjid Khan and Muhammad Ishaq produced in custody. Arguments already heard and record perused.

Vide my detailed judgment of today, consisting of thirty-two pages, separately placed on file, prosecution failed to bring home the charge against the accused facing trial, hence, by extending the benefit of doubt, the accused facing trial are hereby acquitted. Accused Mujahid Azam is on bail, his bail bonds stand cancelled and sureties to him are relieved from the liability of bail bonds. Accused namely Rab Nawaz, Ihsan Ullah, Amjad Khan, Muhammad Ishaq are in custody, they be set free forthwith, if not required in any other case, whereas, accused Amal Nawaz and Shakil are hereby declared as proclaimed offenders. Perpetual warrants of arrest be issued against them and their names be entered in the relevant register of POs.

Case property be kept intact till the arrest, trial and disposal of case against the absconding accused Amal Nawaz and Shakil.

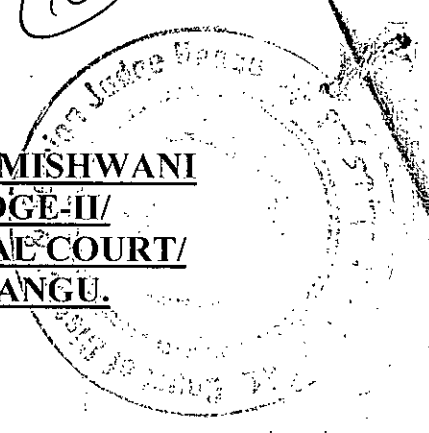
File be consigned to record room after necessary completion and compilation.

ANNOUNCED
26/03/2021

Azimullah
(Azimullah Mishwani)
Addl: Sessions Judge-II/JMCTC/JSC,
Hangu

CERTIFIED BY
30/3/21
EXAMINE
COPYING AGENCY HANGU

(16)



IN THE COURT OF AZIMULLAH MISHWANI
ADDITIONAL SESSIONS JUDGE-II/
JUDGE MODEL CRIMINAL TRIAL COURT/
JUDGE SPECIAL COURT, HANGU.

Session Case # 61/II-P

Date of Institution..... 18/09/2020
Date of Hearing 25/03/2021
Date of Decision..... 26/03/2021

The State

VERSUS

- (100)
- 1)- Rab Nawaz s/o Eidat Khan,
 - 2)- Ihsan Ullah s/o Shafi Ullah
 - 3)- Amjid Khan s/o Hamid Ullah
 - 4)- Muhammad Ishaq, and
 - 5)- Mujahid Azam s/o Mir Azam.

(all residents of village Zargeri, District
Hangu).

.....(Accused facing trial)

FIR # 475 DATED 28/09/2019

U/S 302-324-427-148-149-109 PPC, PS DOABA, DISTRICT
HANGU.

JUDGMENT

1. The accused Rab Nawaz, Ihsan Ullah, Amjid Khan, Muhammad Ishaq and Mujahid Azam faced trial in afore captioned case.

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2. Compendium facts as per the FIR are such that; on 28/09/2019, the complainant Farhad Ullah in presence of injured namely Rustam, Mst Sharifa, Zalif Khan, Habib Ullah and Shaukat and deceased namely Hashmat Ullah, Habib Shah, Haji Badshah, Momin, Tila Jan and Jannat Bibi in the emergency room of DHQ hospital Hangu reported the matter to the effect that; they have blood feud enmity with their maternal cousins namely Shakil etc. On the fateful day he (complainant) alongwith his grandfather Habib Shah (deceased) and cousin Rustum (injured) had gone to District Courts Hangu to attend the Court proceedings. After the hearing, they were returning back to home in a flying coach bearing No.1297/Bannu alongwith other passengers. At about 13:25 hours, when they reached to Zargeri Adda Farsh situated near Al-Qalam Public School; the accused namely Amal Nawaz, Rab Nawaz, Ihsan Ullah, Amjid, Shakil appeared there duly armed with firearm weapons and started indiscriminate firing upon the flying coach, as result, whereof, his grandfather Habib Shah alongwith passengers namely Hashmat, Mst Tilla Jana, Mst Jannat Bibi, Badshah, Momin Khan got hit and died on the spot, while other passengers namely Mst Sharifa Bibi, Zalif Khan, Habib Ullah, Rustam Akbar and Shaukat Khan got hit and sustained firearm injuries, whereas, he (the complainant) luckily remained safe and unhurt. He charged the accused for murders of his grandfather, rest of the deceased and making effective firing causing injuries to about five persons and causing damage to the vehicle. Report of the complainant was scribed in shape of Murasila (Ex.PW-24/1) culminated into FIR (Ex.PW-24/2). Later on, accused Mujahid Azam

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EXAMINES

and Muhammad Ishaq were also charged by the complainant in his statement recorded u/s 164 Cr.PC dated 14/10/2019.

3. After completion of investigation, prosecution submitted complete challan against accused Rab Nawaz, Ihsan Ullah and Mujahid Azam and absconding co-accused Shakil, Amal Nawaz, Ishaq and Amjid u/s 512 Cr.PC. Later on, accused Rab Nawaz got arrested vide his card of arrest (Ex.PW-3/1) dated 03/10/2019, accused Ihsan Ullah vide card of arrest (Ex.PW-23/14) dated 05/10/2019, Accused Amjid Khan and Muhammad Ishaq vide their card of arrest (Ex.PW-3/3) dated 08/06/2020 and Mujahid Azam vide card of arrest (Ex.PW-3/2) dated 05/01/2021. Prosecution submitted supplementary challans against the arrested accused. Trial was commenced. Charge against accused facing trial framed to which they claimed trial by pleading not guilty. Hence, prosecution was accorded opportunity to adduce its evidence. Detail of evidence so recorded is given in table given below;

PWs	Name	Role	Documents exhibited
SW-1	Tahir Abbas DFC No.32	Entrusted with the warrants of arrest u/s 204 Cr.PC and proclamation notices 87 Cr.PC issued against the accused.	Warrants u/s 204 Cr.PC Ex.SW-1/1 and Ex.SW-1/2 Reports Ex.SW-1/3 and Ex.SW-1/4 Proclamation notices Ex.SW-1/5 & Ex.SW-1/6 Reports Ex.SW-1/7 & Ex.SW-1/8
PW-1	Farhad Ullah	Complainant.	...

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PW-2	Constable Safeer-ur-Rehman No.28	Taken the parcels to FSL	...
PW-3	Mujahid Hussain SHO	Arrested accused Rab Nawaz. Issued card of arrest. Arrested accused Mujahid Azam Submitted supplementary challan. Arrested the accused Amjid Khan and Muhammad Ishaq. Issued card of arrest. Submitted supplementary challan	Card of arrest of accused Rab Nawaz EX.PW-3/1 Card of arrest of accused Mujahid Azam Ex.PW-3/2 Card of arrest of accused Amjid Khan and Muhammad Ishaq Ex.PW-3/3.
PW-4	Khurshed Nawaz LHC	Obtained the CDR data of accused vide his application	Application for obtaining CDR data Ex.PW-4/1 CDR data Ex.PW-4/2
PW-5	Noor Khan (mechanic)	Examined the vehicle	Examination report Ex.PW-5/1
PW-6	Constable Hasham No.189	Witness to recovery memo Ex.PC	...
PW-7	Shaukat Khan (driver)	Driver of Flying Coach bearing No. C-1297/Bannu	...
PW-8	Sayed Yasrab Hussain ASI	Witness to recovery memos Ex.PW-8/1 & Ex.PW-8/2	...
PW-9	Muhammad Nauman	Son of deceased Mst Jannat bibi	...

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PW-10	Deenat Shah	Brother of deceased Haji Badshah	...
PW-11	Umar Islam	Son of deceased Momin Khan	...
PW-12	Noor Khan	Husband of deceased Mst Teela Jana	...
PW-13	Fazal Badshah Khan S.I	Witness to pointation memo	Pointation memo Ex.PW-13/1
PW-14	Abdur Rahim IHC	Witness to recovery memo Ex.PC Witness to pointation memo Ex.PW-14/1	...
PW-15	Umar Saif Khan	Identified the dead body of the deceased Momin Khan and Badshah before the doctor and police at DHQ hospital Hangu	...
PW-16	Imtiaz Khan	Identified the deceased Habib Shah and Minor Hashmat before the doctor and police at DHQ hospital Hangu	...
PW-17	Dr. Muhib Ullah Jan	Conducted autopsy of dead bodies of deceased Hashmat Ullah, Habib Shah, Haji Badshah, Momin Khan. Examined the injured Rustam, Mst Sharifa, Zaleef, Habib Ullah and	PM reports Ex.PM, Ex.PM/3, Ex.PW/5, and Ex.PM/7. Inquest reports Ex.PM/1, Ex.PM/4, Ex.PW-6, Ex.PM/8 MLC reports Ex.PW-17/1, Ex.PW, Ex.PW-17/3, Ex.PW-17/5,

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		Shaukat.	Ex.PW-17/1 Ex.PW-17/9 Injury Sheets Ex.PW-17/2, Ex.PW-17/4, Ex.PW-17/6, Ex.PW-17/8 and Ex.PW-17/10.
PW-18	Momin Khan	Identified the dead body of Mst Jannat Bibi before the doctor and local police in the hospital.	...
PW-19	Habib Ullah	Injured / eye witness to the occurrence	...
PW-20	Lady Dr. Gul Andaam	Conducted autopsy on the dead bodies of deceased Mst Tela Jan and Mst Jannat bibi.	PM reports Ex.PW-20/1 and Ex.PW-20/3 Inquest reports Ex.W-20/2 and Ex.PW-20/4.
PW-21	Zalib Khan	Injured / eye witness to the occurrence	...
PW-22	Muhammad Rauf	Identified the dead body of deceased Tella Jana in hospital before the doctor and police.	...
PW-23	Ali Ahmad Khan Inspector	Conducted investigation	Site plan Ex.PB Photographs Ex.PW-23/1 Recovery memos Ex.PC & Ex.PW-

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			<p>23/2, Ex.PW-2</p> <p>Application for obtaining mobile data Ex.PW-4/1</p> <p>CDR data Ex.PW-4/2</p> <p>Recovery memo Ex.PC/1</p> <p>Application for issuing letter against all the accused Ex.PW-23/3</p> <p>Letter Ex.PW-23/4</p> <p>Application for recording statement of accused u/s 164 Cr.PC Ex.PW-23/5</p> <p>List of LRs of deceased Mst Teela Jana Ex.PW-23/6</p> <p>List of LRs of deceased Jannat Bibi Ex.PW-23/7</p> <p>List of LRs of deceased Momin Khan Ex.PW-23/8</p> <p>List of LRs of deceased minor Hashmat Ex.PW-23/9</p> <p>List of Lrs of</p>
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deceased Hajir

Badshah Ex.PW-

23/11

Application for
recording statement
of PW Nauman u/s
164 Cr.PC Ex.PW-
23/12

Application for
obtaining physical
custody of accused
Ex.PW-23/13

Card of arrest of
accused Ihsan Ullah

Ex.PW-23/14

Application for
grant of physical
custody of accused
Ex.PW-23/14-A

Application for
grant of further
physical custody of
accused

Ex.PW-23/14-B

Application for
grant of further
physical custody of
accused

Ex.PW-23/14-C

Memo for addition
of section of law

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			<p>Ex.PW-23/16</p> <p>Pointation memo Ex.PW-14/1</p> <p>Application for seeking further time for submitting challan Ex.PW-23/16</p> <p>Application for issuance of letter to DPO Orakzai Ex.PW-23/17</p> <p>Application for recording confessional statement of accused Ex.PW-23/18</p> <p>Application for obtaining warrants u/s 204 Cr.PC Ex.PW-23/19</p> <p>Application for recording statement of complainant u/s 164 Cr.PC EX.PW-23/20</p> <p>Card of arrest of accused Mujahid Azam Ex.PW-3/2.</p> <p>Application for grant of physical custody of accused</p>
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Dated: 26/03/2011

Ex.PW-23/21
 Application for recording confessional statement of accused Ex.PW-23/22
 Applications for proclamation notices Ex.PW-23/23
 Applications for sending parcels to FSL Ex.PZ to Ex.PZ/4
 FSL results Ex.PW-23/24 & Ex.PW-23/25
 Card of arrest of accused Amjad Khan and Muhammad Ishaq Ex.PW-3/3
 Application for obtaining physical custody of accused Ex.PW-23/26
 Pointation memo Ex.PW-13/1.
 Application for recording confessional statement of accused

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			Ex.PW-23/27
PW-24	Yaqeen Ali ASI	Scriber of Murasila, prepared inquest reports and injury sheets.	Murasila Ex.PW-24/1 Inquest reports of deceased Ex.PW-24/3 to Ex.PW-24/8 Injury sheets Ex.PW-24/9 to Ex.PW-24/13

4. Rest of the prosecution witnesses were abandoned by the prosecution.
5. On completion of the prosecution evidence, statements of accused were recorded u/s 342 Cr.PC on 13/03/2021, wherein the accused facing trial professed innocence, however, did not wish to produce defense evidence.
6. Sr.PP for the State assisted by learned counsel for complainant, inter alia, contended that the accused facing trial have directly been charged for the commission of offence; that the incident has taken the lives of almost six persons and five persons have been injured and the prosecution has brought ample evidence against the accused facing trial. Hence, the accused may be given exemplary punishment.
7. On the other hand, learned counsel for the defense argued that the accused have been falsely implicated by the complainant and sufficient doubt exists in in the prosecution's evidence. That the prosecution could not substantiate the indictment against accused facing trial. Prosecution case is full of doubts, hence, by extending

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benefit of doubt to the accused facing trial, they be acquitted of charges.

8. Heard and record perused.
9. As per conspectus the genesis of the prosecution case is based upon the report of the complainant whose contention is that they had got enmity with Shakil etc (the accused party) and on the fateful day he alongwith his deceased grandfather Habib Shah and injured Rustam had been to District Courts, Hangu to attend the court of ADJ, Hangu. After attending the court they were on their way back to their village Zargeri Shamsu Din Banda in Flying coach No.C-1297/Bannu being driven by driver Shaukat Khan (injured). On reaching the place of occurrence, the accused facing trial namely Rab Nawaz, Ihsan Ullah, Amjid alongwith absconding co-accused Shakil and Amal Nawaz duly armed with deadly weapons appeared in front of the flying coach, wherein besides them other commuters were also boarded, the accused facing trial made indiscriminate firing upon the flying coach which hit his deceased grandfather Habib Shah, his cousin Rustam alongwith other passengers, out of whom Hashmat Ullah, Haji Badshah, Momin, Tila Jan and Janat Bibi got hit and succumbed to their injuries, while Rustam (cousin of complainant), Mst Sharifa, Zaleef, Habib Ullah and Shaukat (driver) got injured, while he (the complainant) luckily remained unhurt. The episode was reported by the complainant vide Murasila Ex.PW-24/1, while, the accused facing trial Mujahid Azam and Muhammad Ishaq were later on charged by the complainant in his subsequent statement u/s 164 Cr.PC on 14/10/2019.

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10. To substantiate the peculiar indictment against the accused facing trial; the prosecution has produced almost twenty-four PWs, out of whom PW-17 Dr. Muhib Ullah Jan has conducted autopsy on the bodies of deceased Hasmat Ullah, Habib Shah, Haji Badshah and Momin Khan. Similarly, he has also examined the injured namely Mst Sharifa Bibi, Zaleef, Habib Ullah and Shaukat Khan and has rendered his report as follow;

External Appearance of deceased Hashmat Ullah: Mark of ligature on neck and dissection. Nil. Condition of subject stout emaciated, decomposed etc clothing: Healthy, blood stained cloth handed over to police.

Injuries:

1. One entry wound 0.5 x 0.5 cm left side in front of ear with exit posteriorly 4 inches behind the ear 2 x 3 inches.
2. Firearm injury left side chest 1 cm x 1 cm with its exit on the same side 2 cm x 2 cm at level of seventh intercostal space.
3. Firearm injury entry at 10 intercostal space on the right side of the chest and its exit on left side of chest superficial of level of 10th ribs.

Cranium & Spinal Cord: Skull fractured on the posterior side and brain matter out.

Thorax: Intact.

Abdomen: Intact.

Muscles, Bones and Joints: Intact.

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Remarks: One entry wound 0.5 x 0.5 cm left side in front of with exit posteriorly 4 inches behind the ear 2 x 3 inches. Firearm injury left side chest 1 cm x 1 cm with its exit on the same side 2 cm x 2 cm at level of seventh intercostal space. Firearm injury entry at 10th intercostal space on the right side of the chest and its exit on left side of chest superficial of level of 10th ribs.

In his opinion death occurred due to injury to the vital organ i.e. brain and hemorrhage due to firearm injury.

Probable time between injury & death on spot and between death and postmortem 2½ hrs. He furnished postmortem report (ExPM) consisting of six sheets including two pictorials. The inquest report of the deceased is ExPM/1.

Similarly, on the same day and time, he had also conducted postmortem of deceased Habib Shah s/o Eid Akbar aged about 65 years r/o Shams-ud-Din Banda, Hangu and found the following:

External Appearance: Mark of ligature on neck and dissection. Nil. Condition of subject stout emaciated, decomposed etc clothing: Healthy, blood stained cloth handed over to police.

Injuries:

1. FAI entry at 12th rib left side 2 cm x 2 cm and exit at the exile 4 cm x 4 cm on right side.
2. Entry at left axilla 1 cm x 1 cm with exit right axilla 3 cm x 3 cm.
3. Entry 1 cm x 1 cm on tip of shoulder with exit on same side left.

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4. Right shoulder about 4 inch below superficial lacerated wound 2 x 2 cm.

Cranium & Spinal Cord: Intact.

Thorax: Walls, Ribs and cartilages, larynx and trachea, pericardium and heart and Blood vessels are intact while remaining are damaged/full of blood.

Abdomen: Intact.

Muscles, Bones and Joints: Intact

Remarks: FAI entry at 12th rib left side 2 cm x 2 cm and exit at the axilla 4 cm x 4 cm on right side. Entry at left axilla 1 cm x 1 cm with exit right axilla 3 cm x 3 cm. Entry 1 cm x 1 cm on tip of shoulder with exit on same side left. Right shoulder about 4 inch below superficial lacerated wound 2 x 2 cm.

In his opinion death occurred due to injuries to the vital organ i.e. pleura (respiratory tract) and hemorrhage due to firearm injury.

Probable time between injury and death on the spot and between death and postmortem 3 hrs.

He has furnished the postmortem report (Ex.PM/3) consisting of six sheets including two pictorials. The inquest report of the deceased is (Ex.PM/4).

Similarly, on the same day at about 03:30 PM, he had also conducted postmortem of deceased Haji Badshah s/o Zar Badshah aged about 80 years r/o Shams-ud-Din Banda, Hangu and found the following:

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External Appearance: Mark of ligature on neck and dissection. Nil
 Condition of subject stout emaciated, decomposed etc clothing
 Healthy, blood stained cloth handed over to police.

Injuries:

1. FAI at level 3rd rib below 2 cm x 2 cm and exit at the left axilla 4 cm x 4 cm on right side.
2. FAI right arm superficial 3 cm x 3 cm continuous exit and entry.
3. Left shoulder with fracture of head of humerus and clavicle 4 cm x 4 cm.
4. FAI 4 inch below shoulder entry 1 x 1 cm with exit 3 cm x 3 cm with fracture humerus.
5. FAI left side arm 6 inches below elbow with fracture radius and ulna, entry lateral side 2 cm x 2 cm with exit 4 x 4 cm.

Cranium & Spinal Cord: Intact.

Thorax: Walls, Ribs and cartilages, larynx and trachea, pericardium and heart and Blood vessels are intact while remaining are damaged/full of blood.

Abdomen: Intact.

Muscles, Bones and Joints: Head of left humerus fracture. Left clavicle head fractured. Left humerus fractured. Radius and ulna fractured on left side.

Remarks: FAI at level 3rd rib below 2 cm x 2 cm and exit at the left axilla 4 cm x 4 cm on right side. FAI right arm superficial 3 cm x 3 cm continuous exit and entry. Left shoulder with fracture of head of

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humorous and clavicle 4 cm x 4 cm. FAI 4 inch below shoulder entry 1 x 1 cm with exit 3 cm x 3 cm with fracture humorous. FAI left side arm 6 inches below elbow with fracture radius and ulna, entry lateral side 2 cm x 2 cm with exit 4 x 4 cm.

In his opinion death occurred due to injuries to the vital organs i.e. lungs and pleura and hemorrhage due to firearm injury.

Probable time between injury and death on the spot and between death and postmortem approximately 04 hrs. He has furnished the postmortem report (Ex.PM/5) consisting of six sheets including two pictorials. He had also endorsed the inquest report of the deceased is (Ex.PM/6).

Similarly, on the same day at about 03:30 PM, he had also conducted postmortem of deceased Momin Khan s/o Norab Khan aged about 45/46 years r/o Shams-ud-Din Banda, Hangu and found the following:

External Appearance: Mark of ligature on neck and dissection. Nil. Condition of subject stout emaciated, decomposed etc clothing: Healthy, blood stained cloth handed over to police.

Injuries:

1. FAI entry at thyroid region and exit left side mouth angle with fracture mandible.
2. FAI nose left side and exit above at the base of nose superficial region.
3. Injury FAI at right first rib at manubrium and exit left side chest at the level of nipple.

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4. FAI left thigh at the middle region entry lateral exit medial side.
5. Left leg middle region entry medial side exit lateral side.

Cranium & Spinal Cord: fracture mandible. Multiple and nose injury with bone intact.

Thorax: Walls, Ribs and cartilages larynx and trachea, pericardium and heart and Blood vessels are intact while remaining are damaged/full of blood.

Abdomen: Intact.

Muscles, Bones and Joints: Mandible multiple fractures.

Remarks: FAI entry at thyroid region and exit left side mouth angle with fracture mandible. FAI nose left side and exit above at the base of nose superficial region. Injury FAI at right first rib at manubrium and exit left side chest at the level of nipple. FAI left thigh at the middle region entry lateral exit medial side. Left leg middle region entry medial side exit lateral side. In my opinion death occurred due to injuries to the vital organs i.e. lungs and hemorrhage due to firearm injury.

Probable time between injury and death on the spot and between death and postmortem: approximately 05 hrs. He has furnished the postmortem report (Ex.PM/7) consisting of six sheets including two pictorials. He has also endorsed the inquest report of the deceased (Ex.PM/8).

Similarly, he has also examined on the same day at about 02:30 PM injured namely the injured namely Rustam s/o Amir

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Khan aged about 40/41 years r/o Shams-ud- Banda and found the following:

Firearm Injuries:

Entry wound left chest 0.5 x 0.5 cm six intercostal space.

Laceration right forearm 2 cm x 1 cm.

Laceration left shoulder anteriorly two entry sounds each 0.5 x 0.5 cm. posteriorly two exit wounds 1 x 1 cm.

Laceration lower hip 2 x 1 cm.

Laceration tongue 2 x 1 cm

Swelling left side neck posteriorly 1 x 1 cm.

The injured was referred to LRH Peshawar. He has furnished the medico legal report (Ex.PW-17/1). He has also endorsed the injury sheet (ExPW-17/2) of the injured.

Similarly, he has also examined on the same day at about 02:30 PM injured namely Mst. Sharifa w/o Zaleef aged about 35/36 years r/o Shams-ud- Banda and found the following:

Firearm Injuries:

Entry wound right shoulder 0.5 x 0.5 cm anteriorly, exit right shoulder anteriorly 1 x 1 cm.

The injured was referred to LRH Peshawar. He has furnished the medico legal report (Ex.PW-17/3). He has also endorsed the injury sheet (ExPW-17/4) of the injured.

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Similarly, he has also examined on the same day at about 02:30 PM injured namely Zaleef s/o Mewa Khan aged about 40/41 years r/o Shams-ud- Banda and found the following:

Firearm Injuries:

Laceration right forehead 2 x 1 cm.

Laceration right cheek 1 x 1 cm bullet passed after grazing.

The injured was referred to LRH Peshawar. He has furnished the medico legal report which is ExPW-17/5. He has also endorsed the injury sheet (ExPW-17/6) of the injured.

Similarly, he has also examined on the same day at about 02:30 PM injured namely Habib Ullah s/o Habib Khan aged about 18/19 years r/o Shams-ud- Banda and found the following:

Firearm Injuries:

Entry wound 0.5 x 0.5 cm lateral aspect of right shoulder, no exit wound. X-Ray shows F.B (Bullet) present near head of humerus.

The injured was referred to LRH Peshawar. He has furnished the medico legal report which is ExPW-17/7. He has also endorsed the injury sheet (Ex.PW-17/8) of the injured.

Similarly, he has also examined on the same day at about 02:30 PM injured namely Shaukat s/o Misri Khan aged about 30/31 years r/o Shams-ud- Banda and found the following:

Firearm Injuries:

Entry wound 0.5 x 0.5 cm umbilical region of

Abdomen, no exit wound.

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Entry wound 0.5 x 0.5 cm, right hand dorsum side with no exit.

The injured was referred to LRH Peshawar. He has furnished the medico legal report which is ExpPW-17/9. He has also endorsed the injury sheet (ExpPW-17/10) of the injured.

11. Lady doctor Gul Andaam as PW-20 has conducted postmortem of deceased namely Mst. Teela Jan w/o Noor Khan aged about 40 years r/o Shams-ud-Din Banda, Hangu and found the following:

External Appearance: Pale looking middle age lady with medium built wearing Shalwar Qamees, dupatta brought dead.

Injuries:

Firearm entry wound (4 to 5) of about 1.5 x 1.5 cm on right side of the lower abdomen below umbilicus.

Exit wound of about 1.5 x 2 cm on back (right side of abdomen about 4 to 5 wounds.

Multiple entry wounds on lower limbs on both side about 1 x 1 cm.

Multiple exit wound seen on the back of the lower limbs of about 1.5 x 2.5 cm.

Cranium & Spinal Cord: Intact:

Thorax: Intact.

Abdomen: Walls, peritoneum, diaphragm, small intestine, large intestine, bladder damage, organ of generation external and internal damage, while remaining were intact.

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Muscles, Bones and Joints: As mentioned above. Multiple fractures of lower limbs.

Remarks: In her opinion the cause of death is injury to major abdominal organs and excessive bleeding to hypovolemic shock and death due to firearm injury. **Probable time between injury and death:** 10 to 15 minutes

Probable time between death and postmortem 2 to 3 hrs.

She has furnished the postmortem report which is Ex.PW-20/1 consisting of six sheets including two pictorials. She has also endorsed the inquest report (ExPM-20/2) of the deceased.

Similarly, on the same date at 04:30 PM, she has also conducted the postmortem of deceased namely Jannat Bibi w/o Zar Manan aged about 70 years r/o Shams-ud-Din Banda, Zargiri and found the following;

External Appearance: An old lady pale looking of lean built wearing Shalwar Qamees, dupatta brought dead.

Injuries:

1. Entry wound of about 1.5 x 2 cm on left maxilla damaging the left maxilla and left temporomandibular joint.
2. Exit wound of about 2 x 3 cm on the back of the skull on the occipital region.
3. Entry wound of about 1 x 1 cm on the mid of the right clavicular bone.
4. Exit about 1.5 x 1.5 cm on the back of the chest (right side at scapular bone).

GOVERNMENT OF PUNJAB

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State vs Rab Nawaz etc

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5. Entry wound of 1 x 1.5 cm on the right dorsal aspect of the right forearm in mid.
6. Exit about 2 x 3 cm on ventral aspect of right forearm fracturing the radius and ulna bone.
7. Two entry wounds of about 1 x 1.5 cm on palmer aspect of the right hand
8. Exit of the same of the dorsal aspect of the right hand about 1.5 x 2 cm.
9. Two entry wounds of about 1 x 1.5 cm on lateral aspect of left thigh and its two exit wounds of about 1.5 x 2 cm on inner aspect of left thigh.

Cranium & Spinal Cord: Damaged:

Thorax: Walls, Ribs, cartilages, pleura, right lung, blood vessels damaged rest were intact.

Abdomen: Intact.

Muscles, Bones and Joints: Left Maxilla fractured, skull fractured, right clavicle fracture, right radius and ulna fractured, right hand fractured, left femur bone fractured.

Remarks: In her opinion the cause of death is firearm injury to major organs i.e. brain and lungs leading to death. **Probable time between injury and death:** 05 to 10 minutes

Probable time between death and postmortem: within 2½ to 3 hrs.

She has furnished the postmortem report which is Ex.PW-20/3 consisting of six sheets including two pictorials. She

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has also endorsed the inquest report of the deceased which is ExPM-20/4.

12. Ali Ahmad Khan Inspector as PW-23 has reiterated the proceeding of the investigation he has carried out as per the detail given in the preceding table. During the course investigation, the complainant pointed out different places of accused to him (PW-23) by specifying their positions, which are mentioned in the site plan (Ex.PB). As per his deposition the accused facing trial Rab Nawaz led the I.O to the spot and pointed out the place of occurrence and the places of accused on the spot at the time of occurrence. This PW-23 has also sent the samples of blood stained garments of deceased and injured and sixteen empties of 7.62 bore to FSL and arms expert, result whereof received are Ex.PW-23/24 to Ex.PW-23/25.
13. Constable Hasham as PW-6, PW-8 Sayed Yasrab Hussain ASI are the marginal witness to the recovery memos as indicated in the preceding table vide which the I.O recovered 12 empties shells of 7.62 bore from the spot.
14. Abdur Rahim IHC as PW-14 is the marginal witness to recovery memo (Ex.PC) in whose presence the I.O recovered and took into possession cut covers of the seats from the places of deceased and injured. Similarly, in his presence, vide same recovery memo the I.O also took into possession the Flying coach and blood through cotton secured from the floor (*farsh*) of the Flying coach. This PW-14 is also marginal witness to pointation memo vide which the accused

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Rab Nawaz pointed out different positions of co-accused, places of injured and the flying coach on the spot to the I.O.

15. Yaqeen Ali ASI as PW-24 has reiterated the proceeding of scribing the Murasila (Ex.PW-24/1) containing report of the complainant, preparing injury sheets (Ex.PW-24/9 to Ex.PW-24/13) and inquest reports of the deceased (Ex.PW-24/3 to Ex.PW-24/8).

16. The complainant as PW-1 during his cross examination deposed that all of a sudden the firing took place. By describing their seating position in the vehicle he contends that he was seated in between his deceased grandfather Habib Shah and his cousin Rustam Akbar (injured), who both got hit with further admitting that there were exist wounds to the injuries sustained by both the aforementioned deceased and injured. He further in an unequivocal term narrates that as the firing started upon the flying coach, he put down his head and that he has not seen the culprits firing upon the flying coach. Further contends that the accused were charged on the basis of suspicion after due consultation and deliberation and he lodged the report after the arrival of the elders from the village. where after upon their instance he charged the accused. It is pertinent to highlight here that due to the above averments of the complainant (PW-1) he was declared as hostile on the request of the prosecution and accordingly was re-examined during the course of which he reiterated that due to firing upon the flying coach six persons were murdered while five got injured. Further admitted his report bearing his signature as correct with further admission that he deviated from his earlier

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stance during his cross examination by explaining that the accused by then assured and satisfied them in their Rivaj/Pashto on oath regarding their innocence. During his re-cross examination on behalf of defense, he admits that since he had not seen the accused facing trial while making firing, therefore, he got satisfied on their assurance on oath regarding their innocence and that neither the accused have hurled any threat nor he has received any fiscal benefit for extending concessional statement in their favour.

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17. Shaukat Khan (PW-7) being driver of the ill-fated flying coach in his examination in chief reiterated his stance as recorded by the I.O u/s 161 Cr.PC, however, in his cross examination, he contended that he knew and recognized most of the passengers by then seated in the flying coach. He in clear term denied any of his statement recorded either by the police nor before the Court u/s 164 Cr.PC, wherein he charged the accused with further assertion that he did not identify the accused at the time of occurrence. This PW-7 was also declared as hostile on the request of the prosecution and thus was cross examined both by the APP for the State and counsel for the complainant, wherein he admitted that he also got injured in the episode of the instant case alongwith other PWs and the incident took six lives as well. That he is plying the flying coach for the last fifteen years and that at the fateful day besides the other passengers his relatives were also boarded in the vehicle and that he knew all the passengers. He categorically denied to have been won-over with

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negating the suggestion that he has charged the accused in his statement u/s 161 Cr.PC.

During the re-cross examination by the defense up to the facts divulged during his cross examination on behalf of prosecution this PW-7 by taking oath on the holy Quran stated that he has not seen the accused making firing upon the flying coach. That the police came to his house for recording his statement to whom he had not identified any of the accused, who have neither threatened him nor received any consideration from them and that before coming to the court he did not know that he was listed as witness in the case in hand and that he is not charging the accused for the commission of the offence.

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18. PW-9 Muhammad Nauman, PW-10 Deenat-Shah, PW-11 Umar Islam and PW-12 Noor Khan are the legal heirs of deceased Mst Janat Bibi, deceased Haji Badhah, deceased Hashmat Ullah, deceased Momin Khan and deceased Mst Tila Jana respectively, who have rendered their statements u/s 164 Cr.PC and have charged the accused nominated by the complainant. All these PWs No.9 to 12 during their cross examination almost in the same line admitted that they are not eye witness of the occurrence and have not disclosed or stated in their statements as to how they came to know and got satisfied regarding the involvement of accused facing trial for the commission of the offence. By self-explaining contended that since the complainant Farhad has enmity with the accused party on account of which they were charged for attacking on the vehicle.

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2 One Habib Ullah examined as PW-19 the injured witness though has charged the accused in his examination in chief but during his cross examination, he narrates that his statement was recorded by the I.O and that the police had disclosed the names of the accused to him. That he by himself was not familiar with the accused and that though he charged the accused but he did not identify them at the time of occurrence. Zalif Khan (PW-21), the alleged eye witness of the occurrence had accompanied his injured wife Mst Sharifa to Hangu and on their return on the ill-fated flying coach when the tragic incident took place. He has also charged the accused in his examination in chief but in cross examination he contends that he is neither familiar with the accused nor recognize the accused either by face or by their names.

19. So far the veracity of the depositions of PW-9 to PW-12 towards the substantiation of the peculiar allegation against the accused facing trial is concerned, it is admitted floating fact that they are neither the eye witnesses nor have based their information regarding the involvement of the accused facing trial in the commission of the offence from any independent source but have rather deposed against the accused only because the complainant has named them, therefore, their statements alone cannot be considered as material ones unless supported by the eye witnesses. Needless to repeat that the perpetrator of the case as PW-1 as earlier commented upon has altogether negated his earlier stance and has expressed his contentment regarding the innocence of the accused facing trial, who

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cannot be accepted as a true witness, hence, the rest of supporting evidence is of no help to the prosecution for proving the indictment against the accused.

20. Undoubtedly providing security to the citizens and maintaining law and order on the soil is the paramount responsibility of the State and in case of commission of an offence its prosecution is the State attribute and to bring the offenders to book is its prime obligation. The sovereign paramountcy of the State needs no approval or permission of the relative of the affectees rather in order to achieve the purpose of taking to task the violators, the law of the land allows anyone to set law in motion and the local police of an area while coping with the conducting of investigation or inquiry into an act constituting offence are expected to reach to the cause and the perpetrators by unearthing the actual facts and are not supposed to get dictated by the interested party in all the circumstances. In the case in hand, admittedly the incident has taken precious lives of four innocent persons and has caused injuries to four innocent commuters besides the casualties of the complainant party but instead to dig out the actual truth culminating into the happening, the traditional mechanical manner of planting the complainant has been adopted on whose shoulder the entire destiny of the case has been put whose resile has caused material damage to the case of prosecution rendering loss of the valuable lives un-redressable. As evinced from the case record, the I.O Ali Ahmad Khan Inspector (herein examined as PW-23) has conducted the investigation in almost in a cyclostyle and traditional manner but has not strived to effect recovery of the weapon of the offence despite the fact that having remained the accused Rab

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Nawaz in almost nine days in police custody, while, accused Ihsan Ullah for five days but of no avail towards the accumulation of material evidence except that both the accused allegedly pointed him out the place of occurrence. The I.O has not bothered to preserve the statements of the injured eye witnesses through getting their statement recorded u/s 164 Cr.PC and instead has recorded the statements of their relatives i.e. PW-9 to PW-12, who admittedly are not the spectators of the occurrence. The I.O was required and it was incumbent upon him to get the identification of the accused after their arrest through the injured commuters, which has not been done to the bad luck of the innocent affectees rendering the investigation highly defective. So far the CDR data (Ex.PW-4/2) is concerned, it alone is of no help to the proof against the accused as the occurrence has been occurred near the houses of the accused, hence, the data showing their cells presence in the area is not sufficient evidence until corroborated with the rest of materials. Needless to reiterate that the structure of the case has entirely been placed on the shoulders of the complainant, who for the reason best known to him has not only failed to stand on his stance but has rather resiled who not doubt could be taken to task and his resile be discarded if otherwise the case would have been investigated in the true sense of bringing tangible evidence in shape of recovery of weapon of offence and its matching with the recovered empties corroborating the stance in the FIR. It is also the established principle of Criminal Justice System that when the witness introduces contradictions which seem to have brought deliberately, it does not affect case of the prosecution on merits, if otherwise it is well knitted, which is lacking in the instant case for the reasons as elaborated in the preceding paras.

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21. Having securitized and analyzed the depositions of the prosecution witnesses, the court is of the considered un-hesitated view that culpability of the accused facing trial could not be established particularly taking into consideration the resile of the complainant (PW-1) from his stance of the report and the eye witness injured Shaukat (driver of the flying coach). Needless to repeat that not only the complainant has shattered the very edifice of the case of the prosecution by averring that as soon the firing started he put down his head and that he has not seen the culprits making firing upon the flying coach. Further that the accused were charged only on suspicion after having consultation and deliberation with the elders of the complainant party. Besides his totally denying the report, his contention, that he was sitting in between his deceased grandfather and his injured cousin who both sustained injuries but he remained unhurt is neither believable nor is possible in the normal course of affairs rendering case of the prosecution shrouded with improbabilities suggesting the occurrence not to has been occurred in the mode and manner as contended by the prosecution. Hence, the court is constrained to hold the prosecution has been failed to bring home the charge against the accused beyond reasonable doubt. However, before parting with the judgment in hand the court deems it necessary to dilate upon that admittedly four innocent persons have lost their lives, while four have sustained firearm injuries in the episode entailing its routes from the enmity of the complainant party with the accused party, hence, they cannot be left uncompensated, therefore, they are at liberty to bring criminal private complaint against the complainant as well as the accused party, if so advised by law.

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22. As corollary of the afore stated discourse, the prosecution could not substantiate the allegation against the accused facing trial, hence, by extending the benefit of doubt, the accused facing trial are hereby acquitted. Accused Mujahid Azam is on bail, his bail bonds stand cancelled and sureties to him are relieved from the liability of bail bonds. Accused namely Rab Nawaz, Ihsan Ullah, Amjad Khan, Muhammad Ishaq are in custody, they be set free forthwith, if not required in any other case, whereas, accused Amal Nawaz and Shakil are hereby declared as proclaimed offenders. Perpetual warrants of arrest be issued against them and their names be entered in the relevant register of POs.

23. Case property be kept intact till the arrest, trial and disposal of case against the absconding accused Amal Nawaz and Shakil.

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

Announced:

26/03/2021

Azimullah
 (Azimullah Mishwani)
 ASJ-II/JMCTC, Hangu

CERTIFICATE

Certified that this Judgment consists of thirty-two (32) pages, separately placed on file. Each page has been checked, signed, and corrected accordingly.

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 30/3/21
 30/3/21

Azimullah
 (Azimullah Mishwani)
 ASJ-II/JMCTC, Hangu

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Annex "C"



OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Amjid s/o Hameed Ullah of Ali Khel tribe under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Constable Amjid s/o Hameed Ullah was charged/involved in FIR No. 475 dated 28.09.2019 U/S 302/324/427/148/149 PPC PS Doaba District Hangu.


He was suspended vide order OB No. 630 dated 02.10.2019 and DSP HQrs was nominated as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled against him, and recommend him for major punishment.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act.

In view of the above and available record, i reached to the conclusion that the accused official was involved in criminal act. Therefore, these charges leveled against accused Constable Amjid s/o Hameed Ullah have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of "dismissed from service with immediate effect" is imposed on accused Constable Amjid s/o Hameed Ullah with immediate effect. Kit etc issued to the Constable be collected.

Announced ^{PN^s} 1229

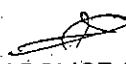
Dated 28/12/2020


DISTRICT POLICE OFFICER, ORAKZAI

No. 283 /EC/OASI Dated 28/12 /2020.

Copy of above to the:-

1. The Regional Police Officer, Kohat.
2. DSP HQrs.
3. SDPo Upper for collection of items and clearance.
4. Pay Officer/SRC/OHC/Reader for necessary action.


DISTRICT POLICE OFFICER, ORAKZAI

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ANNEX D
7

THE HONORABLE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION KOHAT

APPEAL AGAINST THE ORDER OF THE WORTHY DISTRICT
POLICE OFFICER ORAKZAI AGENCY DATED 28-12-
2020 RECEIVED ON 27-03-2021 VIDE WHICH THE
APPELLANT WAS DISMISSED FROM SERVICE WITHOUT
LAWFUL JUSTIFICATION.

Respected Sir,

With great respect the appellant may be allowed to submit the following for your kind and sympathetic consideration;

Facts of the Case:

1. That appellant is the bonafide resident of Village Zargeri Tehsil Thall District Hangu.
2. That the appellant in the year 2011 had joined the Khasadar Force as Sepoy.
3. That at the time of merger of the tribal areas in the Khyber Pakhtunkhwar Province, the appellant also became member of the police force in the year 2019.
4. That the appellant since his enrolment as Sepoy in Khasadar force, discharged his official functions honestly and efficiently and after becoming member of the KP Police Force the appellant continued his meritorious services and did not provide any opportunity to his worthy officers to make any complaint against the appellant.
5. That throughout his service career, the appellant has never been awarded minor or major punishment.

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6. That the unfortunately the appellant was charged in a false, concocted and fabricated case vide FIR No.475 dt:28-09-2019 U/SS 302/324/427/148/149/109 PPC P.S Doaba District Hangu.
7. That the being member of the law enforcing agency and also being a law abiding citizen had surrendered before the law.
8. That the appellant was lodged in the Judicial Lock up Hangu, while his trial commenced in the court of Addl: Sessions Judge / Model Court Hangu.
9. That after the conclusion of the trial, the learned trial court vide its judgment dt:26-03-2021, had acquitted the appellant and the appellant was directed to be released from the judicial lock up. (Copy of the judgment is enclosed.)
10. That on 27-03-2021 when the appellant went to the office of the Distt: Police Officer Orakzai, for resuming his duty, he was informed that since he has already been dismissed from service therefore, the appellant cannot resume his duty. However, the officials present over there delivered copy of the dismissal order to the appellant, which is enclosed herewith.
11. That upon perusal of the impugned order of the dismissal, it revealed that the order consists of so many legal and factual infirmities, material contradictions and a number of the flaws which have made the impugned order open to a number of questions.
12. That the appellant with the permission of your good self submits the following grounds of appeal against the impugned order of punishment which may kindly be considered sympathetically.

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Grounds of Appeal:

- A. That the impugned order of dismissal from service dated 28-12-2020 is against law, facts and evidence on record, hence it is liable to be set aside.
- B. That it is the well established procedure in conducting departmental enquiry that before commencement of the enquiry the defaulter official shall be served with the show cause notice, statement of Allegations and the charge sheet.
- C. That service of charge sheet, show cause notice and statement of allegations upon the defaulter official is mandatory. No departmental proceedings can be initiated without such mandatory documents.
- D. That in the case of the appellant. No show cause notice or statement of allegation or charge sheet were served upon the appellant, thus any order consequent to such a legally defective order is of no legal effect and the law treats such an order as an order illegal ab-intio.
- E. That the appellant while in the judicial lock up, the alleged enquiry was initiated against him. However, the appellant was not informed about initiation of the enquiry in question.
- F. That the alleged enquiry was conducted at the back of the appellant.
- G. That the appellant was completely kept in the dark and the worthy authority did not follow the due process of law.
- H. That if the impugned order is perused, it will transpire that the said order has not mentioned service of the show cause notice or the statement of allegation the charge sheet upon the appellant.
- I. That the authority could serve the charge sheet, statement of allegations or show cause notice upon the appellant even in the judicial lock up but the authority did not fulfill such an important and mandatory ingredient of the enquiry and thus rendered the impugned order as illegal and without legal effect.

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- J. That by issuing dismissal order of the appellant without observing mandatory legal formalities, a serious miscarriage of justice has taken place, which is not curable under the law.
- K. That in support of the contention of the appellant. The Honorable Service Tribunal the then NWFP now KP 1987, the Service Tribunal the then NWFP now KP 1988 and the Service Tribunal the then NWFP now KP 1988 have set aside impugned order of the departmental authority because no charge sheet or statement of allegations were served upon the defaulter official. (Copy of the judgments are enclosed.)
- L. That under Article 10-A of the constitution fair, transparent and independent trial / enquiry is the fundamental right of the accused or the defaulter official. By dismissing the appellant through such a legally defective order, fundamental right of the appellant has been badly infringed, thus such an order cannot sustain in the eyes of law.
- M. That the worthy authority, even did not send the impugned dismissal order at his home address so that to apprise the appellant about fate of his service. By not informing the appellant about dismissal from service, the concerned have shown malafide against the appellant for the reason best known to them.
- N. That it appears from the impugned order as if the authority was bent upon to dismiss the appellant without observing basic/ fundamental legal formalities and to deprive the appellant from his sole source of earning at any cost.
- O. That it is well established principle of law that FIR is not a substantive piece of evidence. Thus, nomination of a person in FIR does not deprive him of his service.
- After nomination of the appellant, the authority at the most could suspend him and should have waited for the outcome of the case. It appears that the authority was in so hurry that without informing the

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appellant and without observing legal / codal formalities the service of the appellant was brought to an end with one stroke of pen.

That in support of the contention of the appellant, the Honorable High Court vide its judgment dt: 14-02-2018 and the honorable Supreme Court of Pakistan in its judgment in the year 2007 have held that the department shall initiate departmental enquiry after decision of the criminal / trial court. (Copies of the judgments are enclosed).

P. That legally speaking, involvement of the person in a case is no offence. Accused under the law is considered innocent unless and until he is proven guilty but conversely, the appellant at the very beginning of the registration of case was considered guilty and was awarded such a harsh and maximum punishment by the Department.

Q. That the impugned order is also Violation of the Police Rules 1934 chapter 16 Rule 3(1) wherein it has been stated that *"When a police officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on the different charge based upon the evidence cited in the criminal case"*. (Copy is enclosed)

Once the appellant charged in a criminal case, he cannot be legally charged again for the same offence. In case of the appellant the competent authority has charged the appellant for the same offence in which he is acquitted from the learned trial court. Hence at this score too the impugned order is not sustainable in the eyes of law.

R. That the impugned order is also repugnant to the Article 13 of the Constitution of Pakistan 1973 wherein it has been provided that *"No person shall be prosecuted or punished for the same offence more than once"* while in case of the appellant he was charged in a criminal case and subsequently same charge was leveled by the department and made the basis of punishment.

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- S. That the appellant has more or less eight year service to his credit but such a meritorious service rendered by the appellant was brought to end with a stroke of pen.
- T. That the appellant has a large family and he is the only bread earner. If the punishment remains intact, it is likely to land family of appellant to starvation and the appellant is likely to sustain irreparable loss.
- U. That the Worthy authority did not hear the appellant and service of the appellant was one sidedly and arbitrarily was brought to an end without any lawful justification.
- V. That by all means the appellant was awarded an illegal and unjustified punishment for no fault on his part.
- W. That the appellant belongs to a respectable family. The unjustified, one sided and arbitrary punishment has lowered his position in the eyes of his family members and as well as his friends and acquaintances.
- X. That being not in accordance with law/rules and principles of justice, such an arbitrary and one sided order deserves be set aside
- Y. That the appellant is innocent and he was awarded punishment for no fault on his part. Moreover, it has been held by the superior courts that "Facts are to be proved and not presumed particularly for awarding major penalty".
- Z. That if the impugned order is set aside, the appellant will discharge his official functions with more vigor, merits and in accordance with the law/ rules.
- AA. That the appellant was acquitted on 26-03-2021. He went to the office of the DPO Orakzi for resuming duty on 27-3-2021, however he came to know about the impugned order of dismissal, while in office of the DPO Orakzai and was handed over copy of the dismissal order. Thus the period of limitation runs from 27-3-2021, which is the

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actual date when the appellant came to know about his dismissal from service. Hence this appeal is within the limitation and is entertain able.
BB. That if deemed proper the appellant may kindly be heard in person.

Prayer:

It is therefore, humbly prayed that since the impugned order of punishment is one sided, arbitrary, illegal, capricious, fanciful, unjust illegal ab-inito may kindly be set aside in the interest of law and justice. The appellant may kindly be graciously reinstated in service from the date of dismissal from service with all back benefits. The appellant will pray for your long life and prosperity.

Thanking you in anticipation.

Yours Obediently,

Dated: 26-04-2021.

AMJID KHAN
S/o Hameed Ullah
Ex-Constable
R/o Zarger District Hangu.
Cell No. 0336-9844478.

ATTESTED


POLICE DEPTT:

KOHAT REGION

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ORDER:

This order will dispose of a departmental appeal moved by Ex-Constable Amjid of district Orakzai against the punishment order, passed by DPO Orakzai vide OB No. 1229, dated 28.12.2020 whereby he was awarded major punishment of **dismissal from service** on the allegations of his alleged involvement in criminal case vide FIR No. 475, dated 28.09.2019 u/s 302, 324, 427, 148-149 PPC PS Doaba, Hangu.

Comments as well as relevant record were requisitioned from DPO Orakzai and perused. The appellant was also heard in person in O.R held in this office on 08.07.2021. During hearing the appellant did not advance any plausible explanation in his defense to prove his innocence.

Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved beyond any shadow of doubt and the same has also been established by the E.O in his findings report. Therefore, in exercise of the powers conferred upon the undersigned under Rules 11-A, the punishment awarded by DPO / Orakzai is upheld and appeal being devoid of merits is **hereby rejected**.

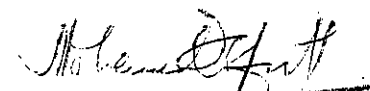
Order Announced
08.07.2021


(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.

No. 10721 /EC, dated Kohat the 12/7 /2021.

Copy to District Police Officer, Orakzai for information and necessary action w/r to his office Memo: No. 1330/EC, dated 11.06.2021. Enquiry papers are returned herewith.

EC
for action


(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.
09/7


District Police Officer,
Orakzai

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وکالت نامہ

بعدالت جناب جسٹس کنون خواہ سپریم کورٹ فیصلہ
ضلع۔ اورکزئی

مقدمہ فوجداری ادویاتی

ملت مورخہ 7م

بنام گورنمنٹ جسٹس کنون خواہ و عشرہ
باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام سپریم کورٹ کیلئے

محمد الیاس اور کرنئی، محمد شبیر خلیل ایڈووکیٹس ہائی کورٹ، پشاور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و
تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ
اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور
منسوخی نیز دائر کرنے اپیل نگرانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے
اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل
ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ
پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکورہ کریں۔

لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

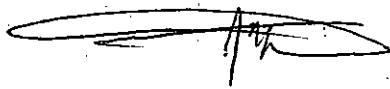
المرقوم:- 02 ماہ اگست 2021ء

بمقام پشاور کے لئے منظور ہے۔

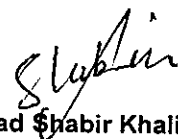
العبد

العبد

Attested & Accepted



Muhammad Ilyas Orakzai
Advocate High Court
BC No:- 10-3471
CNIC 14101-0798923-7
Cell 0333-9191892



Muhammad Shabir Khalil
Advocate High Court
BC No:- 11-10999
CNIC 17301-1490356-7
Cell 0333-9047138

محمد خلیل ایڈووکیٹ ہائی کورٹ پشاور
محمد شبیر خلیل ایڈووکیٹ ہائی کورٹ پشاور

BEFORE THE HONOABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 7147/2021

Amjid Khan

.....Appellant

VERSUS

Govt of khyber Pakhtunkhwa
Through Secretary Home
& TAs Department and others

.....Respondents

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01	Parawise comments	-	1-3
02	Affidavit	-	04
03	Copy of FIR	A	05-06
04	Copy of Dismissal Order dated 28/12/2020	B	07


Deponent

P-0

**BEFORE THE HONOABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

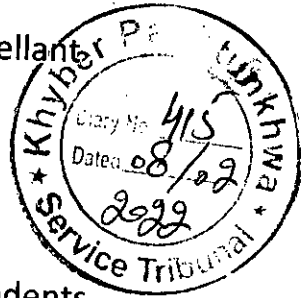
Service Appeal No. 7147/2021
Amjid khan
Ex-Constable, district Orakzai

.....Appellant

VERSUS

Govt of khyber pakhtunkhw
Through Secretary Home
&TAs Deptt & others

.....Respondents



PARAWISE COMMENTS BY RESPONDENTS.

Respectfully Sheweth:-

Preliminary Objection:-

- i. That the appellant has got no cause of action.
- ii. The appellant has got no locus standi to file the instant appeal.
- iii. That the appeal is bad for missjoinder and nonjoinder of necessary parties.
- iv. That the appellant is estopped to file the instant appeal for his own act.
- v. That the appeal is bad in eyes of law and not maintainable.
- vi. That the appellant has not approached the honorable Tribunal with clean hands.
- vii. That the appeal is barred by law & limitation.

Facts:-

1. Pertains to record, hence no comments.
2. Pertains to record, hence no comments.
3. Irrelevant. The performance of appellant was not up to the marks.
4. Police is a disciplined department, wherein award and punishment run side by side.
5. On 28.09.2019, one Farhad Ullah in presence of five injured reported to local Police that he alongwith his grandfather Habib Shah (deceased) and cousin Rustam (injured) had gone to district courts Hangu to attend the court proceeding. After hearing they were returning back to home in flying coach bearing Registration No. 1297/Bannu alongwith other passengers. When they reached near Zargiri Ada, Alqalam Public School, the accused namely Aman Nawaz, Rab Nawaz, Ihsan Ullah Amjid (appellant) & Shakeel appeared and open indiscriminate firing at flying coach, resultantly his grandfather Habib Shah and other 05 passengers got hit died on the spot and other passengers sustained fire arm injuries, while he escaped unhurt luckily. Motive for the offence was disclosed previous blood feud enmity. Thus case vide FIR No. 18 dated 28.09.2019 u/s 302, 324, 427, 148, 149

PPC, PS Doaba, district Hangu was registered against the accused along with his co-accused. Copy of FIR is annexure-A.

6. Incorrect, the appellant along with his co-accused was directly charged by complainant for a heinous offence. Thus the appellant being member of a disciplined department has committed a gross misconduct besides the commission of criminal offence and damaged the image of Police in eyes of general public.
7. The appellant was arrested in the said case and the local Police submitted challan initiating trail against him and other accused. The appellant was acquitted from the Honorable Court by extending the benefit of doubt, which does not amount to his honorably acquittal.
8. The appellant was charged for commission of heinous crime, therefore, departmental proceeding were conducted against the appellant by respondent NO.4 under the relevant rules. The charge leveled against him was proved during departmental proceedings. Hence, the respondent No.4 has passed his dismissal order from service under the relevant rules and the appellant was in knowledge of the impugned order. Copy of order is annexure -B.
9. The departmental appeal of the appellant was devoid of merits, hence correctly rejected by respondent No. 3.
10. The appellant is estopped to file the instant for his own act.

Ground:-

- A. Incorrect the impugned order passed by respondent No.3 & 4 are based on facts, evidence speaking and legal one.
- B. Incorrect, the respondents No. 3 & 4 passed the impugned order in accordance with the relevant rules.
- C. The criminal and departmental proceeding are distinct in nature, can run side by side and order of one authority is not binding on the other. Further added that the appellant was acquitted by the trial court from criminal case by extending benefit of doubt, which does not amount to his innocence, false implication or honorably acquittal.
- D. Incorrect, the respondent No. 4 has completed all codal formalities, while imposing punishment on the appellant.
- E. Reply is submitted in para No.C.
- F. The appellant was proceeded departmentally by respondent No. 4 under the relevant rules.
- G. Incorrect, legal and speaking orders are passed by the respondent No. 3 & 4
- H. The respondents may also be allowed to advance other grounds during the course of arguments.

Prayer:-

In view of the above, it is prayed that the appeal being barred by law and limitation and not maintainable may graciously be dismissed with costs.



Regional Police Officer,
Kohat

(Respondent No.3)



Govt of Khyber Pakhtunkhwa,
through secretary Home
& TA's Department
khyber pakhtunkhwa,
(Respondent No.1)

Home Secretary,
Khyber Pakhtunkhwa



District Police Officer,
Orakzai

(Respondent No.4)



Inspector General of Police,
khyber pakhtunkhwa,
(Respondent No.2)

BEFORE THE HONOABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 7147/2021

Amjid Khan

.....Appellant

VERSUS

Govt of khyber Pakhtunkhwa
Through Secretary Home
&TAs Department and others

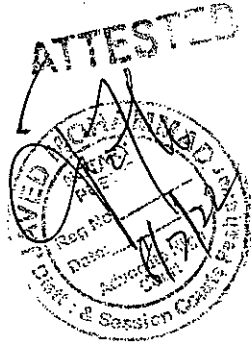
.....Respondents

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents o parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.



Regional Police Officer,
Kohat
(Respondent No.3)



Provincial Police Officer,
Khyber Pakhtunkhwa
(Respondent No.2)



District Police Officer,
Orakzai
(Respondent No.4)

P-6

1. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 2. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 3. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 4. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 5. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 6. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 7. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 8. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 9. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده
 10. در خصوص درخواست خرید مواد مصرفی در سال 1398، مبلغ 28,000,000 ریال، در تاریخ 28/09/1398، در راستای نظام آموخته شده

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28-09-2019
 28-09-2019

ATTESTED

(Signature)

و
 ع

این سند در تاریخ 28/09/1398 در راستای نظام آموخته شده صادر گردید.



Annex "B" P-7

OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Amjid s/o Hameed Ullah of Ali Khel tribe under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Constable Amjid s/o Hameed Ullah was charged/involved in FIR No. 475 dated 28.09.2019 U/S 302/324/427/148/149 PPC PS Doaba District Hangu.

He was suspended vide order OB No. 630 dated 02.10.2019 and DSP HQrs was nominated as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled against him, and recommend him for major punishment.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act.

In view of the above and available record, i reached to the conclusion that the accused official was involved in criminal act. Therefore, these charges leveled against accused Constable Amjid s/o Hameed Ullah have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of **"dismissed from service with immediate effect"** is imposed on accused Constable Amjid s/o Hameed Ullah with immediate effect. Kit etc issued to the Constable be collected.

Announced ^{PSN} 1229

Dated 28/12/2020


DISTRICT POLICE OFFICER, ORAKZAI

No 283 /EC/OASI Dated 28/12 /2020.

Copy of above to the:-

1. The Regional Police Officer, Kohat.
2. DSP HQrs.
3. SDPo Upper for collection of items and clearance.
4. Pay Officer/SRC/OHC/Reader for necessary action.


DISTRICT POLICE OFFICER, ORAKZAI