

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

Service Appeal No. 8491/2020

Date of Institution ... 24.07.2020

Date of Decision ... 14.07.2022

Nazir Ullah S/O Noor Jamal, R/O Sai Kot, Tehsil Takht-e-Nasrati
District Karak.

... (Appellant)

VERSUS

Provincial Police Officer/Inspector General of Police Khyber
Pakhtunkhwa, Peshawar and three others.

... (Respondents)

MR. SHAHID QAYUM KHATTAK,
Advocate

--- For appellant.

MR. NASEER-UD-DIN SHAH,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts giving rise to filing of the instant service appeal are that disciplinary action was taken against the appellant on the allegations of his involvement in case FIR No. 134 dated 08.03.2020 under section 302 PPC registered at Police Station Latamber District Karak. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service vide impugned order dated 30.04.2020. The departmental appeal of the appellant was also rejected vide order dated 25.06.2020. The appellant has now approached



this Tribunal through instant appeal for redressal of his grievance.

2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the inquiry officer had not rendered any finding regarding guilt of the appellant and had recommended that the inquiry proceedings against the appellant may be kept pending till final decision of the criminal case but even then, major penalty of dismissal from service was wrongly and illegally awarded to the appellant; that the inquiry proceedings were conducted in clear violation of mandatory provisions of Khyber Pakhtunkhwa Police Rules, 1975; that neither any final show cause notice was issued to the appellant nor he was afforded any opportunity of personal hearing, therefore, the impugned orders are not sustainable in the eye of law; that disciplinary action was taken against the appellant on the allegation of his involvement in criminal case, however he has been acquitted in the same, therefore, competent Authority was not justified in awarding penalty to the appellant. Reliance was placed on PLD 2010 Supreme Court 695 and judgment dated 17.05.2022 passed by this Tribunal in Service Appeal No. 1500/2018 titled "Sanaullah Versus Provincial Police Officer Khyber Pakhtunkhwa Peshawar and three others".

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant was directly charged for committing *Qatl-e-amd* of his father and the allegation leveled against the appellant stood proved in a regular inquiry; that a regular inquiry was conducted against the appellant by complying all legal and codal formalities; that criminal as well as departmental proceedings are distinct in nature and mere acquittal of the appellant would not entitle him for exoneration in the departmental proceedings; that the appellant was not acquitted on

merit, rather he was acquitted on the basis of compromise, therefore, his acquittal would not make him entitled to exoneration in the departmental proceedings; that the appellant being a member of a disciplined force was charged for the murder of his own father, therefore, he has rightly been dismissed from service. Reliance was placed on 2020 SCMR 1708.

5. We have heard arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations of his involvement in case FIR No. 134 dated 08.03.2020 under section 302 PPC registered at Police Station Latamber District Karak. While going through the impugned order dated 30.04.2020 passed by the then District Police Officer Karak, it is evident that the inquiry officer had recommended that the inquiry proceedings against the appellant may be kept pending till the final decision of the criminal case. Nothing has been mentioned in the aforementioned order that the inquiry officer had given any findings that the appellant was guilty of the charge leveled against him but even then the appellant was dismissed from service. No final show cause notice was issued to the appellant and he was not even provided any opportunity of personal hearing, which fact has created material dent in the inquiry proceedings.

7. Departmental Authority had taken disciplinary action against the appellant on the allegation of his involvement in case FIR No. 134 dated 08.03.2020 under section 302 PPC registered at Police Station Latamber District Karak. The legal heirs of the deceased had appeared before the court and their joint statement was recorded regarding compromise, wherein they have categorically stated that they were satisfied regarding innocence of the appellant, therefore, they have pardoned him in the name of almighty Allah by waving the rights available to them under the law. The appellant has been acquitted in the concerned criminal case vide order


dated 04.12.2020 passed by the then learned Sessions Judge Karak. The appellant has been acquitted on the basis of compromise, however it is by now well settled that every acquittal is honourable. In view of acquittal of the appellant, the very charge, on the basis of which the appellant was proceeded against, has vanished away. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

8. Consequently, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.07.2022



(ROZINA REHMAN)
MEMBER (JUDICIAL)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
14.07.2022


Learned counsel for the appellant present. Mr. Waqar Ahmad, ASI alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.07.2022



(Rozina Rehman)
Member (Judicial)



(Salah-Ud-Din)
Member (Judicial)

DFA

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 8491/2020

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Nazeer Ullah

... (Appellant)

VERSUS

and three others.

... (Respondents)

MR. _____,
Advocate

--- For appellant.

MR. _____,

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts giving rise to filing of the instant service appeal are that disciplinary action was taken against the appellant on account of ^{the allegations} his involvement in case FIR No. 134 dated 08.03.2020 under section 302 PPC registered at Police Station Latamber District Karak. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service vide impugned order dated 30.04.2020. The departmental appeal of the appellant was also rejected vide order dated 25.06.2020. The appellant has now approached this Tribunal through instant appeal for redressal of his grievance.

بیان : مسی محمد سعید ولد شکر خان قوم احوال سکونت ماہانہ
 حال اسٹٹ پنشن ڈائریکٹریٹل خندیاں اینڈ
 میں جو رقم 12/15 اس آفس میں اپنی معیشت کی ضرورت
 موجود تھا انہی مارکونٹس کا حکم سے ماہانہ آفس میں ایک
 انکوائری کرنا ہے کیونکہ جو معاملہ مارسل کا تھا میں
 نے ایکسپنڈ کارڈ آف اس کے انچارج میں القادر کے پاس جو آج
 میری بیان ہے جو رقم درج ہے ۔

المسی محمد سعید ولد شکر خان قوم احوال سکونت ماہانہ پنشن حال
 اسٹٹ پنشن ڈائریکٹریٹل اسٹیٹ مار

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09-07-2020

2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the inquiry officer had not rendered any finding regarding guilt of the appellant and had recommended that the inquiry proceedings against the appellant may be kept pending till final decision of the criminal case but even then, major penalty of dismissal from service was wrongly and illegally awarded to the appellant; that the inquiry proceedings were conducted in clear violation of mandatory provisions of Khyber Pakhtunkhwa Police Rules, 1975; that neither any final show cause notice was issued to the appellant nor he was afforded any opportunity of personal hearing, therefore, the impugned orders are not sustainable in the eye of law; that disciplinary action was taken against the appellant on the allegation of his involvement in criminal case, however he has already been acquitted in the same, therefore, competent Authority was not justified in awarding ~~major~~ penalty ~~of dismissal from service~~ to the appellant. Reliance was placed on PLD 2010 Supreme Court 695 and judgment dated 17.05.2022 passed by this Tribunal in Service Appeal No. 1500/2018 titled "Sanaullah Versus Provincial Police Officer Khyber Pakhtunkhwa Peshawar and three others".

4. On the other hand, learned _____ Advocate General for the respondents has contended that the appellant was directly charged for committing *Qatl-e-amd* of his father and the allegation leveled against the appellant stood proved in a regular inquiry; that a regular inquiry was conducted against the appellant by complying all legal and codal formalities; that criminal as well as departmental proceedings are distinct in

nature and mere acquittal of the appellant would not entitle him for exoneration in the departmental proceedings; that the appellant was not acquitted on merit, rather he was acquitted on the basis of compromise, therefore, his acquittal would not make him entitled to exoneration in the departmental proceedings; that the appellant being a member of a disciplined force was charged for the murder of his own father, therefore, he has rightly been dismissed from service. Reliance was placed on 2020 SCMR 1708.

5. We have heard arguments of learned counsel for the parties and have perused the record.

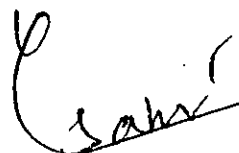
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7. Departmental Authority had taken disciplinary action against the appellant on the allegation of his involvement in case FIR No. 134 dated 08.03.2020 under section 302 PPC registered at Police Station Latamber District Karak. The legal heirs of the deceased had appeared before the court and their joint statement was recorded regarding compromise, wherein they [✓] ~~have~~ ^{have} categorically stated that they were satisfied regarding innocence of the appellant, therefore, they have ^{him} ~~the~~ pardoned the appellant in the name of almighty Allah by waving [✓] ~~the~~ ^{the} rights available to them.

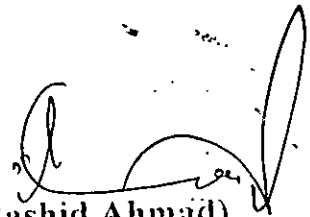
the

Qasim. And very next day they arrested HC Amjad from the Daewoo Terminal
 Abbottabad. If HC Amjad not involved in the matter then why he come to collect the
possession at Daewoo Terminal. HC Amjad remained confined in Peshawar Jail and now on
release and case is under trail in court. His this criminal act brought bad name for police
department in the eyes of general public. Allegations leveled against delinquent official
are stand proved, recommendation for major punishment.


Submitted for your kind perusal with all the relevant record.



(Muhammad Sabir)
 Deputy Superintendent of Police,
 Mirpur Abbottabad.



(Rashid Ahmad)
 Dy: Superintendent of Police,
 Legal Abbottabad.

Sir,
 Submitted for f/10
 order please. 

PA
 Issue FSCN


 DPO Atd.

under the law. The appellant has been acquitted in the concerned criminal case vide order dated 04.12.2020 passed by the then *learned* Sessions Judge Karak. The appellant has been acquitted on the basis of compromise, however it is by now well settled that every acquittal is honourable. In view of acquittal of the appellant, the very charge, on the basis of which the appellant was proceeded against, has vanished away. *The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.*

8. Consequently, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
00.07.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

STATEMENT ABDUL QADEER S/O ABDUL GHAFUOR INCHAGE KARGO
DAEWOO TERMINAL ABBOTTABAD.

Stated in his written statement that on 15-12-2019 he was present on his duty at 0900 hour 07 personnel of Anti Narcotic came to Kargo office out of which 04 were in uniform and 03 were in plain clothes. They asked me about the parcel No. 191951977 to check the parcel where is it, I checked parcel which was booked from Peshawar but not received so far in the office.

After that they showed me a copy of FIR and said that we came here for this enquiry, than they called namely Amjad from our Daewoo company landline No. later on Amjad came to Daewoo Terminal where ANF Personnel arrested him and took him in their Vehicle and went away.

STATEMENT ASSISTANT MANAGER DAEWOO TERMINAL MR. SAEED
S/O SHAMRAIZ R/O BANDA BATANG ABBOTTABAD.

Stated in his written statement that on 15-12-2020 he was present in his routine duty at Daewoo Terminal, team of Anti Narcotic Peshawar came to his office. They told about the parcel no. and said that we came here for the enquiry of this parcel. He sent them incharge Kargo office concerned.

FINDINGS:-

The real facts behind these allegations are that on 14-12-2019 supervisor of Daewoo fast courier logistic booking office situated at Daewoo Adda informed the ANF authorities at Peshawar that he received a consignment in a gatta cotton booked by one M. Qasim for one Amjad of to be delivered at Abbottabad, which seems to be suspected. On the information the ANF authorities department raid party along with IO, the party rushed to the spot there at Peshawar, where the supervisor handed over that consigned along with booking receipt 191951977 the IO of the raid party opened the same cotton where from charas weighing 1200 gram was recovered, the IO fulfilling the formalities of investigating further probed into the investigation and on very next day reached Abbottabad office and apprehended the alleged accused official, who had to receive the same cotton on the following day at Abbottabad.

Being Enquiry officer, I have come to the conclusion that Parcel which was booked on the name of HC Amjad Khan reached Peshawar Daewoo Adda which have to be received by Amjad Khan from Daewoo Adda Abbottabad. The same parcel was taken into possession by ANF Personnel at Peshawar Daewoo Terminal and a case FIR No. 179 dated 14-12-2019 u/s 9E CNSA was registered against HC Amjad

7-3-22

Due to Retirement of the Hon. ble
Chairman the 's adjourned on
30-6-22
Reddin

30.06.2022

Appellant alongwith his counsel present. Mr. Waqar Ahmad
alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for
respondents present.

Partial arguments heard. To come up for remaining
arguments on 14.07.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah Ud Din)
Member (J)

01.07.2021

Appellant in person and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned AAG seeks time to submit reply. He is required to contact the respondents and submit written reply/comments within 10 days in office, positively. In case written reply/comments are not submitted within the stipulated time, office shall submit the file with a report of non-compliance. To come up for arguments on 15.11.2021 before the D.B.

Stipulated period has passed and reply has not been submitted.


Chairman

P.S

14.07.2021


Learned Addl. A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.


Chairman

15.11.2021

Appellant in person present. Mr. Akhtar Ghani, LHC alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Reply/comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments before the D.B on 07.03.2022.


(Salah-Ud-Din)
Member (J)

849/2020

04.01.2021

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks further time to furnish reply/comments. He is required to contact the respondents and submit requisite reply/comments on 16.02.2021 positively.


Chairman

16.02.2021

Junior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Shahid, PSI, for the respondents are also present.

Written reply on behalf of respondents not submitted. Representative of the department is seeking further time for submission of written reply/comments. Last chance is given to the respondents for filing of written reply/comments on 08.04.2021 before S.B.


(Muhammad Jamal Khan)
Member

08.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 01.07.2021 for the same as before.


READER

14.09.2020

Counsel for the appellant present.

Contents that the appellant, after having been charged under Section 302 PPC through FIR No. 134 dated 08.03.2020, was released on bail by a court of competent jurisdiction on 18.04.2020. On the other hand, while recording the impugned order dated 30.04.2020, the competent authority did not keep in consideration the grant of bail to the appellant on the basis of compromise. The legal heirs of the deceased, in their joint statement, dated 18.04.2020, also stated that they did not have any objection to acquittal of the appellant. The departmental appellate authority also did not consider this aspect of the case and was pleased to reject the appeal on 25.06.2020.,

Subject to all just exceptions, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 16.11.2020 before S.B.

Appellant Deposited
Security & Process Fee

14/9/20


Chairman

16.11.2020

Junior to counsel for the appellant and Addl. AG for respondents present.

Learned AAG seeks time to contact the respondents and furnish reply/comments on next date of hearing. Adjourned to 04.01.2021 on which date the requisite reply/comments shall positively be furnished.

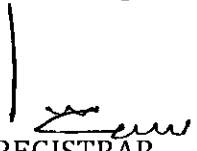


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 8491 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	24/07/2020	<p>The appeal of Mr. Nazeerullah presented today by Mr. Shahid Qayum Khattak 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>2-</p>		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>14/09/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 8491 /2020

Nazir Ullah Appellant

Versus

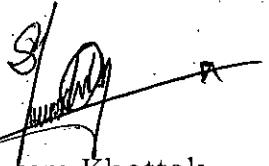
Provincial Police Officer and others..... Respondents

INDEX

S.No.	Description of Documents	Annex	Pages
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2.	Address of the parties		6
3.	Charge Sheet with statement of allegation	A	7-8
4.	Reply of appellant	B	9
5.	impugned order dated 30/04/2020	C	10
6.	Copy of Departmental Appeal	D	11-13
7.	Order dated 25/06/2020	E	14
8.	other documents		15-17
9.	Wakalat Nama		18

Appellant

Through



Shahid Qayum Khattak
Advocate, Supreme Court
of Pakistan
Mob No. 0333-9195776

Dated: /07/2020

①

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. /2020

Diary No. 7861

Nazir Ullah S/o Noor Jamal R/o Sai Kot,

Dated 24-07-2020

Tehsil Takht-e-Nasrati District, Karak Appellant

-Versus

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. The Regional Police Officer, Kohat Region, Kohat
3. District Police Officer, Karak.
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 30/04/2020 PASSED BY
RESPONDENT NO. 3 BY WHICH MAJOR PUNISHMENT OF
DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT HAS
BEEN AWARDED TO THE APPELLANT AND AGAINST THE ORDER
DATED 25/06/2020 ISSUED ON 06/07/2020 VIDE WHICH THE
REPRESENTATION/ DEPARTMENTAL APPEAL OF THE
APPELLANT FILED ON 11/05/2020 HAS BEEN REJECTED

PRAYER

Filed to-day

Registrar

24/7/2020

By accepting this service appeal, the punishment awarded to the
appellant through impugned orders dated 30/04/2020 may
graciously be set aside by declaring it illegal, void, unlawful,
without authority, based on mala fide, void abinitio and thus not
sustainable and the appellant is entitled for reinstatement in
service with all back benefits of pay and service.

Respectfully Sheweth;

1. That appellant was serving in the police department as constable
and has rendered satisfactory service in the Department and
performed his duties with full zeal and enthusiasm.

2. That respondent No. 3 issued a Charge Sheet alongwith Statement of Allegation to appellant which was properly replied but the same has not been taken into consideration and passed impugned order dated 30/04/2020 and appellant has been dismissed from service.
(Copy of the Charge sheet, reply and order are attached as Annexure "A" "B" and "C")
3. That appellant filed departmental appeal against the impugned order before worthy respondent No. 2 on 11/05/2020 which was rejected vide order dated 25/06/2020 issued on 06/07/2020.
(Copy of the Representation and order are attached as Annexure " D" & "E")
4. That the appellant feeling aggrieved from the impugned orders hence, filling this appeal on the following amongst other grounds inter alia

GROUND:

- a. That both the impugned orders are illegal, unlawful, without authority, based on mala fide intention, against the nature justice, violative of the Constitution and Service Law and equally with out jurisdiction, hence, the same are liable to be set aside in the best interest of justice.
- b. That impugned orders passed by respondents is very much harsh, without any evidence based on surmises & conjectures and is equally against the principle of natural justice.
- c. That respondent No. 3 has not taken into consideration the detail and plausible reply to the charge sheet but brushed aside it without any reason, grounds. Furthermore respondent No. 3 has not adopted proper procedure and passed impugned order which is liable to be set aside.
- d. That no show cause notice has been issued to appellant and no regular inquiry has been conducted for confirming the allegation and scrutinizing the conduct of appellant with reference to the charges therefore, the very foundation of the impugned order was baseless and groundless and not sustainable under the law and rules.

3

- e. That the allegation leveled against the appellant are baseless, without any proof and cogent evidence and is based on malafide intention and are concocted one. No proper opportunity of personal hearing has been provided to appellant. Respondents have not adopted proper procedure nor any statement of any witness has been recorded.
- f. That the learned respondents brushed aside the recommendation of the enquiry officer wherein he opined the departmental file may be kept pending till finalization of criminal Trial, but still no show cause notice has been issued by respondent No. 3.
- g. That except the allegation leveled in the charge sheet, that appellant was charged in criminal case, no other allegation i.e absence from duty , misusing official status or acting in the manner prejudicial to service discipline had been leveled against appellant. In plain language the contents of charge sheet do not constitute a departmental charges of misconduct.
- h. That respondent No. 3 does not considered that all the legal heirs of the deceased had pleaded in clear terms the innocence of appellant and raise no objection on the release of appellant on bail and subsequently acquittal from criminal charges.
- i. That the enquiry officer has furnished opinion for keeping pending the departmental file till acquittal or conviction order of appellant by the trial court but the lower authority disagreed with the opinion of the enquiry officer without advancing any reasons and grounds.
- j. That under the law and rules in case the authority did not agree with the findings of enquiry officer then notice to this effect shall be supplied to the accused officer/ official for explaining the cause, but no such notice or final show cause notice has been issued to appellant which vitiate the whole proceeding and thus the impugned orders are liable to be set aside and appellant may please be re-instated on service with all back benefits.

(4)

- k. That previous unblemished record of appellant has not been taken into consideration. Further more mere charge in criminal case is no ground for removal from service, until and unless the charge has been proved against appellant.
- l. That the trial of the criminal case is still pending adjudication before the competent Court of law and pre-trial conviction order of removal from service is not justified specially when the legal heir of the deceased effected compromised with appellant.
- m. That the impugned order has been passed in violation of law and rules of disciplinary proceedings and principles of natural justice. The authority wrongly and malafidly based the impugned order on assessments and speculations, therefore the impugned order is bad in law.
- n. That the disciplinary proceedings against appellant suffered from gross infirmities, illegalities and irregularities as no evidence what so ever has been produce or cited in the respondents nor any witness has been examined.
- o. That major penalty of removal from service has been passed against appellant without conducting any regular inquiry and without examining any witness in support of the charges. Similarly no documentary evidence was brought on record to substantiate the allegations leveled against appellant, therefore, the impugned orders based on assessment is bad in law and has been passed in violation of settled principles governing the disciplinary action against the Police Officers. Similarly no show cause notice has been issued against appellant which also make it a void order.
- p. That the learned respondent has not taken into consideration that the rules under which the appellant has been charged are not applicable on him which clearly shows that the act of respondent is totally based on discrimination undue victimization beside that the impugned order is suffered from gross infirmities, illegality , based on no evidence totally contradictory to the enquiry.

5


q. That the entire service record of the appellant is unblemished therefore, the impugned order would be a black stigma on the clean service career of the appellant, therefore, the same is liable to be set aside.

It is, therefore, most humbly prayed that on accepting this service appeal, the punishment awarded to the appellant through impugned orders dated 30/04/2020 and 25/06/2020 may graciously be set aside by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable and the appellant is entitled for reinstatement in service with all back benefits of pay and service.

Any other relief not specifically prayed for but deem appropriate in the circumstances of the case may also be granted.



Appellant

Through


Shahid Qayum Khattak
Advocate, Supreme Court
of Pakistan

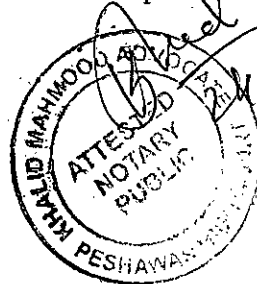
Dated: 24 /07/2020

Certified that as per instruction of my client no such appeal has been filed before this Hon'ble Forum.


Advocate

Affidavit

I, Nazir Ullah S/o Noor Jamal R/o Sai Kot, Tehsil. Takht-e-Nasrati District, Karak do hereby solemnly affirm and declare on Oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.



Deponent

6

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2020

Nazir Ullah Appellant

Versus

Provincial Police Officer and others..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT

Nazir Ullah S/o Noor Jamal R/o Sai Kot,
Tehsil Takht-e-Nasrati District, Karak

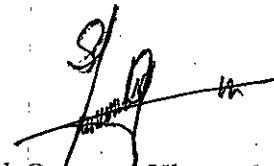
RESPONDENTS

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. The Regional Police Officer, Kohat Region, Kohat
3. District Police Officer, Karak.
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar



Appellant

Through



Shahid Qayum Khattak
Advocate, Supreme Court
of Pakistan

Dated: 24/07/2020

(7)

Annex - A

No. 55 /EC(Enq)

Dated 09/10/2020

CHARGE SHEET

I, NAUSHER KHAN, District Police Officer, Karak as a competent authority, hereby charge you Constable Nazir Ullah No. 262 (suspended) Police Lines Karak as follows:-

"You Constable Nazir Ullah No. 262 have been charged/arrested in criminal case for murder of his father vide FIR No. 134 dated 08.03.2020 u/s 302 PPC PS Latamber. This is highly adverse on your part and shows your immoral and unlawful act on the discharge of your official obligations being a member of discipline Force. This act on your part is against service discipline and amounts to gross misconduct."

1. By the reason of your commission/omission, constitute miss-conduct under Police disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department, you have rendered your-self liable to all or any of the penalties specified in Police Rule-1975 ibid.

2. You are, therefore, required to submit your written defense within 07-days of the receipt of this charge sheet to the enquiry Officer DSP H98 is hereby appointed for the purpose of conducting enquiry.

Your written defense, if any should reach to the Enquiry Officer within a stipulated period, failing which shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

3. Intimate whether you desire to be heard in person.

4. A statement of allegation is enclosed.

Shahid
Attested

Shahid
District Police Officer, Karak

13/10/20

7-A

BETTER COPY OF THE PAGE NO.7

No. 55/EC(Eng)
Dated 09/03/2020

CHARGE SHEET

I, **NAUSHER KHAN**, District Police Officer, Karak as a competent authority, hereby charge you **Constable Nazir Ullah No. 262 (suspended) Police Lines Karak** as follows:-

“You Constable Nazir Ullah No. 262 have been charged/arrested in criminal case for murder of his father vide FIR No. 134 dated 08.03.2020 u/s 302 PPC PS Latamber. This is highly adverse on your part and shows your immoral and unlawful act on the discharge of your official obligations being a member of discipline Force. This act on your part is against service discipline and amounts to gross misconduct.”

1. By the reason of your commission/omission, constitute misconduct under Police disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt of Khyber Pakhtunkhwa, Police Department, you have rendered your-self liable to all or any of the penalties specified in Police Rule-1975 ibid.

2. You are, therefore, required to submit your written defense within 07-days of the receipt of this charge sheet to the enquiry Officer **DSP Hqr** is hereby appointed for the purpose of conducting enquiry.

Your written defense if any should reach to the Enquiry Officer within a stipulated period, failing which shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

3. Intimate whether you desire to be heard in person.

4. A statement of allegation is enclosed.

[Handwritten Signature]
Attested

-Sd-
District Police Officer, Karak

DISCIPLINARY ACTION

I, NAUSHER KHAN, District Police Officer, Karak as a competent authority, is of the opinion that Constable Nazir Ullah No. 262 (suspended) Police Lines Karak, has rendered himself liable to be proceeded against on committing the following act/commission within the meaning of Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department.

STATEMENT OF ALLEGATIONS

"Constable Nazir Ullah No. 262 has been charged/arrested in criminal case for murder of his father vide FIR No. 134 dated 08.03.2020 u/s 302 PPC PS Latamber. This is highly adverse on his part and shows his immoral and unlawful act on the discharge of his official obligations being a member of discipline Force. This act on his part is against service discipline and amounts to gross misconduct."

1. The enquiry Officers DSP HQ in accordance with provision of the Police Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department may provide reasonable opportunity of hearing to the accused official, record his finding and make within 10-days of the receipt of this order recommendation as to punishment or other appropriate action against the accused.
2. The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

NAUSHER KHAN
District Police Officer, Karak

No. 56 /EC(Enq), dated 09/03/2020

Copy to:-

1. The Dy. Inspector General of Police Kohat Region Kohat for favour of information, please.
2. The enquiry Officers for initiating proceeding against the accused under the Provision of the Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department.
2. Constable Nazir Ullah No. 262 (suspended) Police Lines Karak

NAUSHER KHAN

Attested

NAUSHER KHAN
District Police Officer, Karak

8-A

BETTER COPY OF THE PAGE NO.8

DISCIPLINARY ACTION

I, NAUSHER KHAN District Police Officer, Karak as a competent authority is of the opinion that Constable Nazir Ullah No. 262 (suspended) Police Lines Karak has rendered himself liable to be proceeded against on committing the following act commission within the meaning of Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department.

STATEMENT OF ALLEGATIONS

“Constable Nazir Ullah No 262 has been charged/arrested in criminal case for murder of his father vide FIR NO. 134 dated 08.03.2020 u/s 302 PPC PS Latamber This is highly adverse on his part and shows his immoral and unlawful act on the discharge of his official obligations being a member of discipline Force. This act on his part is against service discipline and amounts to gross misconduct.”

1. The enquiry Officers DSP Hqr in accordance with provision of the Police Rule-1975 (amendment Notification No. 3859/Legal. dated 27 08 2014) Govt of Khyber Pakhtunkhwa, Police Department may provide reasonable opportunity of hearing to the accused official, record his finding and make within 10-days of the receipt of this order recommendation as to punishment or other appropriate action against the accused.
2. The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

-Sd-
District Police Officer, Karak

No. 56/EC(Eng), dated 09/03/2020.

Copy to:-

1. The Dy Inspector General of Police Kohat Region Kohat for favour of information, please
2. The enquiry Officers for initiating proceeding against the accused under the Provision of the Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt of Khyber Pakhtunkhwa, Police Department
3. Constable Nazir Ullah No. 262 (suspended) Police Lines Karak

[Handwritten Signature]
Attested

-Sd-
District Police Officer, Karak

بیان اذانی مسئل کتبیل تفریقہ دہلی پولیس لائن کرک

جنا علی

شمارہ چارٹ شیٹ نمبری 55 وارم 30 صواب کرک معروضی خدمتوں
9-3-20

قدہ ملت 134 اور 2/20 قسم 2022 مہانہ لکھن میں لے پرتل کی دہلی پولیس
سہ انعام لگایا گیا ہے۔ جو میں بلکل پتہ لگایا ہوں۔ لکھن میں یہ دہلی پولیس ہو گئی
پر مہیا ہے۔ اور حقائق کے برعکس ہے۔ جو کہ میں عدالت میں اپنا پتہ لگایا
الستاد اللہ ثابت کرو گئے

استدعا چارٹ شیٹ عدالتا منیما، قدہ پندرنگ لکھا جائے
اور لکھ اپنے عید پر بحال کیا جاوے۔ مہنہ اور جزا کی صورت میں کارروائی
کیجاوے۔ میرا ایس قدر بیان ہے جو حقیقت پر مبنی ہے۔ جواب انہر معیار نورا

[Handwritten signature]

سائنس مسئل تفریقہ دہلی پولیس لائن کرک

[Handwritten signature]

12

(9-A)

Better Copy of the Page No. 9

بیان ازاں معطل کانشیل نذیر خان 262 پولیس لائن کرک

جناب عالی!

مشمولہ چارٹ شیٹ نمبری 55-09/03/2020 مجاریہ DPO صاحب کرک معروض خدمت ہوں،
مقدمہ علت نمبر 134، مورخہ 08/03/2020 بجرم PPC 302 تھانہ لتمبر میں مجھ پر قتل کی دعویداری کا
الزام لگایا گیا ہے جو میں بالکل بے گناہ ہوں، مجھ پر یہ دعویداری بدنیت پر مبنی ہے اور حقائق کے برعکس ہے جو کہ
میں عدالت میں اپنی بے گناہی انشاء اللہ ثابت کرونگا۔

استدعا چارٹ شیٹ ہذا تا فیصلہ مقدمہ پینڈنگ کیا جائے اور مجھے اپنے عہدے پر بحال کیا جاوے سزا و جزا کی
صورت میں کارروائی کی جاوے میرا اس قدر بیان ہے جو حقیقت پر مبنی ہے جو اب اندر معیا دگزر رہا۔

(Handwritten Signature)

کانشیل معطل نذیر خان 262 پولیس لائن کرک

Sd- و نشان انگشت

Attest

ORDER

My this Order will dispose off the departmental enquiry against Constable Nazir Ullah No. 262 (suspended) of this district Police.

Facts are that Constable Nazir Ullah No. 262 has been charged/arrested in criminal case for murders of his father vide FIR No. 134 dated 08.03.2020 u/s 302 PPC PS Latamber. This is highly adverse on his part and shows his immoral and unlawful act on the discharge of his official obligations being a member of discipline Force. This act on his part is against service discipline and amounts to gross misconduct.

He was issued with Charge Sheet and Statement of allegations. Muhammad Ismail SDPO Karak was appointed as an Enquiry Officer to conduct proper departmental enquiry against him and to submit his findings within the stipulated time.

The Enquiry Officer reported that the enquiry process against the defaulter Constable Nazir Ullah No. 262 may be pending till the final decision of the court. }

Keeping in view of the available record and facts on file, perusal of enquiry papers, I did not agree with the recommendations of the Enquiry Officer, his arrest in such murder of his father is intolerable and his retention in the Police department is not required. He is stigma for the Police department, Therefore, in exercise of power conferred upon me, I, NAUSHER KHAN, District Police Officer, Karak is hereby imposed a major punishment of dismissal from service upon the defaulter Constable Nazir Ullah No. 262 with immediate effect.

OB No. 177
Dated 30.1.04/2020

[Signature]
District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER KARAK

No 1999 /EC, dated Karak the 04/05 2020

Copy of above is submitted to the PSO to Dy. Inspector General of Police, Kohat Region Kohat for favour of information, please.

Nazirullah

403449023

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[Signature]
District Police Officer, Karak
Attest

[Handwritten notes]

To, The Regional Police Officer,
Kohat Region, Kohat.

Subject DEPARTMENTAL APPEAL.

Respected Sir,
Facts giving rise to the departmental appeal are as follow.

FACTS.

1. That appellant was serving as Constable in Police Department District, Karak under your kind control and command.
2. That unfortunately appellant was implicated in murder case FIR No. 134 dated 08/03/2020 under section 302 PPC Police Station Latamber wherein charges of killing his father were leveled against appellant.
3. That appellant was innocently charged, therefore, the appellant did not abscond for a single moment and surrendered himself before police on the very day of the occurrence.
4. That the appellant was put behind the bars in Judicial Lock-up District Jail, Karak. Later on the legal heirs of the deceased contended innocence of appellant before trial court and appellant was released on bail vide order dated 18/04/2020.
5. That in-addition to criminal charge the worthy District Police Officer, Karak initiated departmental proceedings against appellant by issuing charge sheet and DSP Headquarters, Karak was appointed as Enquiry Officer for scrutinizing the conduct of appellant with reference to the departmental charges leveled against him.
6. That the Enquiry Officer furnished opinion that the departmental file may be kept pending till finalization of criminal trial but the worthy District Police Officer, Karak did not agree with the opinion of Enquiry Officer

[Handwritten Signature]
Atteste

and passed the impugned order of dismissal from service of appellant dated 30/04/2020 vide DP No. 177. Hence the departmental appeal on the following grounds.

Grounds.

- a. That the worthy District Police Officer, Karak has passed the impugned order without evaluating the facts and evidence on record.
- b. That according to charge sheet appellant was charged in criminal case. No charges of absence from duty, misusing official status or acting in the manner prejudicial to service discipline had been leveled against appellant. In plain language the contents of charge sheet do not constitute a departmental charge of misconduct.
- c. That all the legal heirs of the deceased have pleaded in clear terming the innocence of appellant and contended that release of appellant on bail and subsequent acquittal from the criminal charge before trial court.
- d. That the worthy District Police Officer, Karak did not consider the contention of the legal heirs of the deceased.
- e. That the Enquiry Officer has furnished opinion for keeping pending the departmental file till acquittal or conviction order of appellant by the trial court but the lower authority disagreed with the opinion of the Enquiry Officer without advancing any reasons and grounds.
- f. That under the law and rules in case the authority did not agree with the findings of Enquiry Officer than a notice to this effect shall be supplied to the accused officer/official for explaining the cause. No final show cause notice was issued to appellant.

[Handwritten Signature]
Artesleu

- g. That this is on the record that the wife of appellant has denied natural death. The appellant not only look after the minor children but also earn livelihood for the minors. The dismissal from service order of appellant will render the minor to hunger.
- h. That the loss of service of appellant will prove more fatal to the minor than the loss of beloved mother. The appellant will not be able to shoulder the huge responsibilities of care of minor children while working on daily wages basis. Therefore, reinstatement of appellant in service is required for the welfare of the minor children.

Request.

It is, therefore, most humbly and respectfully requested that the impugned order may very graciously be pleased to set aside and the appellant may be re-instated in service with all back benefits.

Dated:- 11/05/2020.

Yours Obediently

Nazir Ullah Ex Constable
No. 262 District, Karak.
Cell No. 0344-9023749

Enclosure.

1. Copy of impugned order.
2. Statement of legal heirs recorded by trial court.
3. Charge Sheet.
4. Inquiry Report.

Nazir Ullah
At

(14)

Ames - E

POLICE DEPT:

KOHAT REGION


ORDER.

This order will dispose departmental appeal, moved by Ex-Constable Nazir Ullah No. 262 of Karak district against the punishment order, passed by DPO Karak vide OB No. 177, dated 30.04.2020 whereby he was awarded major punishment of dismissal from service on the allegations of his involvement in case vide FIR No. 134, dated 08.03.2020 u/s 302 PPC PS Latamber, Karak.

He preferred an appeal to the undersigned upon which comments were obtained from DPO Karak and his service documents were perused. He was also heard in person in Orderly Room, held on 25.06.2020. During hearing, he did not advance any plausible explanation in his defense to prove his innocence.

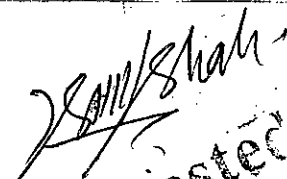
I have gone through the available record and came to the conclusion that the allegations leveled against the appellant are proved beyond any shadow of doubt and the same has also been established by the E.O in his findings. Therefore, his appeal being devoid of merits is hereby rejected.


Order Announced
25.06.2020


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

No. 6896 /EC, dated Kohat the 6/7 /2020.

Copy to DPO/Karak for information w/r to his office Letter No. 2338/LB, dated 20.05.2020. His Service Roll & Fauji Missal is returned herewith.


Attested


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

کبدات حیاتیہ شیخ حاجی صاحب کرک

نیز مرشد ولد نور جمال سکند سائیکوٹ تحصیل تخت لہری ضلع کرک

بنام

- 1- سیکر
- 2- سراج حاجی بیوہ نور جمال تحصیل تخت لہری ضلع کرک

C. FIR No 135 Dated 08/03/2020 U.S. 302 P.C. P.S. LATAMBER

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 Karak
 18-4-2020

درخواست بلوہ اصولی برہانہ ضمانت تافصلہ مقدمہ

صاحبی! سائل / ملزم ذیل عرضی ارسال ہے

- 1- پیر کر سائل / ملزم مقدمہ عنوان بالا میں گن متار ہے (کامی FIR کف ہے)
- 2- پیر کر سائل / ملزم کا درخواست ضمانت صورت میں پیر خارج کامی ہے
- 3- پیر کر درخواست ضمانت شدہ اراچی نامہ کی بنیاد پر دائر کی جارہی ہے
- 4- پیر کر سائل / ملزم عدالت حضور کو مطمئن کرنے کے لئے ہر قسم کی ضمانت دے گا و متار ہے
- 5- پیر کر سائل / ملزم ہر وہاں جہاں عدالت میں ہوئے

اسد استناد ہے کہ درخواست شدہ اور منظور
 فرمائے ہوئے۔ لکن اراچی نامہ سائل / ملزم و ضمانت
 کی صورت دی جاوے گی

Certificate
 As per instructions of my client
 contents of Application
 are True & correct and No
 such like Application priorly
 filled before any court of law

16/04/2020

SUPERINTENDENT
 Sessions Court Karak
 16/4/2020

لہ

Accused through Council
 نیز مرشد

Order---11
18-04-2020

APP for the State present. Counsel for accused/petitioner present.

Mr. Javed Hassan advocate submitted wakalatnama on behalf of complainant.

Accused Nazeer Ullah s/o Noor Jamal r/o Seikot Tehsil Takht-e-Nasrati District Karak seeks post arrest bail in case FIR No.135 dated: 08.03.2020 u/s 302 PPC Police Station Latambar on the basis of compromise.

Complainant/Legal heir of deceased Noor Jamal appeared, submitted an affidavit compromise proforma ExPA wherein they stated that they have patched up the matter with accused facing trial outside the court and have pardoned him in the name of Allah Almighty by waiving of all their rights (Qisas/Diyat) or any other compensation under the law. They also showed no objection on acceptance of instant bail application. In this respect, joint statement of complainant and legal heirs duly signed/thumb impressed by them, was recorded.

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18-4-20

In view of the above, as the legal heirs have entered into a genuine compromise free from duress and undue pressure and the offence is compoundable, the bail petition in hand is accepted and accused/petitioners is admitted to bail on furnishing bail bond in the sum of Rs.200,000/- with two local, reliable and respectable sureties each in the like amount to the satisfaction Illaqa Magistrate/MOD. Requisitioned record alongwith copy of this order be returned, while file of this court be consigned to record room after its necessary completion and compilation.

Announced:
18-04-2020
18-4-20



[Lubna Zaman]
Additional District & Sessions Judge-II/Duty Judge,
Karak

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18-4-20
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Joint statement of legal heirs of deceased Noor Jamal namely (1) Miraj Bibi (widow) (2) Muhammad Raees (3) Rehman Ullah (4) Hayat Ullah (5) Riyat Ullah (6) Amir Sohail (7) Muhammad Tufail (sons) and (8) Mst: Makhmad Zari (daughter) all r/o Seikot, Tehsil Takht-e-Nasrati District Karak.

We are the sole major legal heirs of deceased Noor Jamal who died vide case-FIR No.135 dated: 08.03.2020 u/s 302 PPC Police Station Latambar for which, the accused/petitioner is charged.

Since the accused/petitioner has satisfied us regarding his innocence by taking oath on the Holy Quran, therefore, we, all the legal heirs named above have pardoned him in the name of Almighty Allah by waiving of all our rights under the law. The accused/petitioner is also the son of deceased.

Because of our satisfaction made by accused, we, the legal heirs of deceased, have got no objection over the release of accused/petitioner on bail or subsequently acquitted during trial. To this effect we submit compromise deed ExPA containing 03 sheets, compromise proforma ExPA/1 and copies of our CNICs ExA/2 to ExPA/9 respectively.

RO&AC
18-04-2020

(1) Miraj Bibi (widow)
CNIC No.14203-1999980-2

(2) Muhammad Raees (son)
CNIC No.14203-4927420-7

(3) Rehman Ullah (son)
CNIC No.142030-390315-3

(4) Hayat Ullah (son)
CNIC No.14203-4862955-1

(5) Riyat Ullah (son)
CNIC No.14203-6345760-9

(6) Amir Sohail (son)
CNIC No.14203-5502265-5

(7) Muhammad Tufail (son)
CNIC No.14203-7788117-5

(8) Mst: Makhmad Zari
CNIC No.14203-2001759-2

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Branch Karak
18-4-2020

Attested

[Lubna Zaman]
Addl: District & Sessions Judge-II/ Duty
Judge, Karak

بعدالت جناب سر و سسر ٹریڈینگ سٹور

BC no - 10-7677
PH-No 0333-9195776

Appellant 2 جناب
مذکورہ بنام پی پی او

مدرجہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کارروائی متعلقہ
آن مقام سٹیٹ اور کیلئے سٹیٹ ایڈووکیٹ جنرل ایڈووکیٹ جنرل ایڈووکیٹ جنرل ایڈووکیٹ جنرل
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثبات ہ فیصلہ بر حلف دیئے جواب دہی 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 کی طرف یا اپیل کی برادگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر 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
مذکور کریں۔ لہذا اذکالت نامہ لکھ دیا کہ مندر ہے۔

المرقوم 24 ماہ 07 2020

وہ العی و العی

Attested
&
Accepted
by
I shall

بمقام سٹیٹ اور

مذکورہ بالا کے لئے
دائریہ سٹیٹ اور
تحت لفظی عمل کریں

2

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

Service Appeal No. 8491/2020
Nazir Ullah

..... Appellant

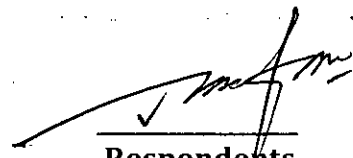
VERSUS

Provincial Police Officer/
Inspector General of Police
Khyber Pakhtunkhwa & others

..... Respondents

INDEX

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE NO.
1.	Para wise comments/reply	-	1-3
2.	List of Bad Entries	A	4
3.	ATTESTED COPY FIR No. 135 dated 08.03.2020 u/s 302 PPC Police Station Latamber Karak	B	5
4.	BETTER COPY FIR No. 135 dated 08.03.2020 u/s 302 PPC Police Station Latamber Karak	-	6


Respondents
Through Representative

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 8491/2020
Nazir Ullah

..... Appellant

VERSUS

Provincial Police Officer/
Inspector General of Police,
Khyber Pakhtunkhwa & others

..... Respondents

PARAWISE COMMENTS BY RESPONDENTS.

Respectively Sheweth:-

Preliminary Objections:-

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

Facts:-

1. Correct to the extent that the appellant was employee of Police as Constable but during service his performance was not satisfactory. (Attached list of his Bad entries, as **annexure-A.**)
2. Incorrect, the appellant was directly charged for the commissions of offence vide FIR No. 135 dated 08.03.2020 u/s 302 PPC, Police station Latamber, district Karak. He being member of a disciplined force committed professional misconduct besides criminal act. Therefore, departmental proceedings initiated against him under the relevant rules. The reply of appellant to the charge sheet and show cause notice were found unsatisfactory and without plausible explanation. Copy of FIR is **annexure B.**
3. The departmental appeal of the appellant was processed accordingly by respondent No. 2, which was devoid of merits and correctly rejected with cogent reasons vide order dated 25.06.2020.
4. The appellant is estopped to file the instant appeal for his own act and wrongly challenged the valid orders of respondents through unsound grounds.

Grounds:-

- a. Incorrect, the appellant was proceeded with departmentally under the relevant rules by respondent No. 3. All codal formalities were fulfilled during the entire departmental proceedings and departmental appeal. Both the orders are based on facts, merit and speaking one.
- b. Incorrect, the appellant was charged for a heinous offence on receipt of inquiry findings report and punishment was imposed commensurate to the proved charges against the appellant.
- c. Incorrect, the respondent No. 3 being a competent authority fulfilled all the codal formalities during the course of departmental proceedings. Furthermore, reply to the charge sheet and show cause notice were found unsatisfactory and without any plausible explanation.
- d. Incorrect, a regular inquiry was conducted against the appellant. The respondent No. 3 was not agreed with the findings report of inquiry officer and being a competent authority awarded punishment to the appellant in accordance with the rules.
- e. Incorrect, the appellant was directly charged in FIR for the offence of murder. Furthermore, the appellant has entered into a written compromise with the legal heirs of deceased, which further corroborates the involvement of appellant in the alleged criminal case.
- f. Criminal and departmental proceedings have their own jurisdiction and distinct in nature. These proceedings can run side by side. Therefore, the respondent No. 3 rightly exercised his lawful powers conferred upon him under the relevant rules.
- g. The appellant was charged by complainant for the commission of offence and his release on bail on the basis of compromise could not be valid grounds for dropping departmental proceedings.
- h. Incorrect, the respondent No. 3 has thoroughly gone through the available record, which connect the appellant with the commission of offence and the charge framed against the appellant were established against him.
- i. As explained in above Para # F.
- j. Incorrect, the respondent being a competent authority has rightly exercised lawful power conferred upon him under the relevant rules.
- k. Incorrect, the appellant has committed a heinous crime for which he was proceeded with departmentally and awarded punishment commensurate to the established charge.
- l. As replied above, criminal and departmental proceedings are distinct in nature and can run side by side.

- m. Incorrect, all the departmental proceedings were conducted against the appellant in accordance with the relevant rules.
- n. Incorrect, all codal formalities were fulfilled by respondent No. 3 during the course of departmental inquiry.
- o. Incorrect, a regular inquiry was conducted against the appellant under the relevant rules and fulfilled the mandatory requirements accordingly.
- p. Incorrect, the appellant being member of a disciplined force has committed a heinous crime and professional misconduct as well, therefore, he was proceeded with departmentally by the respondent No. 3, under the relevant rules.
- q. Incorrect, as explained in Paras of facts, appellant's performance was not up to ~~the up to~~ the mark.

Prayer:-

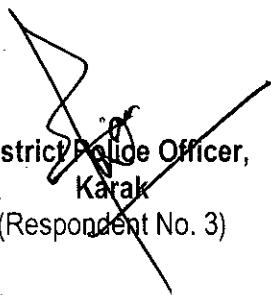
In view of the above stated facts and reasons, it is prayed that the appeal being meritless may graciously be dismissed with costs, please.



Chief Secretary
Govt of Khyber Pakhtunkhwa,
(Respondent No. 4)



Provincial Police Officer /
Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No. 1)



District Police Officer,
Karak
(Respondent No. 3)



Regional Police Officer,
Kohat, Region Kohat
(Respondent No. 2)

(4)

ANNEXURE "A"

POLICE DEPARTMENT


DISTRICT KARAK

SERVICE APPEAL NO. 8491/2020

NAZIR ULLAH

LIST OF BAD ENTRIES

S. NO.	DETAILS OF BAD ENTRY	PUNISHMENT AWARDED
1.	Absent from Duty for 04 Days vide DD No. 03 dated 21.12.2009.	Punishment of Censure and Period is treated as Leave without Pay.
2.	Absent from Duty for 02 Hours vide DD No. 31, On 26-10-2018.	Issued Warning to be careful.
3.	Involved & arrested in case FIR No. 135 dated 08.03.2020 u/s 302 PPC PS Latamber Karak.	Dismissed from Service vide OB No. 177 dated 30.04.2020.



Reader
Legal Branch

ملکی نام (پولیس) فارم نمبر ۲۳-۱۵ (۱)

گورنمنٹ پولیس پشاور جاب نمبر 2286/13 فارم نمبر تعداد ایک ہزار چتر سو سو 20.06.2011 (فارم نمبر جابز) ملکی نام (پولیس)

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

تاریخ	ضلع	لشکرہ
14-12-2020	کراچی	18
تاریخ	ضلع	لشکرہ
25-12-2020	کراچی	135
تاریخ	ضلع	لشکرہ
16-12-2020	کراچی	18
نوموت اطلاع دہندہ مستغیث		نوموت اطلاع دہندہ مستغیث
نورمحمد خان ولد سعید سعید سعید سعید		نورمحمد خان ولد سعید سعید سعید سعید
نوموت اطلاع دہندہ مستغیث		نوموت اطلاع دہندہ مستغیث
نورمحمد خان ولد سعید سعید سعید سعید		نورمحمد خان ولد سعید سعید سعید سعید
نوموت اطلاع دہندہ مستغیث		نوموت اطلاع دہندہ مستغیث
نورمحمد خان ولد سعید سعید سعید سعید		نورمحمد خان ولد سعید سعید سعید سعید
نوموت اطلاع دہندہ مستغیث		نوموت اطلاع دہندہ مستغیث

ابتدائی اطلاع سے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کر دو۔
 واقعہ ۱۵۴ کے تحت درج کیا گیا ہے۔
 واقعہ ۱۵۴ کے تحت درج کیا گیا ہے۔
 واقعہ ۱۵۴ کے تحت درج کیا گیا ہے۔

Attested
 District Police Officer
 KARAK

ANNEXURE "B" (6) BETTER COPY

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دستاوردازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع کرک

تھانہ تممر

تاریخ وقت وقوعہ 08.03.2020 بوقت 1420 بجے

135

علت

تاریخ وقت رپورٹ 08.03.2020 وقت 1525 بجے	چاکیڈگی پرچہ 08.03.2020 وقت 1645 بجے
سکونت اطلاع دہندہ مستغیث:	نور جمال خان ولد لعل محمد بھر قریب 76/77 سال سکنہ سائیکوٹ
کیفیت جرم (معدہ دفعہ) حال اگر کچھ لیا گیا ہو۔	324 PPC
وقوعہ فاصلہ تھانہ سے اور سمت:	کچھ راستہ رواندہ ارضیات موسومہ بنگگی واقعہ نزد سائیکوٹ بفاصلہ 11/12 کلومیٹر جانب جنوب از تھانہ
نام سکونت ملزم	نذیر اللہ ولد نور جمال سکنہ سائیکوٹ
کاروائی تفتیش کی متعلق اگر کی گئی اطلاع درج کرنے میں توقف ہو تو وجہ بیان کرو،	برسیدگی مراسلہ پر چرچا دیا جاتا ہے
تھانہ سے روانگی کی تاریخ و وقت	بطور پیش رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ ایک تحریری مراسلہ مجانب محمد اسماعیل IHC انچارج رپورٹنگ سنٹر KDA ہسپتال

کرک بدست کانسٹیبل نور اسلم 374 موصول ہو کر جو کہ درج ذیل ہے۔ بخدمت انچارج آفیسر تھانہ تممر مجروح نور جمال خان ولد لعل محمد بھر قریب 76/77 سال سکنہ سائیکوٹ بالمداد اہلیان دیہہ ایمر جنسی روم KDA لا کر شناختی کارڈ نمبر 9-100-20588-14203 موبائل نمبر موجود نہیں ہے۔ مورخہ وقت بالا بمقام ایمر جنسی روم اپنی مجروحیت کا بقا کی درست ہوش حواس یوں رپورٹ کرتا ہیکہ امروز میں معدہ بیوی ام مسماہ معراج بی بی بغرض گھاس لینے ارضی بلندی جا رہا تھا۔ جب بوقت بمقام وقوعہ بالا پہنچا۔ تو اس اثناء میں پسر اش نذیر اللہ بہ مسلح پستول نمودار ہوا۔ اور با آواز بلند کہا کہ امی جان آپ والد ام نور جمال خان سے سائیڈ پر ہو جاؤ۔ اُسکے بعد پسر ام نذیر اللہ نے پستول سے بارادہ قتل فائرنگ کی۔ جس سے میں لگ شدید زخمی ہوا۔ وجہ عداوت شادی نہ کرنے پر ہے۔ پسر ام کی بیوی چند ماہ قبل فوت ہوئی ہے۔ وقوعہ ہذا میرے علاوہ بیوی ام مسماہ معراج بی بی کا چشم دید ہے۔ میں اپنی اوپر بارادہ قتل فائرنگ کرنے اور زخمی ہونے برخلاف پسر ام نذیر اللہ دعوی دار ہوں۔ نشانی انگوٹھا کاروائی پولیس حسب گفتہ سائل رپورٹ درج بالا ہو کر پڑھ کر سنایا سمجھایا گیا۔ درست تسلیم کر کے زیر رپورٹ پر خود نشان انگوٹھا ثبت کی۔ جس کی میں تصدیق کرتا ہوں۔ مجروح کی نقشہ ضرر بمطابق زخمت مرتب کر کے زیر حفاظت کانسٹیبل آفاق احمد 531 حوالہ ڈاکٹر صاحب کی گئی۔ مضمون رپورٹ سے صورت جرم بالا کی پائی جا کر مراسلہ بغرض مقدمہ بدست کانسٹیبل نور اسلم 374 ارسال تھانہ ہے۔ دستخط انگریزی محمد اسماعیل IHC انچارج رپورٹنگ سنٹر KDA ہسپتال کرک مورخہ 08.03.2020 کاروائی تھانہ آمدہ مراسلہ حرف بحرف درج بالا ہو کر پرچہ جا کر ہو کر نقل FIR معدہ مراسلہ بغرض تفتیش حوالہ KBI سٹاف کیا جاتا ہے۔ پرچہ بطور پیش رپورٹ گزارش ہے۔

-sd-

تھانہ تممر

08.03.2020

04/12/20 (Case file)
2

2020 52
7

IN THE COURT OF MOHIB UR REHMAN
JUDICIAL MAGISTRATE, KARAK

Case No. _____ of 2020

State vs. Nazeer Ullah

Case FIR No.135 dated 08.03.2020 u/s 302 PPC Police Station Latambar

Or.....01
27.07.2020

Complete challan received from prosecution. APP for State present.

The instant case under section 302 PPC is exclusively triable by the Court of Sessions; hence the case file is forwarded herewith under the provision of Section 190 Sub Section 3 Cr.P.C to the Court of Hon'ble District and Sessions Judge, Karak for further appropriate order please.

Muharir of this Court is directed to send the case file forthwith to the Court of Hon'ble District and Sessions Judge, Karak and also make relevant entry in the register.

ATTESTED
Examiner Copying
Branch Karak

07/12/20

(MOHIB UR REHMAN)
Judicial Magistrate, Karak

3

FORM "A"
FORM OF ORDER SHEET

Court of..... Sessions Judge, Karak.....

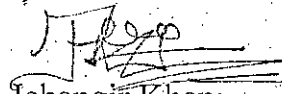
Case No. 5217 of..... 2020

Serial No. of Order or Proceeding 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
	29.7.2020	<p>Case file received from learned area Magistrate today. To be checked and put up for orders before the learned Sessions Judge, Karak today.</p> <p style="text-align: right;">Superintendent, Sessions Judge, Karak</p> <p style="text-align: center;"><i>[Signature]</i> SUPERINTENDENT Sessions Court, Karak</p>
Or.....01 29.7.2020	<i>[Signature]</i>	<p>Instant case received from the Court of learned Magistrate, Karak. It be entered in relevant Register. Accused & complainant be summoned for <u>03/9/2020</u>.</p> <p style="text-align: right;"><i>[Signature]</i> Jehangir Khan Sessions Judge, Karak.</p> <p style="text-align: center;">Sessions Judge, Karak</p>
Or.....02 03.9.2020	<i>[Signature]</i>	<p>Mr. Taj Muhammad D.P.P. for the State and accused facing trial Nazeerullah on bail with learned counsel Mr. Malik Rehman Advocate present who submitted w/nama. Notice issued to the complainant returned with the report that he has died, hence notice be issued to Mst. Miraj Bibi (widow of deceased) for the next date. In compliance of provisions of section 265-C Cr.PC, necessary copies are provided to the accused. To come up for framing of charge on <u>-15-9-2020</u></p> <p style="text-align: right;"><i>[Signature]</i> Jehangir Khan Sessions Judge, Karak.</p>

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Branch Karak
07/11/20

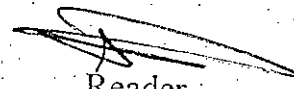
Or.....03
10.9.2020

Mr. Taj Muhammad D.P.P for the State and accused facing trial Nazeerullah on bail present. Mst. Miraj Bibi (widow of deceased) is absent and notice issued to her returned with report that she has been informed personally. Formal charge framed against the accused to which he pleaded not guilty and claimed trial, hence private witnesses including the widow of deceased as well as formal witnesses' alongwith case property be summoned for 12.10.2020.


Jehangir Khan
Sessions Judge, Karak.

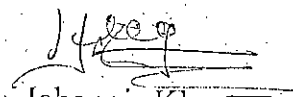
Reader Note
12.10.2020

Presiding Officer is on leave. To come up as before on 07.11.2020.


Reader.

Or.....04
07.11.2020

Mr. Taj Muhammad D.P.P for the State and accused facing trial Nazeerullah on bail present. PWs are not in attendance and process against them has not been issued due to reader not on preceding date. Similarly, learned members of the bar are also observing strike today on the call of KP Bar Council, Peshawar, hence proceedings are adjourned. Formal PWs including Mst. Miraj Bibi (widow of deceased) and case property be summoned for 26.11.2020.


Jehangir Khan
Sessions Judge, Karak.

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07/11/20

(4)

S.C No. 52/7 of 2020

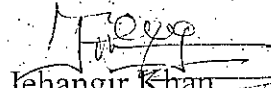
Or.....05
26.11.2020

Mr. Zafranullah A.P.P for the State and accused facing trial Nazeerullah on bail with learned counsel Mr. Malik Rehman Advocate present. Mst. Miraj Bibi (widow), Muhammad Rais and Aamir Sohail (sons) of deceased Noor Jamal also present and got recorded their statement in respect of compromise with the accused facing trial and produced an affidavit on stamp paper (Ex.PA) alongwith attested copies of compromise documents submitted during BBA petition of accused facing trial which are Ex.PA/1. To come up for consideration on 28.11.2020.


Jehangir Khan
Sessions Judge, Karak.

Or.....06
28.11.2020

Mr. Zafranullah A.P.P for the State and accused facing trial Nazeerullah on bail present. The accused sought adjournment to produce his counsel who is busy today in the election of KB Bar Council, hence proceedings are adjourned. To come up on 04.12.2020.


Jehangir Khan
Sessions Judge, Karak.

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Branch Karak

27/11/20

5

IN THE COURT OF JEHANGIR KHAN,
SESSIONS JUDGE, KARAK.

S.C No.52/7 of 2020.

The State... Vs... Nazeerullah.

ORDER
04.12.2020

1. Mr. Zafranullah A.P.P for the State and accused facing trial Nazeerullah on bail present.

2. The accused named above is facing trial in case F.I.R No. 135 dated 08.3.2020 under section 302 PPC registered at P.S Latamber, District Karak.

3. On 26.11.2020, Mst. Miraj Bibi (widow), Muhammad Rais and Amir Sohail (sons) of the deceased Noor Jamal appeared before the Court and produced an affidavit of compromise alongwith attested copies of compromise documents which were produced before the Court at the time of pre-arrest bail petition of the accused facing trial and to this effect, their joint statement recorded wherein

they stated that they and the other legal heirs of the deceased Noor Jamal have already effected

compromise with the accused facing trial Nazeerullah

outside the Court at bail stage wherein he has

satisfied them about his innocence. They further

stated that the same compromise is still intact and

during BBA petition of the accused facing trial, they

as well as the other legal heirs of the deceased have

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Branch Karak

07/12/20

Jaleel
04/12/2020
Sessions Judge, Karak

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(6)

got recorded their compromise statement. They further stated that they have got no objection on the acquittal of the accused facing trial Nazeerullah in the instant case. The affidavit was placed on file as Ex.PA while attested copies of compromise documents submitted during bail stage were also placed on file as Ex.PA/1 (consisting upon 10 pages).

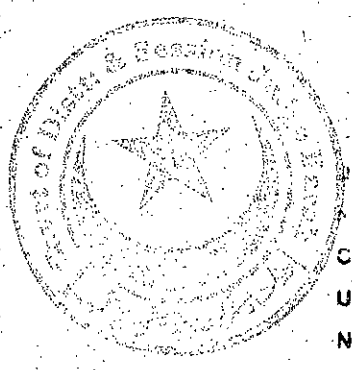
4. In view of above, I am satisfied that the compromise is genuine. The offence with which the accused facing trial has been charged is also compoundable, resultantly, on acceptance of compromise, the accused on trial Nazeerullah is acquitted of the charges on the basis of compromise.

The accused is on bail, his bail bonds stands cancelled and his sureties are absolved of their liabilities towards bail bonds. The case property be kept intact till expiry of period of limitation prescribed for appeal/revision and thereafter, be disposed of in accordance with law.

5. File be consigned to Record Room.

Announced.
04.12.2020

Jehangir Khan
Jehangir Khan,
Sessions Judge, Karak



5294 _____ Sessions Judge, Karak

05-12-20

900

Copying Fee _____ / _____

Urgency _____ / _____

Name of Copyist Usai _____

Date of Preparation of _____ 07-12-20

Date of Delivery of Copy _____ 07-12-20

Date of Dispatch of Copy _____ / _____

Date of _____ / _____

ATTESTED
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Branch Karak
07/12/20

Certified True Copy
Usai
Examiner Copying Branch
Karak
07/12/20

CHARGE

FIR No. 135 dated 08.3.2020 u/s 302 PPC P.S Latamber, District Karak.

I, Jehangir Khan, Sessions Judge, Karak do hereby charge you accused: -

Nazirullah aged about 40/41 years son of Noor Jamal resident of Saikot Tehsil Takht-e-Nasrati District Karak.

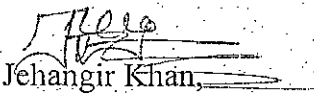
... Accused.

That you accused named above at 14:20 hours on 08.3.2020 at un-paved way leading to the lands known as Bajalgai situated near village Saikot, falling within the criminal jurisdiction of P.S Latamber, District Karak have committed the qatl-e-amd of your father namely Noor Jamal Khan (complainant now deceased), through effective fire shots with your pistol and thereby have committed an offence punishable u/s 302 PPC and within the cognizance of this Court.

And I hereby direct that you be tried by me on the afore-said charge.

The charge has been read over and explained in the language of the accused i.e, Pashto.

Dated: 15.9.2020


Jehangir Khan,
Sessions Judge, Karak.

Q. Do you hear and understand the charge?

A. Yes.

Q. Do you plead guilty or claim trial?

A. I plead not guilty and claim trial.

Q. Do you want to produce defence?

A. Yes (if required).

Certified u/s 364 Cr.PC.

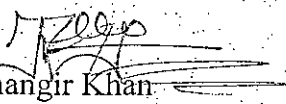
Accused.


Nazirullah

ATTESTED

Examiner Copying
Branch Karak

07/12/20



Jehangir Khan
Sessions Judge, Karak.

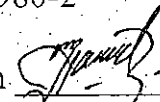
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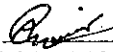
Joint statement of (1) Miraj Bibi (widow) aged about 70/71 years (2) Muhammad Rais aged about 49/50 years (son) and (3) Aamir Sohail aged about 25/26 years (son) of deceased Noor Jamal residents of Saikot, Tehsil Takht-e-Nasrati District Karak:-


Stated that the accused facing trial Nazirullah has been charged vide case F.I.R No. 135 dated 08.3.2020 registered under sections 302 PPC at P.S Latamber, District Karak on the report of Noor Jamal, the deceased then injured. We and the other legal heirs of the deceased Noor Jamal have already effected compromise with the accused facing trial Nazirullah outside the Court at bail stage wherein he has satisfied us about his innocence. The same compromise is still intact. In this respect, during BBA petition of the accused facing trial, we and the other legal heirs of the deceased have got recorded our compromise statement. To this effect we produce an affidavit on stamp paper which is ^{Ex.} PA and also produced attested copies of compromise documents submitted during BBA petition of accused facing trial including statement of all the legal heirs of deceased which are Ex.PA/1 (consisting upon 10 pages). The compromise is still intact and we have got no objection on the acquittal of the accused facing trial Nazirullah.

RO and AC
26.11.2020

Mst. Miraj Bibi (widow) 
CNIC No.14203-1999980-2

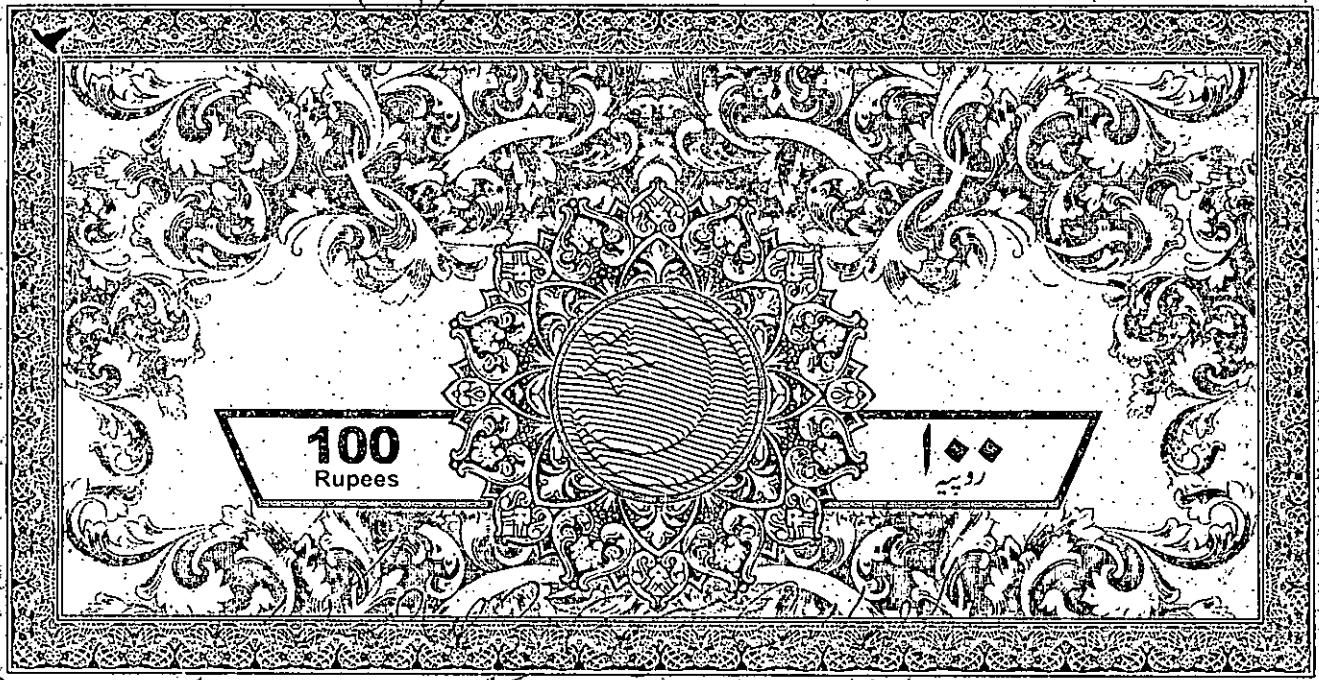
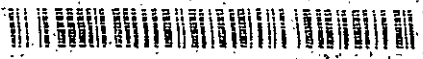
Muhammad Rais Khan 
CNIC No. 14203-4827420-7

Aamir Sohail 
CNIC No. 14203-5502265-5


(Jehangir Khan,
Sessions Judge, Karak.

ATTESTED
Examiner of
Branch Karak

07/12/20



مدت 135 شمارہ نمبر
حورم 3/8/2020
302
844

بیان علی / ارشدی نام
بہار سنگ ندری

EXDA
Heel
Karak

26/11/2020

میں نے درج ذیل بیان کے مطابق حلفاً بیان کیا ہے کہ
میں نے درج ذیل بیان کے مطابق حلفاً بیان کیا ہے کہ
میں نے درج ذیل بیان کے مطابق حلفاً بیان کیا ہے کہ
میں نے درج ذیل بیان کے مطابق حلفاً بیان کیا ہے کہ
میں نے درج ذیل بیان کے مطابق حلفاً بیان کیا ہے کہ

۱۶ رقوم 26/11/2020

14203-199980-2

14203-4927420-7

14203-5502265-5

11 سرانی بی بی
12 محمد راجہ
13 محمد علی

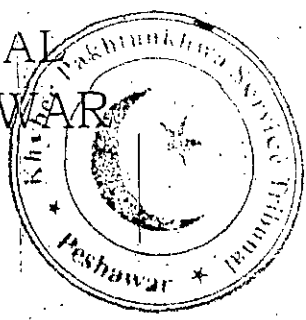
ATTESTED
Qasim Khan
S.No. 354
Date 26/11/2020
Karak

ATTESTED
Examiner Copying
Branch Karak
26/11/20

3

1

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR



Service Appeal No. 1500 /2018

Sana Ullah S/o Muhammad Yaqoob R/o Baram Khel, Shnwa
Gudi Khel Tehsil Takht-e-Nasrati District, Karak Appellant

Versus

1765
18-12-2018

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar
3. Superintendent of Police, FRP, Kohat Range, Kohat
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar

..... Respondents

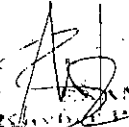
APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 11/09/2018 PASSED BY
RESPONDENT NO. 3 BY WHICH MAJOR PENALTY OF
"DISMISSAL FROM SERVICE", AND HIS ABSENCE PERIOD OF 07
DAYS IS TREATED AS ABSENCE FROM DUTY WITHOUT PAY,
HAS BEEN AWARDED TO THE APPELLANT AND AGAINST THE
ORDER 20/11/2018 PASSED BY RESPONDENT NO. 2 WHEREIN
THE REPRESENTATION/ DEPARTMENTAL APPEAL FILED BY
APPELLANT HAS BEEN REJECTED.

Filed in Registrar 18/12/18

PRAYER

By accepting this service appeal, the punishment awarded to the
appellant through impugned orders dated 11/09/2018 and
20/11/2018 may graciously be set aside by declaring it illegal,
void, unlawful, without authority, based on mala fide, void abinitio
and thus not sustainable and the appellant is entitled for
reinstatement with all back benefits of pay and service.

ATTESTED


EXAMINER
KHYBER PAKHTUNKHWA
Service Tribunal
Peshawar

Resubmitted to-day and filed.

Registered 19/12/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1500/2018

Date of Institution ... 18.12.2018
Date of Decision ... 17.05.2022



Sana Ullah S/O Muhammad Yaqoob R/O Baram Khel, Shnwa
Gudi Khel Tehsil Takhti-e-Nasrati District Karak.

(Appellant)

VERSUS

Provincial Police Officer/Inspector General of Police Khyber
Pakhtunkhwa, Peshawar and three others.

(Respondents)

Shahid Qayum Khattak,
Advocate

For appellant.

Kabir Ullah Khattak,
Additional Advocate General

For respondents.

Salah-Ud-Din
Rozina Rehman

Member (J)


Member (J)

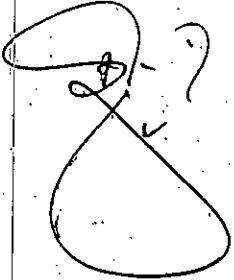
JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

"By accepting this service appeal, the punishment
awarded to the appellant through impugned orders
dated 11.09.2018 and 20.11.2018 may graciously be
set aside by declaring it illegal, void, unlawful,
without authority, based on malafide, void ab-initio
and thus not sustainable and the appellant is
entitled for reinstatement with all back benefits of
pay and service."

ATTESTED

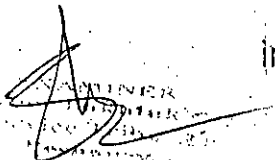
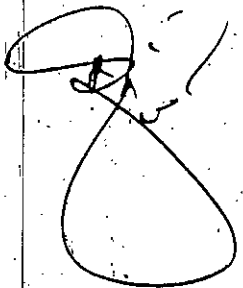

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



2. Brief facts of the case are that appellant was serving as Constable in FRP Platoon No.122 deployed at District Kohat. It was on 29.07.2018 when one Momin was arrested vide case FIR No.446 for having 4 Kg of Charas who allegedly named appellant as an accused, therefore, the appellant was also arrested on the same day by the local police. He was served with a charge sheet alongwith statement of allegations which was properly replied but the same was not taken into consideration and appellant was dismissed from service on 11.09.2018. He filed departmental appeal which was dismissed, hence, the present service appeal.

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

4. Shahid Qayum Khattak Advocate learned counsel appearing on behalf of appellant, inter-alia, submitted that the impugned orders are illegal, unlawful, without authority, hence the same are liable to be set aside being based on surmises and conjectures. It was submitted that the reply to the charge sheet submitted by the appellant was not taken into consideration and that proper procedure was not adopted. It was contended that no show cause notice was issued to the appellant and that no proper regular inquiry was conducted in order to scrutinize the conduct of the appellant with reference to the charges. The learned counsel further contended that the appellant was falsely implicated in case FIR No.446 merely on the statement of an accused person and that the appellant was neither apprehended on spot nor any incriminating article was recovered from his immediate possession.



Lastly, it was submitted that no proper opportunity of personal hearing was provided to the appellant and he was condemned unheard; that the appellant was on duty at the relevant time of alleged occurrence and was arrested on the same day and the moment he was released from jail, he resumed his duty, therefore the absence period of seven days was beyond his control as he was confined in judicial lockup but this aspect of the case was ignored by the respondents.

5. Conversely, learned AAG contended that appellant had developed links with drug paddler namely Momin who was arrested by the local police with 4 Kg of Charas who disclosed before the Police party to have been brought the recovered Charas for the present appellant, therefore, appellant was arrested and proper case vide FIR No.446 was registered. He submitted that he was properly issued charge sheet with statement of allegations and Inquiry Officer was nominated to conduct inquiry against him and that after fulfillment of all codal formalities, he was dismissed from service by the competent authority.

6. From the record it is evident that appellant Sana Ullah was charge sheeted for having committed the following acts/omission:

"As reported vide FRP Lines Kohat DD No.03 dated 29.07.2018, you have been charged/arrested vide case FIR No.446 dated 29.07.2018 U/S 9-C CNSA P.S Cantt. District Kohat for dealing with Narcotics as is evident from contents of said FIR because accused Momin, after recovery of 4Kg Chars, disclosed before the SHO that he was taking the recovered Chars to you (Sana Ullah).

ATTESTED

EXAMINER
Kohat District Court
Sery Tribunal
Kohat

Secondly, you remained absent vide DD No.36 dated 27.07.2016 till date. Thus you have committed a gross "Misconduct" as defined in Rule 2 of Police Rules, 1975".

He submitted reply to the charge sheet and one Noor Ullah Khan DSP FRP Kohat was appointed as Inquiry Officer. The inquiry report is available on file which shows that no witness was examined in presence of the present appellant. No cogent and reliable evidence was adduced in the course of inquiry against appellant. Call Detail Record (CDR) of appellant was collected but he was never confronted with the CDR strictly in accordance with law and procedure. It is also not denied that the appellant was not arrested on spot and nothing incriminating was ever recovered from his possession. The main accused Momin allegedly arrested on spot for having 4 packets of Charas (04 Kg) did not record his confession rather he charged the present appellant allegedly in his statement U/S 161 Cr.PC which is inadmissible in evidence. Both accused Momin and the present appellant Sana Ullah were tried in a competent court of Law and vide order of the learned Judge, Special Court, Kohat dated 01.04.2021, both Momin Khan and Sana Ullah were acquitted from the charges leveled against them. The present appellant was arrested on 29.07.2018 when FIR No.446 was registered. His absence is justified as he was arrested and sent to judicial lockup and soon after getting release on bail, he joined his duty. His links with accused Momin were

ATTESTED

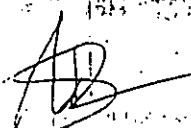
not properly established. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which

EXAMINER
 Service Tribunal

may be said to be dishonorable. Involvement of the appellant in the criminal case was also a 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. His links with law breaking persons were not brought on record and the inquiry report is silent in this regard.

7. It is established from the record that charges of his involvement in the 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 and judgments rendered by this Tribunal in Service Appeal No.1380/2014 titled Ilam Nawaz Vs. Police Department; Service Appeal No.616/2017 titled Mumtaz Ali Vs. Police Department; Service Appeal No.863/2018 titled Fateh-ur-Rehman Vs. Police Department; Service Appeal No.1065/2019 titled Naveed Gul Vs. Police Department and Service Appeal No.12098/2020 titled Ali Imran Vs. Police Department.

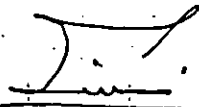
8. For what has been gone above, the appeal at hand is accepted. Consequently, the impugned order of imposition of penalty with disciplinary proceedings wherefrom it resulted, are set aside; and the appellant is reinstated into service from the date of dismissal from service with all back benefits. The concerned respondent, on receipt of copy of this judgment, shall issue the order of appellant's reinstatement with all back benefits having accrued or accruable from



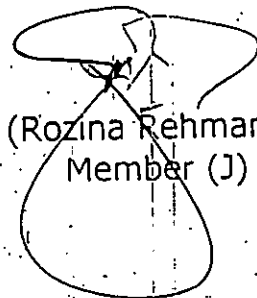
the date of his dismissal from service. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

17.05.2022



(Salah-ud-Din)
Member (J)



(Rozina Rehman)
Member (J)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 03/06/22
Number of Words 2800
Copying Fee 30/-
Urgent _____
Total 30/-
Name of _____
Date of Lodging of Copy 08/06/22
Date of Delivery of Copy 08/06/22

Departmental & Criminal Proceedings ... Acquittal
in Criminal Case

12/21/21, 8:47 AM

2020 S C M R 1708

2020 PLC(CS)1521
2020 S C M R 1708

Deputy District Attorney
Khyber Pakhtunkhwa
Service Tribunal Peshawar

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J., Ijaz ul Ahsan and Qazi Muhammad Amin
Ahmed, JJ

Dr. SOHAIL HASSAN KHAN and others—Petitioners

Versus

DIRECTOR GENERAL (RESEARCH), LIVESTOCK AND DAIRY
DEVELOPMENT DEPARTMENT, PUNJAB, LAHORE and others—
Respondents

Civil Petitions Nos. 4185, 4209 and 4504 of 2019, decided on 20th August, 2020.

(Against the judgment dated 28.10.2019 of the Punjab Service Tribunal passed in
Appeal No. 2872/2014)

(a) Constitution of Pakistan—

—Art. 13(a)—Civil service—Concurrent departmental proceedings and criminal
proceedings—Acquittal in criminal proceedings—Double jeopardy, principle of—
Application—Civil servant could not escape departmental proceedings or
consequences thereof on account of his acquittal/exoneration on a criminal charge
arising out of the same impugned transaction; these two were entirely different
jurisdictions with different standards of proof as well as procedures—Criminal
prosecution required strict proof through a narrowly jacketed procedure and, thus,
State's failure on the criminal plane did not provide shield of double jeopardy to a
delinquent officer.

(b) Punjab Employees Efficiency, Discipline and Accountability Act (XII of
2006)—

—S. 4—Officials of Poultry Research Institute (the petitioners)—Procurement of
birds through an aid package granted by foreign donor organization—Allegation of
operating fake departmental accounts for fraudulent transactions; procuring goods
of questionable quality to make illicit profit; and receiving commission in
procurement—Petitioners who were officials of Poultry Research Institute were
found guilty by the inquiry officer and awarded punishments including compulsory
retirement and removal from service—Said penalties were maintained by the
Service Tribunal—Held, that multiple transactions involving the grant package
through privately held bank accounts inescapably established petitioners'
culpability, as official channels were available in the form of departmental accounts
to effect payments to the vendors—Similarly without approval or authority
purchase from outlets through private arrangements could not be viewed as an
innocent omission, that too, by officers with considerable standing/experience—
Petitioners' stress on the principle of proportionately in the award of punishment
was entirely beside the mark—Petition for leave to appeal was dismissed and leave
was declined.

(c) Civil service—

---Public servant, duty of---Financial impropriety---Public trust, breach of---
 Consequences---Public authority was a most sacred trust and a very high onus was
 cast upon a State functionary to uphold the highest degree of rectitude in financial
 matters---Financial corruption or misappropriation of public money were wrongs of
 most repugnant depravity---Once a public servant was found to have the capacity to
 betray the public trust, it would be most unwise as well as inexpedient to retain him
 on the job.

Mrs. Sharven Imran, Advocate Supreme Court for Petitioners (in C.Ps. Nos.4185
 and 4209/2019)

Abdul Rahim Bhatti, Advocate Supreme Court for Petitioners (in C.P. No.
 4504/2019)

Nemo for Respondents.

Date of hearing: 20th August, 2020.

ORDER

QAZI MUHAMMAD AMIN AHMED, J.---In a long drawn struggle, marred
 by consecutive failures, the petitioners are resigned in the last ditch to save their
 jobs; they were at the helm in various capacities in the Poultry Research Institute at
 Rawalpindi. The episode started in the wake of massive earthquake that
 devastated/jolted Azad Jammu and Kashmir with adjoining parts of Khyber
 Pakhtunkhwa in the year 2005. With an unprecedented intensity, the seismic
 vibrations followed by aftershocks resulted into colossal loss of life and property.
 Rescue and rehabilitation efforts with the assistance of foreign donors started soon
 after the disaster. The Food and Agricultural Organization, a specialized agency of
 the United Nations Organization, joined the efforts by deaching substantial
 assistance through the good offices of the Asian Development Bank to provide
 poultry package for, "immediate support to poor and vulnerable households in
 inaccessible areas devastated by the 2005 earthquake". The Poultry Research
 Institute Rawalpindi was tasked to reach out the victims with aid package. Dr.
 Shamas-ul-Hassani, Dr. Sohail Hassan Khan and Muhammad Javed Nayyar were
 posted as Director, Assistant Director and Office Superintendent, respectively; they
 were required to procure 100,000 birds, standard/specification whereof, with mode
 of transportation, were settled by the donor through letter dated 13th of June, 2007.
 It appears that 51228 birds were purchased from designated government outlets
 while for the provision of the remainder, the petitioners ventured on their own; it is
 in this backdrop that a private supplier, namely, Abdul Saboor lodged complaint
 with the Director General Livestock Lahore alleging surreptitious unilateral
 modifications in the supply contract regarding 25000 birds; he blamed them for
 reduction in the settled price as well as withholding of income tax besides charging
 commission on each bird. The complaint was probed into and the department vide
 order dated 5.8.2011 decided to proceed against them on the following charges:

- i. They engaged in private business of supplying poultry birds in earth quake hit
 areas in their official capacities, abusing their position.

- ii. They opened and operated fake departmental accounts for these fraudulent transactions.
- iii. They made an estimated profit of Rs.4.306 million by procuring poultry birds of questionable quality from private poultry farms at rock-bottom rates and supplying the same to various agencies including FAO at hefty rates, pocketing the differential.
- iv. They received a sum of Rs.0.295 Million as commission from a farmer Mr. Abdul Saboor resident of Mohallah Shah Jama, Gakhar Mandi.

Mr. Farhan Aziz Khawaja, a grade 20 officer of P.A.S, was appointed as inquiry officer. After a regular inquiry followed by personal hearing, the Chief Minister vide order dated 14.06.2012 compulsorily retired Dr. Shamas-ul-Hassan with a direction to recover Rs.4.601 million along with Rs.4.306 million and Rs.0.295 million, received by him through the impugned transactions. Dr. Sohail Hassan Khan petitioner was awarded major penalty of removal from service; Muhammad Javed Nayyar petitioner was also dismissed from the service; they petitioned before the Chief Minister for a review; an elaborate exercise already undertaken and a considered decision notwithstanding, the Chief Minister, nonetheless, passed the following order:

"After due examination of the facts of the case, contents of the review petition and averments made by the review petitioners before the Hearing Officer, it is observed that the accused officers have very vehemently contended that neither they were given a fair opportunity of hearing nor fair trial was given to themselves. They also contended that the responsibility was not apportioned according to their job description/official role. Therefore, the order of penalty dated 14.06.2012 is set aside and a de novo proceeding is ordered against the accused officers namely Dr. Shamas-ul-Hassan, Ex-Director, PRI, Rawalpindi, Dr. Sohail Hassan Khan, Ex-Assistant Director, PRI and Mr. Javed Nayyar, Office Superintendent, PRI, Rawalpindi. The A.D. may put up a panel of suitable officers for appointment of an Inquiry Officer to conduct de novo proceedings in the case."

Dr. Muhammad Shabbir Shahid, Director (HQR) Director General (Ext) L&DD Punjab conducted de novo inquiry. With nothing additional, the second inquiry officer came up with amazing conclusions, best described as self destructive; he benignly recommended forfeiture increments, albeit after holding them guilty of misconduct under the Punjab Employees Efficiency Discipline and Accountability Act, 2006, a best possible package under the circumstances. The competent authority/Secretary L&DD Department Lahore remitted the matter for reconsideration of proposed penalty whereupon the inquiry officer came up with a slightly higher wage; this time, he recommended compulsory retirement for Dr. Shamas-ul-Hassan petitioner while suggested forfeiture of five increments for Dr. Sohail Hassan Khan with additional reduction to lower post for Muhammad Javed Nayyar, petitioner. The Secretary, however, restored penalties suggested by the first inquiry officer except for conversion of dismissal of Muhammad Javed Nayyar, petitioner, into removal from service. Appeal before the Chief Secretary failed on

13.08.2014 followed by failure before the Punjab Service Tribunal on 28.07.2015. The petitioners approached this Court and the matter was once again remanded on 4.3.2019 to the Service Tribunal for decision afresh. The Service Tribunal maintained its findings vide judgment dated 28.10.2019, vires whereof are being jointly assailed by the learned counsel; it is contended, in unison, that after petitioners' exoneration from the proceedings of Anti Corruption Department, their position stood vindicated and there was no occasion for the authorities to departmentally proceed against them; that the penalties inflicted upon the petitioners are disproportionately harsh as in the absence of positive proof, forfeiture of increments as recommended by the second inquiry officer was a more conscionable treatment in circumstance; that in any case, enhancement of penalty required reasons in support thereof, according to the learned counsel, hopelessly lacking in the impugned order; that mere opening of accounts without any proof of wrongful gain would not warrant to seal a long career otherwise unblemished, concluded the learned counsel after relying on a number of cases structured in different factual backgrounds.

2. Heard. Record perused.

3. It is by now well settled that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. We would otherwise not comment upon the outcome of proceedings before the Anti Corruption Department as the matter is not before us nor the petitioners have picked up the courage to place details thereof before the authorities. Multiple transactions with grant package through privately held bank accounts inescapably established petitioners' culpability as official channels were available in the form of departmental accounts to effect payments to the vendors. Similarly without approval or authority purchase from outlets through private arrangements cannot be viewed as an innocent omission, that too, by officers with considerable standing/experience. Petitioners' emphatic stress on the principle of proportionality is entirely beside the mark. Public authority is a most sacred trust and a very high onus is cast upon a State functionary to uphold the highest degree of rectitude in financial matters; financial corruption or misappropriation of public money are wrongs of most repugnant depravity; once a public servant is found to have the capacity to betray the public trust, it would be most unwise as well as inexpedient to retain him on the job. Integrity of an individual cannot be quantified and, thus, in the circumstances of the present case, the principle of proportionality has no application. Similarly argument that enhancement of penalty in the de novo inquiry required additional material and show cause does not hold much water. The entire material was collected by the first inquiry officer and was well within the notice of the petitioners; they were confronted with the available material during personal hearings and it was after compliance with all the procedural formalities that they were recommended penalties, they sought review, whereof, apparently for no valid reasons. As pointed

(1)

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 481 /2019

Fazal Munir Constable No. 812 of KBI staff Karak

Khyber Pakhtunkhwa
Service Tribunal

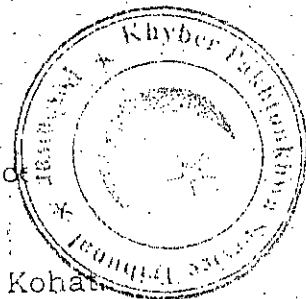
Diary No. 600

Dated 10-4-2019

Appellant

Versus

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police Kohat Region, Kohat
3. Superintendent of Police, Investigation Wing Karak
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar



Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 18/01/2019 PASSED BY
RESPONDENT NO. 2 BY WHICH THE DEPARTMENTAL APPEAL
OF PETITIONER WAS ACCEPTED BUT THE INTERVENING
PERIOD WAS TREATED AS UNAUTHORIZED LEAVE WITHOUT
PAY AND AGAINST THE ORDER DATED 21/03/2019 OF
RESPONDENT NO. 1 BY WHICH THE PETITION OF APPELLANT
HAS BEEN REJECTED BEING TIME BARRED FOR 14 DAYS

PRAYER

On accepting this service appeal, the impugned order dated
18/01/2019 passed by respondent No. 2 to the extend of
punishment of intervening period being treated as
unauthorized leave without pay may please be set aside
alongwith order dated 21/03/2019 passed by respondent
No. 1, by declaring it illegal, void, unlawful, without
authority, based on mala fide, void abinitio and thus not
sustainable to the extend of punishment and the appellant is
entitled for all back benefits of pay and service.

Filed to-day

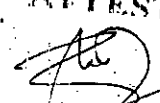
Registrar

10/4/19

Respectfully Sheweth;

1. That appellant was serving in the police department as constable
and has rendered satisfactory service in the Department and
performed his duties with full zeal and enthusiasm.

ATTESTED


REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 481/2019

Date of Institution ... 10.04.2019

Date of Decision ... 21.10.2021



Fazal Munir Constable No. 812 of KBI Staff Karak.

(Appellant)

VERSUS

Provincial Police Officer/Inspector General of Police Khyber
Pakhtunkhwa, Peshawar and three others.

(Respondents)

MR. SHAHID QAYUM KHATTAK,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts as gleaned from the record are that the appellant was serving as constable, who was proceeded against departmentally on the allegations that he was charged in case FIR No. 232 dated 07.02.2016 under section 302/34 PPC Police Station Yaqoob Khan Shaheed District Karak and that he also absented himself from lawful duty. The inquiry against the appellant culminated in his dismissal from service vide order dated 27.09.2016 passed by the competent Authority. The appellant challenged the same through filing of departmental appeal, which was decided vide order dated

ATTESTED

MEMBER (JUDICIAL)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

18.01.2019, whereby the appellant was reinstated in service, however the intervening period was treated as unauthorized leave without pay. The appellant being aggrieved of the aforementioned order to the extent of treating of the intervening period as unauthorized leave without pay, challenged the same through filing of review, however the same was filed on the ground that it was time barred by 14 days. The appellant has now approached this Tribunal through filing of the instant service appeal for redressal of his grievance.

2. Notices were issued to the respondents, who submitted their reply/comments, wherein they refuted the contention of the appellant.

3. Learned counsel for the appellant has argued that the appellant did not remain absent from duty and whole of the proceedings were conducted at his back, without affording him any opportunity of personal hearing or self-defense; that the appellant was falsely charged in the criminal case and was ultimately acquitted by the learned trial court on 07.06.2018; that in view of acquittal of the appellant, the appellant is entitled to all back benefits, therefore, the impugned order to the extent of treating the intervening period as unauthorized leave without pay is wrong and illegal, hence liable to be set-aside to that extent.

4. On the other hand, learned Additional Advocate General for the respondents has argued that after involvement in the criminal case, the appellant had willfully absented himself from duty, therefore, disciplinary action was rightly taken against him; that the appellant did not perform any duty during the intervening period, therefore, on the basis of no work no pay, the said period has rightly been considered as unauthorized leave without pay; that the appeal of the appellant is barred by time and is liable to be dismissed with cost.

RECEIVED

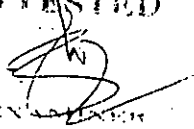
ADDITIONAL ADVOCATE GENERAL
STATE OF JHARKHAND
PATNA

5. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations that he was involved in a criminal case and had absented himself from lawful duty with effect from 05.05.2016 and that he was reportedly remained absconder. FIR of the concerned criminal case was registered on 07.05.2016 and the disciplinary proceedings were initiated against the appellant on 03.06.2016, which culminated in dismissal of the appellant from service vide order dated 27.09.2016 passed by the competent Authority. Copy of *Mad* No. 15 dated 08.09.2016 would show that the appellant had made his arrival in Police Line Karak and this fact has also been mentioned by the competent Authority in the impugned order dated 27.09.2016. The competent Authority has mentioned in the impugned order dated 27.09.2016 that the Bail Before Arrest of the appellant was recalled on 17.09.2016 and he was sent to District Jail Karak, which means that the appellant was admittedly in Jail, however it is astonishing that the competent Authority has mentioned in the impugned order that the appellant again absented himself from duty with effect from 17.09.2016. The competent Authority was well aware of the fact that the appellant was in jail, however he was treated as absent from duty, which is not justifiable on any legal touchstone. Moreover, It is also evident from copy of *Mad* No. 19 dated 17.09.2016 that the appellant was already under suspension at the time of recalling of his Bail Before Arrest application. The appellant remained in custody and was ultimately acquitted vide judgment dated 07.06.2018.

7. It is evident from the record that the appellant was under suspension and after dismissal of his Bail Before Arrest application, the appellant remained in custody till his acquittal on 07.06.2018. No cogent and convincing material is available on the record to justify the allegations against the appellant

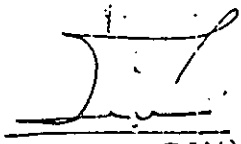
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 District Jail Karak
 Service Tribunal
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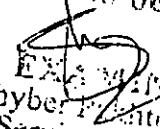
regarding his willful absence, therefore, the appellate Authority was not justified in treating the intervening period as unauthorized leave without pay.

8. In view of the foregoing discussion, the appeal in hand is allowed. The impugned orders dated 13.01.2019 and 21.03.2019 are modified to the extent that during the intervening period, the appellant shall be treated as on duty with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.10.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 02/11/21
Number of 2000
Copies 22/-
Urgent 22/-
Total 22/-
Name -
Date of Copy 15/11/21
Date of Delivery of Copy 15/11/21



(1)

3

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 481 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 600

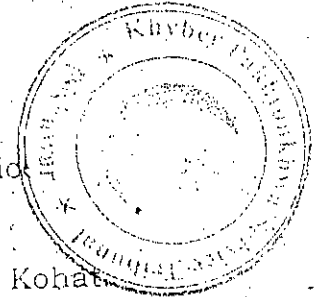
Dated 10-4-2019

Fazal Munir Constable No. 812 of KBI staff Karak

Appellant

Versus

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police Kohat Region, Kohat
3. Superintendent of Police, Investigation Wing Karak
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar



Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 18/01/2019 PASSED BY
RESPONDENT NO. 2 BY WHICH THE DEPARTMENTAL APPEAL
OF PETITIONER WAS ACCEPTED BUT THE INTERVENING
PERIOD WAS TREATED AS UNAUTHORIZED LEAVE WITHOUT
PAY AND AGAINST THE ORDER DATED 21/03/2019 OF
RESPONDENT NO. 1 BY WHICH THE PETITION OF APPELLANT
HAS BEEN REJECTED BEING TIME BARRED FOR 14 DAYS

PRAYER

On accepting this service appeal, the impugned order dated
18/01/2019 passed by respondent No. 2 to the extend of
punishment of intervening period being treated as
unauthorized leave without pay may please be set aside
alongwith order dated 21/03/2019 passed by respondent
No. 1, by declaring it illegal, void, unlawful, without
authority, based on mala fide, void abinitio and thus not
sustainable to the extend of punishment and the appellant is
entitled for all back benefits of pay and service.

Filed to-day

Registrar

10/4/19

Respectfully Sheweth;

1. That appellant was serving in the police department as constable
and has rendered satisfactory service in the Department and
performed his duties with full zeal and enthusiasm.

ATTESTED

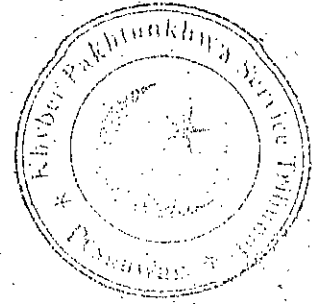
Khyber Pakhtunkhwa
Service Tribunal
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 481/2019

Date of Institution ... 10.04.2019

Date of Decision ... 21.10.2021



Fazal Munir Constable No. 812 of KBI Staff Karak.

(Appellant)

VERSUS

Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar and three others.

(Respondents)

MR. SHAHID QAYUM KHATTAK,
Advocate

For appellant:

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN


CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts as gleaned from the record are that the appellant was serving as constable, who was proceeded against departmentally on the allegations that he was charged in case FIR No. 232 dated 07.02.2016 under section 302/34 PPC Police Station Yaqoob Khan Shaheed District Karak and that he also absented himself from lawful duty. The inquiry against the appellant culminated in his dismissal from service vide order dated 27.09.2016 passed by the competent Authority. The appellant challenged the same through filing of departmental appeal, which was decided vide order dated

ATTESTED


CHAIRMAN
Khyber Pakhtunkhwa Services Tribunal
Peshawar

18.01.2019, whereby the appellant was reinstated in service, however the intervening period was treated as unauthorized leave without pay. The appellant being aggrieved of the aforementioned order to the extent of treating of the intervening period as unauthorized leave without pay, challenged the same through filing of review, however the same was filed on the ground that it was time barred by 14 days. The appellant has now approached this Tribunal through filing of the instant service appeal for redressal of his grievance.

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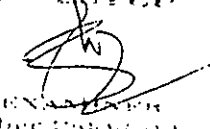
18/01/2019
18/01/2019
18/01/2019

5. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.

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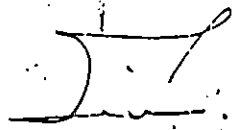
ATTESTED



 JUDGE
 District Court
 Karak

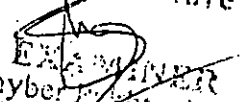
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ANNOUNCED
21.10.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified to be true copy

E. M. KHAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 02/11/21
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P L D 2010 Supreme Court 695

Present: Tassaduq Hussain Jilani and Asif Saeed Khan Khosa, JJ

CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another---
Appellants

Versus

MUMTAZ KHAN---Respondent

Civil Appeal No.589 of 2002, decided on 8th April, 2010.

(On appeal from the judgment dated 3-7-2000 of the Federal Service Tribunal Islamabad passed in Appeal No.81(P) of 1999).

(a) Service Tribunals Act (LXX of 1973)---

----S. 4---Penal Code (XLV of 1860), S.53---Constitution of Pakistan (1973), Art. 212 (3)---Leave to appeal was granted by Supreme Court to consider; whether appeal before Service Tribunal was not time barred; whether convicted person, who was released after payment of Diyat amount could be said or could be declared as a person acquitted honourably and in that eventuality could such person, who was released on payment of Diyat, was liable to be reinstated into service; whether payment of Diyat could absolve a person from accusation of murder; and whether respondent was an acquitted person or was a convicted person even after payment of Diyat.

(b) Penal Code (XLV of 1860)---

----Ss. 309 & 310-Criminal Procedure Code (V of 1898), Ss.249-A & 265-K--- Islamic law---Crime and punishment---Acquittal---Scope---Benefit of doubt---Prior to introduction of Islamic provisions in Penal Code, 1860, acquittal of an accused person could be recorded when prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring prosecution and the other favouring defence, Court decided to extend benefit of doubt to accused person--Acquittal could also be recorded under S.249-A, Cr. P. C. or S.265-K, Cr. P. C., when charge against accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence---After introduction of Islamic provisions in Penal Code, 1860, it has now also become possible for accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under S.309 P.P.C. or on the basis of compounding/Sulh under S. 310 P.P.C.---In case of waiver/Afw acquittal can be earned without any monetary payment to the heirs of deceased but in case of compounding/Sulh an acquittal may be obtained upon acceptance Badal-i-Sulh by the heirs of deceased from the accused person.

(c) Penal Code (XLV of 1860)---

----Ss. 53, 299(e), 310(5) & 323---Diyat' and 'Badal-i-Sulh'---Distinction---Concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as provisions of S.310(5), P.P.C. and the Explanation attached therewith show that Badal-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them---Diyat, under S. 53, P.P.C. is punishment and provisions of S.299(e), P.P.C. and S. 323, P.P.C. manifest that amount of Diyat is to be fixed by Court.

(d) Penal Code (XLV of 1860)---

----S. 310 (5)---Criminal Procedure Code (V of 1898), S.345---Compounding of offence of murder---Payment of Badal-i-Sulh---Effect---Compounding of offence of murder upon payment of

Badal-i-Sulh is not a result of payment of Diyat which is form of punishment and that such compounding of offence leads to nothing but an acquittal of accused person.

Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 rel.

(e) Penal Code (XLV of 1860)---

----S. 310(5)---Criminal Procedure Code (V of 1898), S.345---Compounding of offence of murder--- Admission of guilt---Scope---It is not always that a compromise is entered into by accused person on the basis of admission of guilt by him---In many cases of false implication or spreading net wide by complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battle---Compounding of an offence does not amount to admission of guilt on the part of accused person or that an acquittal earned through such compounding of an offence may not have ramification regarding all spheres of activity of acquitted person's life, including his service or employment, beyond criminal case against him.

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

----S. 403---Constitution of Pakistan (1973), Art. 13(a)---Acquittal---Maxim autrefois acquit--- Principle of Afw---Scope---Ultimate acquittal in a criminal case exonerates accused person completely for all future purposes vis-a-vis the criminal charge against him---Concept of autrefois acquit embodied in S. 403, Cr.P.C., protection guaranteed by Art.13(a) of the Constitution, Afw (waiver) or Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime!

(g) Service Tribunals Act (LXX of 1973)---

----S. 4---Penal Code (XLV of 1860), Ss.302 & 310 (5)---Criminal Procedure Code (V of 1898), S.345---Reinstatement in service---Acquittal by compounding offence of murder---Payment of Badal-i-Sulk---Respondent was employee of a Bank and was convicted on the charge of murder but later on offence was compounded between the parties and respondent was acquitted after payment of Badal-i-Sulh---After the respondent was convicted under the charge of murder, Bank proceeded against him and removed him from service---Bank declined to reinstate him in service, after he was acquitted of the charge but Service Tribunal allowed the appeal and reinstated him in service--- Validity---No allegation was levelled against respondent regarding any illegality, irregularity or impropriety committed by him in relation to his service and acquittal in the case of murder had removed the only blemish cast upon him---Conviction of respondent in murder was the only ground on which he had been removed from service and that ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service---Even order of removal of respondent from service had provided that his case would be considered by competent authority for his reinstatement in service in case he was acquitted of the criminal charge---Respondent was justified in claiming his reinstatement in service upon earning acquittal from the competent criminal court--Supreme Court declined to interfere in the judgment passed by Service Tribunal, whereby respondent was reinstated in service---Appeal was dismissed.

Shehzad Ahmad alias Mithu and another v. The State 2005 PCr.LJ 1316 and Muhammad Siddique v. The State PLD 2002 Lah. 444 ref.

(h) Service Tribunals Act (LXX of 1973)---

----S.4---Appeal---Limitation---Civil servant sought reinstatement in service, after he was acquitted from murder case---Service Tribunal allowed the appeal filed by civil servant and reinstated him in service---Plea raised by employer/bank was that appeal was barred by limitation---Validity---Civil

servant was acquitted in criminal case on 22-9-1998 and he filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in criminal case---It would have been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service---Appeal before Service Tribunal was not barred by limitation.

The Chairman P.I.A.C. and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513 distinguished.

Raja Aleem Abbasi, Advocate Supreme Court for Appellants.

Shakeel Ahmad, Advocate Supreme Court for Respondent.

Mudassar Khalid Abbasi, D.A.G. (On Court notice).

Date of hearing: 8th April, 2010.

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---The appeal in hand throws up an issue which has never been brought up before this Court earlier and, thus, the case in hand is a case of first impression. The facts leading to filing of this appeal are quite simple and admit of no ambiguity but the question raised before the Court is novel and, therefore, the same has been attended to by us with acute consideration.

2. Mumtaz Khan respondent was a Mobile Credit Officer serving with the Agricultural Development Bank of Pakistan when he was implicated in a case of murder through F.I.R. No.327 registered at Police Station Naurang, District Lakki Marwat on 8-9-1991 in respect of an offence under section 302, P.P.C. read with section 34, P.P.C. As a result of trial of that criminal case the respondent was convicted by the learned Sessions Judge, Lakki Marwat for an offence under section 302(b), P.P.C. read with section 34, P.P.C. vide judgment dated 15-11-1995 and was sentenced to imprisonment for life and a fine of Rs.40,000 or in default of payment whereof to undergo simple imprisonment for five years. The respondent preferred an appeal in that regard but his appeal was dismissed by the Peshawar High Court, Dera Ismail Khan Bench vide judgment handed down on 1-4-1998. We have been informed that the respondent had not challenged his conviction and sentence any further and after a few months of the decision of his appeal an application had been submitted by him before the learned Sessions Judge, Lakki Marwat seeking his acquittal on the basis of a compromise arrived at between him and the heirs of the deceased. That application submitted by the respondent was allowed by the learned Sessions Judge, Lakki Marwat on 22-9-1998 and the respondent was acquitted of the charge on the basis of compromise. On the departmental side, the respondent was served with a show cause notice on 22-1-1996 as by then he had already been convicted and sentenced by the criminal Court on the charge of murder and the respondent submitted a reply thereto on 28-1-1996. In view of the respondent's already recorded conviction on the charge of murder by the criminal Court the respondent was removed from service on 3-3-1996. After earning his acquittal from the criminal Court on the basis of compromise the respondent filed a departmental appeal on 12-10-1998 seeking his reinstatement in service with all the back benefits but that appeal was dismissed by the competent authority on 26-2-1999. Thereafter the respondent preferred an appeal before the Federal Service Tribunal, Islamabad in that regard which appeal was allowed by a majority of two against one by the Federal Service Tribunal, Islamabad vide judgment dated 3-7-2000 and the respondent was ordered to be reinstated in service with all the back benefits. That judgment rendered by the Federal Service Tribunal, Islamabad had been assailed by the appellants before this Court through C.P.L.A. No.1391 of 2000 wherein leave to appeal was granted on 14-2-2002 to consider the following points:--

"(a) Whether the appeal before the Federal Service Tribunal was not time barred?"

(b) Whether a convicted person, who is released after payment of Diyat amount, could be said or could be declared as a person acquitted honourably and in that eventuality, could such a person, who is released on payment of Diyat, was liable to be reinstated into service?

(c) Whether the payment of Diyat absolves a person from the accusation of murder? and

(d) Whether the respondent was an acquitted person or was a convicted person even after the payment of Diyat?"

Hence, the present appeal before this Court.

3. We have heard the learned counsel for the parties at some length and have gone through the record of this case with their assistance:

4. It has been argued by the learned counsel for the appellants that the judgment passed by this Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 and relied upon by the Federal Service Tribunal, Islamabad in the impugned judgment was not relevant to the facts of this case as the said precedent case did not pertain to an acquittal in a criminal case on the basis of compromise. It has also been argued by him that by virtue of the provisions of section 53, P.P.C. Diyat is a form of punishment and it was also held so in the case of Shehzad Ahmad alias Mithu and another v. The State 2005 PCr.LJ 1316 and, thus, acquittal earned by the respondent in the case of murder by payment of Diyat to the heirs of the deceased had not washed away the blemish of the respondent regarding his being a punished person and such blemish had rendered him incapable of pressing into service his acquittal for the purpose of seeking reinstatement in service. It has further been argued by him that the compromise entered into by the respondent on the charge of murder amounted to admission of guilt on his part, as held in the case of Muhammad Siddique v. The State PLD 2002 Lahore 444, and, thus, it even otherwise offends against public policy to reinstate a person in service who is a self-condemned murderer. The learned counsel for the appellants has lastly argued that the departmental appeal filed by the respondent was barred by time and, therefore, the Federal Service Tribunal, Islamabad ought to have dismissed his appeal on this score. In support of this submission the learned counsel for the appellants has placed reliance upon the cases of The Chairman P.I.A. C. and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513.

5. As against that the learned counsel for the respondent has maintained that the entire controversy presented before the Federal Service Tribunal, Islamabad and also before this Court regarding acquittal of the respondent on the basis of paying Diyat to the heirs of the deceased is misconceived because the respondent had earned his acquittal after paying Badal-i-Sulh to the heirs of the deceased under section 310, P.P.C. and not upon payment of Diyat. He has elaborated that Diyat may be a punishment contemplated by the provisions of section 53, P.P.C. but Badal-i-Sulh is surely not a punishment mentioned in that section. He has also argued that the respondent's appeal before the Federal Service Tribunal, Islamabad had been filed well within the period of limitation and in the comments submitted by the appellants before the Federal Service Tribunal, Islamabad no objection had been raised by them regarding the appeals filed by the respondent before the Service Tribunal or before the departmental authority being barred by time. He has further maintained in this respect that there is nothing available on the record of this case to establish that the respondent's appeal filed before the departmental authority was barred by time or any objection had ever been raised before the departmental authority in that regard or that the said appeal had been dismissed on the ground of limitation. The learned counsel for the respondent has gone on to submit that no allegation had ever been levelled against the respondent regarding commission of any illegality, irregularity or impropriety by him in his service and the blemish upon the respondent on the basis of his conviction in a case of murder stood washed away on the basis of his acquittal in that criminal case and, thus, there was no impediment in his reinstatement in service with all the back benefits. The learned counsel for the respondent has highlighted that even in the order passed on 3-3-1996 regarding the respondent's removal from service it had specifically been mentioned that the

said removal from service was conditional and was reversible in case of his acquittal in the relevant criminal case. With these submissions the learned counsel for the respondent has supported the majority verdict rendered through the impugned judgment handed down by the Federal Service Tribunal, Islamabad.

6. The learned Deputy Attorney-General appearing on the Court's notice has also maintained before us that the respondent had earned his acquittal in the relevant case of murder not on the basis of payment of Diyat to the heirs of the deceased but upon payment of Badal-i-Sulh to them and, therefore, his acquittal was without any blemish and the same warranted his reinstatement in service with all the back benefits. The learned Deputy Attorney-General has also supported the majority opinion recorded by the Federal Service Tribunal, Islamabad through the impugned judgment rendered by it on 3-7-2000.

7. After hearing the learned counsel for the parties and going through the record of this case with their assistance and after perusing the precedent cases cited before us we, have entertained no manner of doubt that the majority verdict delivered by the Federal Service Tribunal, Islamabad reinstating the respondent in service with all the back benefits was quite justified both on facts and in law. We may observe that prior to introduction of the Islamic provisions in the Pakistan Penal Code, 1860 an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring the prosecution and the other favouring the defence, the Court decided to extend the benefit of doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence. After introduction of the Islamic provisions in the Pakistan Penal Code, 1860 it has now also become possible for an accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under section 309, P.P.C. or on the basis of compounding/Sulh under section 310, P.P.C. In the case of waiver/Afw an acquittal can be earned without any monetary payment to the heirs of the deceased but in the case of compounding/Sulh an acquittal may be obtained upon acceptance of Badal-i-Sulh by the heirs of the deceased from the accused person. In the present case the respondent had been acquitted of the charge of murder by the learned Sessions Judge, Lakki Marwat as a result of compounding of the offence and such compounding had come about on the basis of acceptance of Badal-i-Sulh by the heirs of the deceased from the respondent. It is true that Diyat is one of the forms of punishment specified in section 53, P.P.C. but any discussion about Diyat has been found by us to be totally irrelevant to the case in hand because the respondent had not paid any Diyat to the heirs of the deceased but he had in fact paid Badal-i-Sulh to them for the purpose of compounding of the offence. It goes without saying that the concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as the provisions of subsection (5) of section 310, P.P.C. and the Explanation attached therewith show that Badl-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them whereas under section 53, P.P.C. C Diyat is a punishment and the provisions of section 299(e), P.P.C. and section 323, P.P.C. manifest that the amount of Diyat is to be fixed by the Court. The whole edifice of his arguments built by the learned counsel for the appellants upon Diyat being a form of punishment has, thus, appeared to be utterly misconceived.

8. The provisions of the first proviso to subsection (1) of section 338-E, P.P.C. clearly contemplate acquittal of an accused person on the basis of compounding of an offence by invoking the provisions of section 310, P.P.C. and the effect of such compounding has also been clarified in most explicit terms by the provisions of subsection (6) of section 345, Cr.P.C. in the following words:--

"The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

9. The legal provision mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is a form of punishment and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative

11. It may not be out of place to mention here that even the order of removal of the respondent from service passed on 3-3-1996 had expressly provided that the respondent's case would be considered by the competent authority for his reinstatement in service in case he was acquitted of the criminal charge. Thus, on this score as well we have found the respondent to be quite justified in claiming his reinstatement in service upon earning an acquittal from the competent criminal Court.

12. As far as the submission made by the learned counsel for the appellants regarding the respondent's appeal being barred by time is concerned suffice it to observe in this context that admittedly the respondent's appeal before the Federal Service Tribunal, Islamabad was preferred within the requisite period of limitation. There is no material available before us to conclude or hold that the respondent's departmental appeal was barred by time and, if so, whether the delay in the respect, if any, had been condoned or not and on what basis the said appeal had been dismissed. The order of dismissal of the respondent's appeal by the departmental authority did not mention that his appeal had been filed beyond the period of limitation or that the same was dismissed on the ground. We have further noticed that no such objection had been raised by the appellants before the Federal Service Tribunal, Islamabad. As the assertion of the learned counsel for the appellants regarding the respondent's departmental appeal being barred by time does not find support from any document produced before us, therefore, it is not possible for us to follow the principle laid down in the cases of *The Chairman P.I.A.O and others v. Nasim Malik* PLD 1990 SC 951 and *Muhammad Aslam v. WAPDA and others* 2007 SCMR 513 cited by the learned counsel for the appellants in that regard. We may also observe in this context that the respondent had been acquitted in the criminal case on 22-9-1998 and he had filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in the criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning an acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case, we have found it to be unjust and oppressive to penalize the respondent for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service.

13. For what has been discussed above this appeal is dismissed and the impugned majority verdict rendered by the Federal Service Tribunal, Islamabad on 3-7-2000 is upheld and maintained.

M.H./C-3/S

Appeal dismissed.

P L D 2010 Supreme Court 695

Present: Tassaduq Hussain Jillani and Asif Saeed Khan Khosa, JJ

**CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another---
Appellants**

Versus

MUMTAZ KHAN---Respondent

Civil Appeal No.589 of 2002, decided on 8th April, 2010.

(On appeal from the judgment dated 3-7-2000 of the Federal Service Tribunal Islamabad passed in Appeal No:81(P) of 1999).

(a) Service Tribunals Act (LXX of 1973)---

----S. 4---Penal Code (XLV of 1860), S.53---Constitution of Pakistan (1973), Art. 212 (3)---Leave to appeal was granted by Supreme Court to consider; whether appeal before Service Tribunal was not time barred; whether convicted person, who was released after payment of Diyat amount could be said or could be declared as a person acquitted honourably and in that eventuality could such person, who was released on payment of Diyat, was liable to be reinstated into service; whether payment of Diyat could absolve a person from accusation of murder; and whether respondent was an acquitted person or was a convicted person even after payment of Diyat.

(b) Penal Code (XLV of 1860)---

----Ss. 309 & 310-Criminal Procedure Code (V of 1898), Ss.249-A & 265-K--- Islamic law---Crime and punishment---Acquittal---Scope---Benefit of doubt---Prior to introduction of Islamic provisions in Penal Code, 1860, acquittal of an accused person could be recorded when prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring prosecution and the other favouring defence, Court decided to extend benefit of doubt to accused person--Acquittal could also be recorded under S.249-A, Cr. P. C. or S.265-K, Cr. P. C., when charge against accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence---After introduction of Islamic provisions in Penal Code, 1860, it has now also become possible for accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under S.309 P.P.C. or on the basis of compounding/Sulh under S. 310 P.P.C.---In case of waiver/Afw acquittal can be earned without any monetary payment to the heirs of deceased but in case of compounding/Sulh an acquittal may be obtained upon acceptance Badal-i-Sulh by the heirs of deceased from the accused person.

(c) Penal Code (XLV of 1860)---

----Ss. 53, 299(e), 310(5) & 323---Diyat' and 'Badal-i-Sulh'---Distinction---Concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as provisions of S.310(5), P.P.C. and the Explanation attached therewith show that Badal-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them---Diyat, under S. 53, P.P.C. is punishment and provisions of S.299(e), P.P.C. and S. 323, P.P.C. manifest that amount of Diyat is to be fixed by Court.

(d) Penal Code (XLV of 1860)---

----S. 310 (5)---Criminal Procedure Code (V of 1898), S.345---Compounding of offence of murder---Payment of Badal-i-Sulh---Effect---Compounding of offence of murder upon payment of

Badal-i-Sulh is not a result of payment of Diyat which is form of punishment and that such compounding of offence leads to nothing but an acquittal of accused person.

Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 rel.

(e) Penal Code (XLV of 1860)---

----S. 310(5)---Criminal Procedure Code (V of 1898), S.345---Compounding of offence of murder--- Admission of guilt---Scope---It is not always that a compromise is entered into by accused person on the basis of admission of guilt by him---In many cases of false implication or spreading net wide by complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battle---Compounding of an offence does not amount to admission of guilt on the part of accused person or that an acquittal earned through such compounding of an offence may not have ramification regarding all spheres of activity of acquitted person's life, including his service or employment, beyond criminal case against him.

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

----S. 403---Constitution of Pakistan (1973), Art. 13(a)---Acquittal---Maxim autrefois acquit--- Principle of Afw---Scope---Ultimate acquittal in a criminal case exonerates accused person completely for all future purposes vis-a-vis the criminal charge against him---Concept of autrefois acquit embodied in S. 403, Cr.P.C., protection guaranteed by Art.13(a) of the Constitution, Afw (waiver) or Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime.)

(g) Service Tribunals Act (LXX of 1973)---

----S. 4---Penal Code (XLV of 1860), Ss.302 & 310 (5)---Criminal Procedure Code (V of 1898), S.345---Reinstatement in service---Acquittal by compounding offence of murder---Payment of Badal-i-Sulk---Respondent was employee of a Bank and was convicted on the charge of murder but later on offence was compounded between the parties and respondent was acquitted after payment of Badal-i-Sulh---After the respondent was convicted under the charge of murder, Bank proceeded against him and removed him from service---Bank declined to reinstate him in service, after he was acquitted of the charge but Service Tribunal allowed the appeal and reinstated him in service--- Validity---No allegation was levelled against respondent regarding any illegality, irregularity or impropriety committed by him in relation to his service and acquittal in the case of murder had removed the only blemish cast upon him---Conviction of respondent in murder was the only ground on which he had been removed from service and that ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service---Even order of removal of respondent from service had provided that his case would be considered by competent authority for his reinstatement in service in case he was acquitted of the criminal charge---Respondent was justified in claiming his reinstatement in service upon earning acquittal from the competent criminal court--Supreme Court declined to interfere in the judgment passed by Service Tribunal, whereby respondent was reinstated in service---Appeal was dismissed.

Shehzad Ahmad alias Mithu and another v. The State 2005 PCr.LJ 1316 and Muhammad Siddique v. The State PLD 2002 Lah. 444 ref.

(h) Service Tribunals Act (LXX of 1973)---

----S.4---Appeal---Limitation---Civil servant sought reinstatement in service, after he was acquitted from murder case---Service Tribunal allowed the appeal filed by civil servant and reinstated him in service---Plea raised by employer/bank was that appeal was barred by limitation---Validity---Civil

servant was acquitted in criminal case on 22-9-1998 and he filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in criminal case---It would have been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service---Appeal before Service Tribunal was not barred by limitation.

The Chairman P.I.A.C. and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513 distinguished.

Raja Aleem Abbasi, Advocate Supreme Court for Appellants.

Shakeel Ahmad, Advocate Supreme Court for Respondent.

Mudassar Khalid Abbasi, D.A.G. (On Court notice).

Date of hearing: 8th April, 2010.

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---The appeal in hand throws up an issue which has never been brought up before this Court earlier and, thus, the case in hand is a case of first impression. The facts leading to filing of this appeal are quite simple and admit of no ambiguity but the question raised before the Court is novel and, therefore, the same has been attended to by us with acute consideration.

2. Mumtaz Khan respondent was a Mobile Credit Officer serving with the Agricultural Development Bank of Pakistan when he was implicated in a case of murder through F.I.R. No.327 registered at Police Station Naurang, District Lakki Marwat on 8-9-1991 in respect of an offence under section 302, P.P.C. read with section 34, P.P.C. As a result of trial of that criminal case the respondent was convicted by the learned Sessions Judge, Lakki Marwat for an offence under section 302(b), P.P.C. read with section 34, P.P.C. vide judgment dated 15-11-1995 and was sentenced to imprisonment for life and a fine of Rs.40,000 or in default of payment whereof to undergo simple imprisonment for five years. The respondent preferred an appeal in that regard but his appeal was dismissed by the Peshawar High Court, Dera Ismail Khan Bench vide judgment handed down on 1-4-1998. We have been informed that the respondent had not challenged his conviction and sentence any further and after a few months of the decision of his appeal an application had been submitted by him before the learned Sessions Judge, Lakki Marwat seeking his acquittal on the basis of a compromise arrived at between him and the heirs of the deceased. That application submitted by the respondent was allowed by the learned Sessions Judge, Lakki Marwat on 22-9-1998 and the respondent was acquitted of the charge on the basis of compromise. On the departmental side, the respondent was served with a show cause notice on 22-1-1996 as by then he had already been convicted and sentenced by the criminal Court on the charge of murder and the respondent submitted a reply thereto on 28-1-1996. In view of the respondent's already recorded conviction on the charge of murder by the criminal Court the respondent was removed from service on 3-3-1996. After earning his acquittal from the criminal Court on the basis of compromise the respondent filed a departmental appeal on 12-10-1998 seeking his reinstatement in service with all the back benefits but that appeal was dismissed by the competent authority on 26-2-1999. Thereafter the respondent preferred an appeal before the Federal Service Tribunal, Islamabad in that regard which appeal was allowed by a majority of two against one by the Federal Service Tribunal, Islamabad vide judgment dated 3-7-2000 and the respondent was ordered to be reinstated in service with all the back benefits. That judgment rendered by the Federal Service Tribunal, Islamabad had been assailed by the appellants before this Court through C.P.L.A. No.1391 of 2000 wherein leave to appeal was granted on 14-2-2002 to consider the following points:--

"(a) Whether the appeal before the Federal Service Tribunal was not time barred?"

(b) Whether a convicted person, who is released after payment of Diyat amount, could be said or could be declared as a person acquitted honourably and in that eventuality, could such a person, who is released on payment of Diyat, was liable to be reinstated into service?

(c) Whether the payment of Diyat absolves a person from the accusation of murder? and

(d) Whether the respondent was an acquitted person or was a convicted person even after the payment of Diyat?"

Hence, the present appeal before this Court.

3. We have heard the learned counsel for the parties at some length and have gone through the record of this case with their assistance.

4. It has been argued by the learned counsel for the appellants that the judgment passed by this Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 and relied upon by the Federal Service Tribunal, Islamabad in the impugned judgment was not relevant to the facts of this case as the said precedent case did not pertain to an acquittal in a criminal case on the basis of compromise. It has also been argued by him that by virtue of the provisions of section 53, P.P.C. Diyat is a form of punishment and it was also held so in the case of Shehzad Ahmad alias Mithu and another v. The State 2005 PCr.LJ 1316 and, thus, acquittal earned by the respondent in the case of murder by payment of Diyat to the heirs of the deceased had not washed away the blemish of the respondent regarding his being a punished person and such blemish had rendered him incapable of pressing into service his acquittal for the purpose of seeking reinstatement in service. It has further been argued by him that the compromise entered into by the respondent on the charge of murder amounted to admission of guilt on his part, as held in the case of Muhammad Siddique v. The State PLD 2002 Lahore 444, and, thus, it even otherwise offends against public policy to reinstate a person in service who is a self-condemned murderer. The learned counsel for the appellants has lastly argued that the departmental appeal filed by the respondent was barred by time and, therefore, the Federal Service Tribunal, Islamabad ought to have dismissed his appeal on this score. In support of this submission the learned counsel for the appellants has placed reliance upon the cases of The Chairman P.I.A. C. and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513.

5. As against that the learned counsel for the respondent has maintained that the entire controversy presented before the Federal Service Tribunal, Islamabad and also before this Court regarding acquittal of the respondent on the basis of paying Diyat to the heirs of the deceased is misconceived because the respondent had earned his acquittal after paying Badal-i-Sulh to the heirs of the deceased under section 310, P.P.C. and not upon payment of Diyat. He has elaborated that Diyat may be a punishment contemplated by the provisions of section 53, P.P.C. but Badal-i-Sulh is surely not a punishment mentioned in that section. He has also argued that the respondent's appeal before the Federal Service Tribunal, Islamabad had been filed well within the period of limitation and in the comments submitted by the appellants before the Federal Service Tribunal, Islamabad no objection had been raised by them regarding the appeals filed by the respondent before the Service Tribunal or before the departmental authority being barred by time. He has further maintained in this respect that there is nothing available on the record of this case to establish that the respondent's appeal filed before the departmental authority was barred by time or any objection had ever been raised before the departmental authority in that regard or that the said appeal had been dismissed on the ground of limitation. The learned counsel for the respondent has gone on to submit that no allegation had ever been levelled against the respondent regarding commission of any illegality, irregularity or impropriety by him in his service and the blemish upon the respondent on the basis of his conviction in a case of murder stood washed away on the basis of his acquittal in that criminal case and, thus, there was no impediment in his reinstatement in service with all the back benefits. The learned counsel for the respondent has highlighted that even in the order passed on 3-3-1996 regarding the respondent's removal from service it had specifically been mentioned that the

said removal from service was conditional and was reversible in case of his acquittal in the relevant criminal case. With these submissions the learned counsel for the respondent has supported the majority verdict rendered through the impugned judgment handed down by the Federal Service Tribunal, Islamabad.

6. The learned Deputy Attorney-General appearing on the Court's notice has also maintained before us that the respondent had earned his acquittal in the relevant case of murder not on the basis of payment of Diyat to the heirs of the deceased but upon payment of Badal-i-Sulh to them and, therefore, his acquittal was without any blemish and the same warranted his reinstatement in service with all the back benefits. The learned Deputy Attorney-General has also supported the majority opinion recorded by the Federal Service Tribunal, Islamabad through the impugned judgment rendered by it on 3-7-2000.

7. After hearing the learned counsel for the parties and going through the record of this case with their assistance and after perusing the precedent cases cited before us we, have entertained no manner of doubt that the majority verdict delivered by the Federal Service Tribunal, Islamabad reinstating the respondent in service with all the back benefits was quite justified both on facts and in law. We may observe that prior to introduction of the Islamic provisions in the Pakistan Penal Code, 1860 an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring the prosecution and the other favouring the defence, the Court decided to extend the benefit of doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence. After introduction of the Islamic provisions in the Pakistan Penal Code, 1860 it has now also become possible for an accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under section 309, P.P.C. or on the basis of compounding/Sulh under section 310, P.P.C. In the case of waiver/Afw an acquittal can be earned without any monetary payment to the heirs of the deceased but in the case of compounding/Sulh an acquittal may be obtained upon acceptance of Badal-i-Sulh by the heirs of the deceased from the accused person. In the present case the respondent had been acquitted of the charge of murder by the learned Sessions Judge, Lakki Marwat as a result of compounding of the offence and such compounding had come about on the basis of acceptance of Badal-i-Sulh by the heirs of the deceased from the respondent. It is true that Diyat is one of the forms of punishment specified in section 53, P.P.C. but any discussion about Diyat has been found by us to be totally irrelevant to the case in hand because the respondent had not paid any Diyat to the heirs of the deceased but he had in fact paid Badal-i-Sulh to them for the purpose of compounding of the offence. It goes without saying that the concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as the provisions of subsection (5) of section 310, P.P.C. and the Explanation attached therewith show that Badl-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them whereas under section 53, P.P.C. C Diyat is a punishment and the provisions of section 299(e), P.P.C. and section 323, P.P.C. manifest that the amount of Diyat is to be fixed by the Court. The whole edifice of his arguments built by the learned counsel for the appellants upon Diyat being a form of punishment has, thus, appeared to be utterly misconceived.

8. The provisions of the first proviso to subsection (1) of section 338-E, P.P.C. clearly contemplate acquittal of an accused person on the basis of compounding of an offence by invoking the provisions of section 310, P.P.C. and the effect of such compounding has also been clarified in most explicit terms by the provisions of subsection (6) of section 345, Cr.P.C. in the following words:--

"The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

9. The legal provision mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is a form of punishment and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative

11. It may not be out of place to mention here that even the order of removal of the respondent from service passed on 3-3-1996 had expressly provided that the respondent's case would be considered by the competent authority for his reinstatement in service in case he was acquitted of the criminal charge. Thus, on this score as well we have found the respondent to be quite justified in claiming his reinstatement in service upon earning an acquittal from the competent criminal Court.

12. As far as the submission made by the learned counsel for the appellants regarding the respondent's appeal being barred by time is concerned suffice it to observe in this context that admittedly the respondent's appeal before the Federal Service Tribunal, Islamabad was preferred within the requisite period of limitation. There is no material available before us to conclude or hold that the respondent's departmental appeal was barred by time and, if so, whether the delay in the respect, if any, had been condoned or not and on what basis the said appeal had been dismissed. The order of dismissal of the respondent's appeal by the departmental authority did not mention that his appeal had been filed beyond the period of limitation or that the same was dismissed on the ground. We have further noticed that no such objection had been raised by the appellants before the Federal Service Tribunal, Islamabad. As the assertion of the learned counsel for the appellants regarding the respondent's departmental appeal being barred by time does not find support from any document produced before us, therefore, it is not possible for us to follow the principle laid down in the cases of *The Chairman P.I.A.0 and others v. Nasim Malik* PLD 1990 SC 951 and *Muhammad Aslam v. WAPDA and others* 2007 SCMR 513 cited by the learned counsel for the appellants in that regard. We may also observe in this context that the respondent had been acquitted in the criminal case on 22-9-1998 and he had filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in the criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning an acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case, we have found it to be unjust and oppressive to penalize the respondent for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service.

13. For what has been discussed above this appeal is dismissed and the impugned majority verdict rendered by the Federal Service Tribunal, Islamabad on 3-7-2000 is upheld and maintained.

M.H./C-3/S

Appeal dismissed.

IN THE COURT OF MOHIB UR REHMAN
JUDICIAL MAGISTRATE, KARAK

Case No. _____ of 2020

State vs. Nazeer Ullah

Case FIR No.135 dated 08.03.2020 u/s 302 PPC Police Station Latambar

Or.....01
27.07.2020

Complete challan received from prosecution. APP for State present.

The instant case under section 302 PPC is exclusively triable by the Court of Sessions; hence the case file is forwarded herewith under the provision of Section 190 Sub Section 3 Cr.P.C to the Court of Hon'ble District and Sessions Judge, Karak for further appropriate order please.

Muharir of this Court is directed to send the case file forthwith to the Court of Hon'ble District and Sessions Judge, Karak and also make relevant entry in the register.

ATTESTED
Examiner Copying
Branch Karak

07/12/20

(MOHIB UR REHMAN)
Judicial Magistrate, Karak

3

FORM "A"
FORM OF ORDER SHEET

Court of..... Sessions Judge, Karak.....

Case No. 52/1 of..... 2020


Serial No. of Order or Proceeding 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
	29.7.2020	<p>Case file received from learned area Magistrate today. To be checked and put up for orders before the learned Sessions Judge, Karak today.</p> <p style="text-align: right;">Superintendent, Sessions Judge, Karak</p> <p style="text-align: right;"><i>[Signature]</i> Sessions Judge, Karak</p>
Or.....01 29.7.2020	<i>[Signature]</i>	<p>Instant case received from the Court of learned Magistrate, Karak. It be entered in relevant Register. Accused & complainant be summoned for</p> <p style="text-align: center;"><u>03/9/2020</u></p> <p style="text-align: right;"><i>[Signature]</i> Jehangir Khan Sessions Judge, Karak</p> <p style="text-align: right;">Sessions Judge, Karak</p>
Or.....02 03.9.2020	<i>[Signature]</i>	<p>Mr. Taj Muhammad D.P.P for the State and accused facing trial Nazeerullah on bail with learned counsel Mr. Malik Rehman Advocate present who submitted w/nama. Notice issued to the complainant returned with the report that he has died, hence notice be issued to Mst. Miraj Bibi (widow of deceased) for the next date. In compliance of provisions of section 265-C Cr.PC, necessary copies are provided to the accused. To come up for framing of charge on <u>15-9-2020</u></p> <p style="text-align: right;"><i>[Signature]</i> Jehangir Khan Sessions Judge, Karak</p>

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Branch Karak

07/11/20

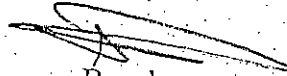
Or.....03
10.9.2020

Mr. Taj Muhammad D.P.P for the State and accused facing trial Nazeerullah on bail present. Mst. Miraj Bibi (widow of deceased) is absent and notice issued to her returned with report that she has been informed personally. Formal charge framed against the accused to which he pleaded not guilty and claimed trial, hence private witnesses including the widow of deceased as well as formal witnesses' alongwith case property be summoned for 12.10.2020.


Jehangir Khan
Sessions Judge, Karak.

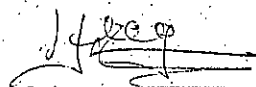
Reader Note
12.10.2020

Presiding Officer is on leave. To come up as before on 07.11.2020.


Reader.

Or.....04
07.11.2020

Mr. Taj Muhammad D.P.P for the State and accused facing trial Nazeerullah on bail present. PWs are not in attendance and process against them has not been issued due to reader not on preceding date. Similarly, learned members of the bar are also observing strike today on the call of KP Bar Council, Peshawar, hence proceedings are adjourned. Formal PWs including Mst. Miraj Bibi (widow of deceased) and case property be summoned for 26.11.2020.


Jehangir Khan
Sessions Judge, Karak.

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Examiner Copying
Branch Karak


07/11/20

(4)

S.C No. 52/7 of 2020

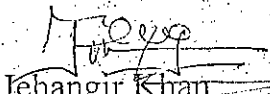
Or.....05
26.11.2020

Mr. Zafranullah A.P.P for the State and accused facing trial Nazeerullah on bail with learned counsel Mr. Malik Rehman Advocate present. Mst. Miraj Bibi (widow), Muhammad Rais and Aamir Sohail (sons) of deceased Noor Jamal also present and got recorded their statement in respect of compromise with the accused facing trial and produced an affidavit on stamp paper (Ex.PA) alongwith attested copies of compromise documents submitted during BBA petition of accused facing trial which are Ex.PA/1. To come up for consideration on 28.11.2020.


Jehangir Khan
Sessions Judge, Karak.

Or.....06
28.11.2020

Mr. Zafranullah A.P.P for the State and accused facing trial Nazeerullah on bail present. The accused sought adjournment to produce his counsel who is busy today in the election of KB Bar Council, hence proceedings are adjourned. To come up on 04.12.2020.


Jehangir Khan
Sessions Judge, Karak.

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27/11/20

5

IN THE COURT OF JEHANGIR KHAN,
SESSIONS JUDGE, KARAK.

S.C No.52/7 of 2020.

The State... Vs... Nazeerullah.

ORDER
04.12.2020

1. Mr. Zafranullah A.P.P for the State and accused facing trial Nazeerullah on bail present.

2. The accused named above is facing trial in case F.I.R No. 135 dated 08.3.2020 under section 302 PPC registered at P.S Latamber, District Karak.

3. On 26.11.2020, Mst. Miraj Bibi (widow), Muhammad Rais and Aamir Sohail (sons) of the deceased Noor Jamal appeared before the Court and produced an affidavit of compromise alongwith attested copies of compromise documents which were produced before the Court at the time of pre-arrest bail petition of the accused facing trial and to this effect, their joint statement recorded wherein

they stated that they and the other legal heirs of the deceased Noor Jamal have already effected

compromise with the accused facing trial Nazeerullah

outside the Court at bail stage wherein he has

satisfied them about his innocence. They further

stated that the same compromise is still intact and

during BBA petition of the accused facing trial, they

as well as the other legal heirs of the deceased have

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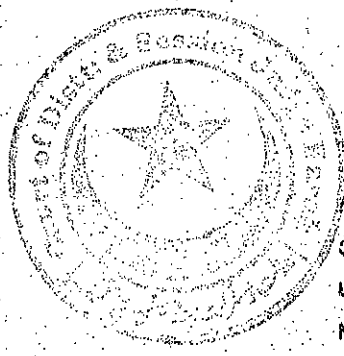
got recorded their compromise statement. They further stated that they have got no objection on the acquittal of the accused facing trial Nazeerullah in the instant case. The affidavit was placed on file as Ex.PA while attested copies of compromise documents submitted during bail stage were also placed on file as Ex.PA/1 (consisting upon 10 pages).

4. In view of above, I am satisfied that the compromise is genuine. The offence with which the accused facing trial has been charged is also compoundable; resultantly, on acceptance of compromise, the accused on trial Nazeerullah is acquitted of the charges on the basis of compromise. The accused is on bail, his bail bonds stands cancelled and his sureties are absolved of their liabilities towards bail bonds. The case property be kept intact till expiry of period of limitation prescribed for appeal/revision and thereafter, be disposed of in accordance with law.

5. File be consigned to Record Room.

Announced:
04.12.2020

Jehangir Khan
Jehangir Khan,
Sessions Judge, Karak



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07/12/20

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Karak

07/12/20

CHARGE

FIR No. 135 dated 08.3.2020 u/s 302 PPC P.S Latamber, District Karak.

I, Jehangir Khan, Sessions Judge, Karak *do hereby charge you accused:* -

Nazirullah aged about 40/41 years son of Noor Jamal resident of Saikot Tehsil Takht-e-Nasrati District Karak.

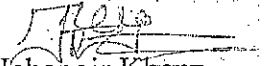
... Accused.

That you accused named above at 14:20 hours on 08.3.2020 at un-paved way leading to the lands known as Bajalgai situated near village Saikot, falling within the criminal jurisdiction of P.S Latamber, District Karak have committed the qatl-e-amd of your father namely Noor Jamal Khan (complainant now deceased), through effective fire shots with your pistol and thereby have committed an offence punishable u/s 302 PPC and within the cognizance of this Court.

And I hereby direct that you be tried by me on the afore-said charge.

The charge has been read over and explained in the language of the accused i.e, Pashto.

Dated: 15.9.2020.


Jehangir Khan

Sessions Judge, Karak.

Q. *Do you hear and understand the charge?*

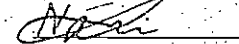
A. Yes.

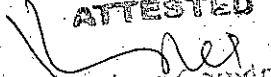
Q. *Do you plead guilty or claim trial?*

A. *I plead not guilty and claim trial.*

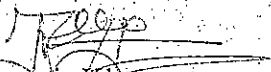
Q. *Do you want to produce defence?*

A. *Yes (if required).* Certified u/s 364 Cr.PC.

Accused: 
Nazirullah

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Examiner Copying
Branch Karak

07/12/20


Jehangir Khan

Sessions Judge, Karak.

2

Joint statement of (1) Miraj Bibi (widow) aged about 70/71 years (2) Muhammad Rais aged about 49/50 years (son) and (3) Aamir Sohail aged about 25/26 years (son) of deceased Noor Jamal residents of Saikot, Tehsil Takht-e-Nasrati District Karak:-

Stated that the accused facing trial Nazirullah has been charged vide case F.I.R No. 135 dated 08.3.2020 registered under sections 302 PPC at P.S Latamber, District Karak on the report of Noor Jamal, the deceased then injured. We and the other legal heirs of the deceased Noor Jamal have already effected compromise with the accused facing trial Nazirullah outside the Court at bail stage wherein he has satisfied us about his innocence. The same compromise is still intact. In this respect, during BBA petition of the accused facing trial, we and the other legal heirs of the deceased have got recorded our compromise statement. To this effect we produce an affidavit on stamp paper which is PA and also produced attested copies of compromise documents submitted during BBA petition of accused facing trial including statement of all the legal heirs of deceased which are Ex.PA/1 (consisting upon 10 pages). The compromise is still intact and we have got no objection on the acquittal of the accused facing trial Nazirullah.

RO and AC
26.11.2020

Mst. Miraj Bibi (widow) _____
CNIC No. 14203-1999980-2

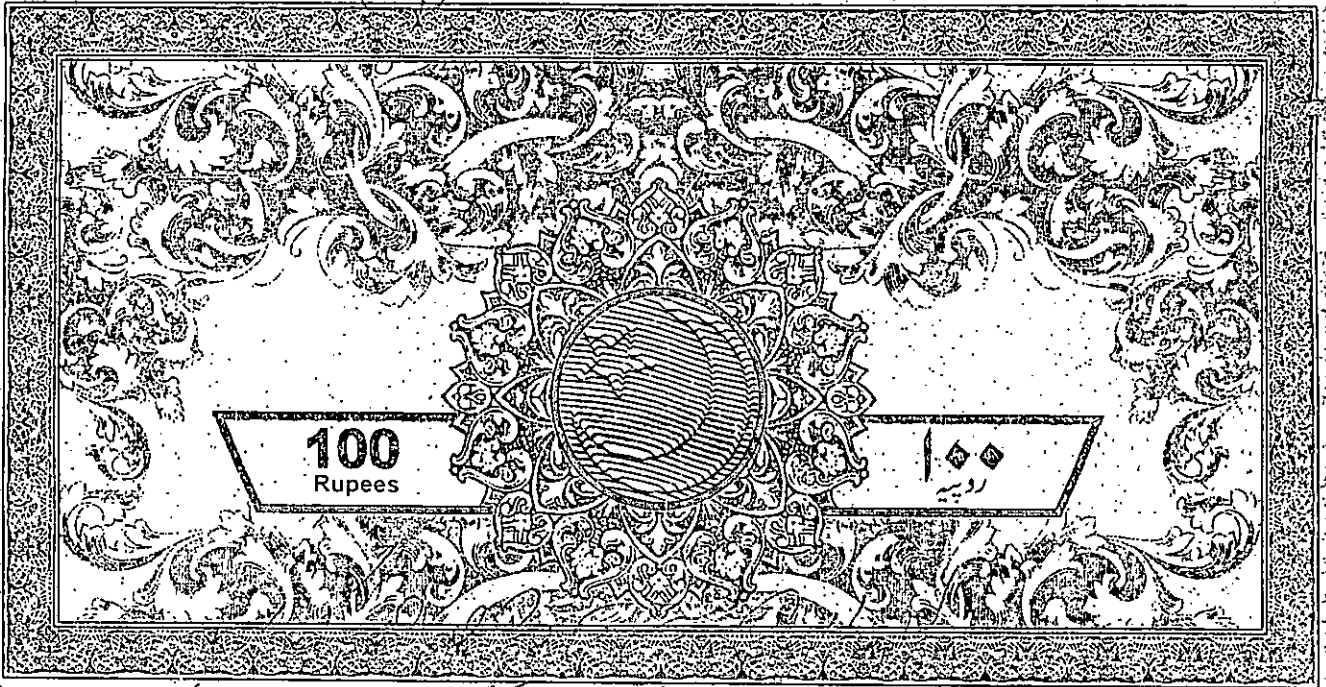
Muhammad Rais Khan _____
CNIC No. 14203-4827420-7

Aamir Sohail _____
CNIC No. 14203-5502265-5

(Jehangir Khan,
Sessions Judge, Karak.

ATTESTED
Examiner of Court
District Karak
07/12/20

11/12/20



مذکورہ 135 نمبر پر
مقام 302/128/3
2020

پان علی اور علی نام

EX PA

کراچی

Heera
Karak

26/11/2020

مذکورہ درجہ میں اول درجہ پان علی اور علی کے نام سے دی گئی ہے۔
ان کے نام درجہ میں مقررہ طور پر 18/1/2020 کو دی گئی تھی۔
اس کے نتیجے میں ان کے نام درجہ میں آئے ہیں اور ان کے نام
کا کٹ اور مقررہ نام درجہ میں آئے ہیں۔ ان کے نام درجہ میں
مقررہ طور پر مقررہ طور پر ان کے نام درجہ میں آئے ہیں۔

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14203-4927420-7

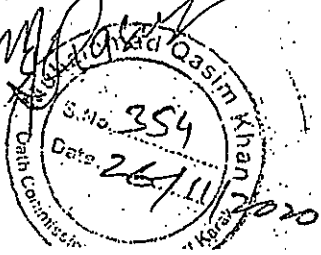
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11 سرانی

12 محمد علی

13 محمد علی

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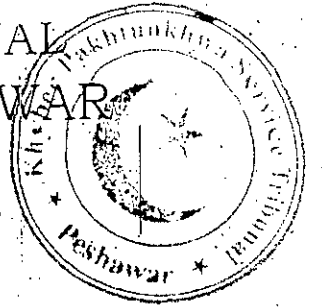
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Branch Karak

26/11/20

3

1

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR



Service Appeal No. 1500 /2018

Sana Ullah S/o Muhammad Yaqoob R/o Baram Khel, Shnwa
Gudi Khel Tehsil Takht-e-Nasrati District, Karak Appellant

Versus

1765
18-12-2018

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar
3. Superintendent of Police, FRP, Kohat Range, Kohat
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar

..... Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
 AGAINST THE ORDER DATED 11/09/2018 PASSED BY
 RESPONDENT NO. 3 BY WHICH MAJOR PENALTY OF
 "DISMISSAL FROM SERVICE", AND HIS ABSENCE PERIOD OF 07
 DAYS IS TREATED AS ABSENCE FROM DUTY WITHOUT PAY,
 HAS BEEN AWARDED TO THE APPELLANT AND AGAINST THE
 ORDER 20/11/2018 PASSED BY RESPONDENT NO. 2 WHEREIN
 THE REPRESENTATION/ DEPARTMENTAL APPEAL FILED BY
 REGISTRAR APPELLANT HAS BEEN REJECTED.

Filed by
18/12/2018
Registrar

PRAYER

By accepting this service appeal, the punishment awarded to the
 appellant through impugned orders dated 11/09/2018 and
 20/11/2018 may graciously be set aside by declaring it illegal,
 void, unlawful, without authority, based on mala fide, void abinitio
 and thus not sustainable and the appellant is entitled for
 reinstatement with all back benefits of pay and service.

ATTESTED

ATTESTING OFFICER
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL
 PESHAWAR

Resubmitted to-day
and filed.

Registered
18/12/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1500/2018

Date of Institution ... 18.12.2018
Date of Decision ... 17.05.2022



Sana Ullah S/O Muhammad Yaqoob R/O Baram Khel, Shnwa
Gudi Khel Tehsil Takhti-e-Nasrati District Karak.

(Appellant)

VERSUS

Provincial Police Officer/Inspector General of Police Khyber
Pakhtunkhwa, Peshawar and three others.

(Respondents)

Shahid Qayum Khattak,
Advocate

For appellant.

Kabir Ullah Khattak,
Additional Advocate General

For respondents.

Salah-Ud-Din
Rozina Rehman

Member (J)


Member (J)

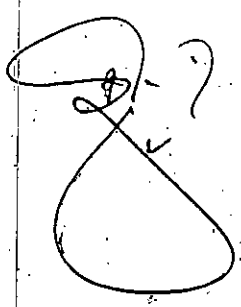
JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

"By accepting this service appeal, the punishment
awarded to the appellant through impugned orders
dated 11.09.2018 and 20.11.2018 may graciously be
set aside by declaring it illegal, void, unlawful,
without authority, based on malafide, void ab-initio
and thus not sustainable and the appellant is
entitled for reinstatement with all back benefits of
pay and service."

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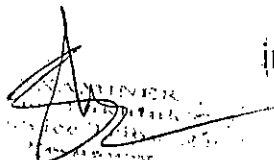
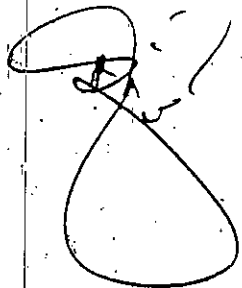

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



2. Brief facts of the case are that appellant was serving as Constable in FRP Platoon No.122 deployed at District Kohat. It was on 29.07.2018 when one Momin was arrested vide case FIR No.446 for having 4 Kg of Charas who allegedly named appellant as an accused, therefore, the appellant was also arrested on the same day by the local police. He was served with a charge sheet alongwith statement of allegations which was properly replied but the same was not taken into consideration and appellant was dismissed from service on 11.09.2018. He filed departmental appeal which was dismissed, hence, the present service appeal.

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

4. Shahid Qayum Khattak Advocate learned counsel appearing on behalf of appellant, inter-alia, submitted that the impugned orders are illegal, unlawful, without authority, hence the same are liable to be set aside being based on surmises and conjectures. It was submitted that the reply to the charge sheet submitted by the appellant was not taken into consideration and that proper procedure was not adopted. It was contended that no show cause notice was issued to the appellant and that no proper regular inquiry was conducted in order to scrutinize the conduct of the appellant with reference to the charges. The learned counsel further contended that the appellant was falsely implicated in case FIR No.446 merely on the statement of an accused person and that the appellant was neither apprehended on spot nor any incriminating article was recovered from his immediate possession.



Lastly, it was submitted that no proper opportunity of personal hearing was provided to the appellant and he was condemned unheard; that the appellant was on duty at the relevant time of alleged occurrence and was arrested on the same day and the moment he was released from jail, he resumed his duty, therefore the absence period of seven days was beyond his control as he was confined in judicial lockup but this aspect of the case was ignored by the respondents.

5. Conversely, learned AAG contended that appellant had developed links with drug paddler namely Momin who was arrested by the local police with 4 Kg of Charas who disclosed before the Police party to have been brought the recovered Charas for the present appellant, therefore, appellant was arrested and proper case vide FIR No.446 was registered. He submitted that he was properly issued charge sheet with statement of allegations and Inquiry Officer was nominated to conduct inquiry against him and that after fulfillment of all codal formalities, he was dismissed from service by the competent authority.

6. From the record it is evident that appellant Sana Ullah was charge sheeted for having committed the following acts/omission:

"As reported vide FRP Lines Kohat DD No.03 dated 29.07.2018, you have been charged/arrested vide case FIR No.446 dated 29.07.2018 U/S 9-C CNSA P.S Cantt. District Kohat for dealing with Narcotics as is evident from contents of said FIR because accused Momin, after recovery of 4Kg Chars, disclosed before the SHO that he was taking the recovered Chars to you (Sana Ullah).

ATTESTED

EXAMINER
Kohat Bench
Service Tribunal
Peshawar

Secondly, you remained absent vide DD No.36 dated 27.07.2016 till date. Thus you have committed a gross "Misconduct" as defined in Rule 2 of Police Rules, 1975".

He submitted reply to the charge sheet and one Noor Ullah Khan DSP FRP Kohat was appointed as Inquiry Officer. The inquiry report is available on file which shows that no witness was examined in presence of the present appellant. No cogent and reliable evidence was adduced in the course of inquiry against appellant. Call Detail Record (CDR) of appellant was collected but he was never confronted with the CDR strictly in accordance with law and procedure. It is also not denied that the appellant was not arrested on spot and nothing incriminating was ever recovered from his possession. The main accused Momin allegedly arrested on spot for having 4 packets of Charas (04 Kg) did not record his confession rather he charged the present appellant allegedly in his statement U/S 161 Cr.PC which is inadmissible in evidence. Both accused Momin and the present appellant Sana Ullah were tried in a competent court of Law and vide order of the learned Judge, Special Court, Kohat dated 01.04.2021, both Momin Khan and Sana Ullah were acquitted from the charges leveled against them. The present appellant was arrested on 29.07.2018 when FIR No.446 was registered. His absence is justified as he was arrested and sent to judicial lockup and soon after getting release on bail, he joined his duty. His links with accused Momin were

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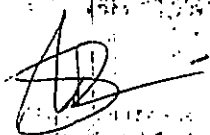
not properly established. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which

EXAMINER
 Kohat
 Service Tribunal
 Kohat

may be said to be dishonorable. Involvement of the appellant in the criminal case was also a 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. His links with law breaking persons were not brought on record and the inquiry report is silent in this regard.

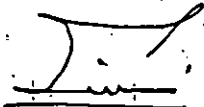
7. It is established from the record that charges of his involvement in the criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988-PLC.(CS) 179, 2003-SCMR 215 and PLD 2010 Supreme Court, 695 and judgments rendered by this Tribunal in Service Appeal No.1380/2014 titled Ilam Nawaz Vs. Police Department; Service Appeal No.616/2017 titled Mumtaz Ali Vs. Police Department; Service Appeal No.863/2018 titled Fateh-ur-Rehman Vs. Police Department; Service Appeal No.1065/2019 titled Naveed Gul Vs. Police Department and Service Appeal No.12098/2020 titled Ali Imran Vs. Police Department.

8. For what has been gone above, the appeal at hand is accepted. Consequently, the impugned order of imposition of penalty with disciplinary proceedings wherefrom it resulted, are set aside; and the appellant is reinstated into service from the date of dismissal from service with all back benefits. The concerned respondent, on receipt of copy of this judgment, shall issue the order of appellant's reinstatement with all back benefits having accrued or accruable from

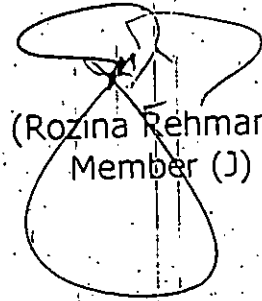


the date of his dismissal from service. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
17.05.2022



(Salah-ud-Din)
Member (J)



(Rozina Rehman)
Member (J)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 03/06/22
 Number of Words 2800
 Copying Fee 30/-
 Urgent _____
 Total 30/-
 Name of Copy _____
 Date of Completion of Copy 08/06/22
 Date of Delivery of Copy 08/06/22

(1)

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Ijaz ul Ahsan
Mr. Justice Syed Mansoor Ali Shah

Suo Motu Case No. 03 of 2017

(Regarding the issue as to whether compounding of an offense under section 345, Cr.P.C. amounts to acquittal of the accused person or not)

In attendance: Syed Nayyab Hussain Gardezi, Assistant Attorney-General for Pakistan

Mr. Tariq Mehmood Jahangiri, Advocate-General, Islamabad

Mr. Qasim Ali Chauhan, Additional Advocate-General, Punjab

Mr. Shehryar Qazi, Additional Advocate-General, Sindh

Mr. Zahid Yousaf Qureshi, Additional Advocate-General, Khyber Pakhtunkhwa

Mr. Ayaz Khan Swati, Additional Advocate-General, Balochistan

Date of hearing: 27.06.2018

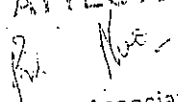
JUDGMENT

Asif Saeed Khan Khosa, J.: One Waheed Ahmiad had allegedly murdered a person named Tariq Hussain on 05.06.2007 in a village in the area of Police Station Mangla Cantonment, District Jhelum and for committing the said offence he was booked

ATTESTED

[Handwritten signatures]

in case FIR No. 68 registered at the said Police Station on the same day for an offence under section 302 of the Pakistan Penal Code, 1860 (PPC). After a regular trial the said Waheed Ahmad was convicted by a learned Additional Sessions Judge, Jhelum on 19.02.2009 for an offence under section 302(b), PPC and was sentenced to death as *Ta'zir* and to pay a sum of Rs. 1,00,000/- to the heirs of the deceased by way of compensation under section 544-A of the Code of Criminal Procedure, 1898 (Cr.P.C.) or in default of payment thereof to undergo simple imprisonment for six months. The said Waheed Ahmad challenged his conviction and sentence before the Lahore High Court, Rawalpindi Bench, Rawalpindi through Criminal Appeal No. 75 of 2009 which was heard by a learned Division Bench of the said Court along with Murder Reference No. 20/RWP of 2009 seeking confirmation of the sentence of death and *vide* judgment dated 22.05.2012 the appeal was dismissed; the conviction and sentence were upheld and the sentence of death was confirmed. The said Waheed Ahmad then filed Criminal Petition for Leave to Appeal No. 216 of 2012 before this Court wherein leave to appeal was granted by this Court on 06.07.2012 in order to reappraise the evidence in the interest of safe administration of criminal justice. As a result of grant of leave to appeal Waheed Ahmad preferred Criminal Appeal No. 328 of 2012 before this Court and during the pendency of that appeal Criminal Miscellaneous Application No. 185 of 2017 was filed seeking acquittal of the convict-appellant on the basis of a compromise with the heirs of Tariq Hussain deceased and the matter of compromise was referred by this Court to the learned District & Sessions Judge, Jhelum for verification. The report dated 27.02.2017 submitted by the learned District & Sessions Judge, Jhelum in that regard confirmed the fact that a genuine, voluntary and complete compromise between the parties had been affected, the heirs of Tariq Hussain deceased had forgiven the convict-appellant, had waived their right of *Qisas* and had not claimed any *Diyat* in that respect. After going through the said report a 3-member Bench of this Court comprising of our learned brothers Amir Hani Muslim, Qazi Faez Isa and Sardar Tariq

ATTESTED

 Court Associate
 Supreme Court of Pakistan
 Islamabad

Asst.

Masood, JJJ. unanimously accepted Criminal Miscellaneous Application No. 185 of 2017 on 21.03.2017 and allowed the compromise between the parties but their lordships differed on how the main appeal was to be disposed of upon acceptance of the compromise. Writing for the majority Sardar Tariq Masood, J. disposed of the appeal in the following terms and Amr Hani Muslim, J. agreed with his lordship:

"In this view of the matter, Criminal Miscellaneous Application No. 185 of 2017 filed under Section 345 Cr.P.C. is accepted and the compromise arrived at between the parties is allowed. As according to sub-section (6) of Section 345 of the Code of Criminal Procedure, 1898, the composition of an offence shall have the effect of an acquittal, hence Criminal Appeal No. 328 of 2012 is allowed, the sentence of Waheed Ahmad (appellant) recorded and upheld by the courts below is set aside and he is acquitted of the charges on the basis of the compromise. He shall be released from jail forthwith if not required to be detained in connection with any other case."

Qazi Faez Isa, J., however, wrote a separate note on that occasion and the said note read as follows:

"Whilst I agree with my learned brother that the application under section 345(6) of the Code of Criminal Procedure ("the Code") be accepted, I most respectfully cannot bring myself to agree that the convict/appellant be "acquitted of the charges on the basis of the compromise". Subsection (6) of section 345 of the Code does not envisage an acquittal, as it provides:

"(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

2. The appellant was convicted by the Additional Sessions Judge, Jhelum, under section 302(b) of the Pakistan Penal Code ("PPC") for the murder of Tariq Hussain, and was sentenced to death. The Trial Court sent the Murder Reference to the Lahore High Court for confirmation under section 374 of the Code whilst the appellant/convict preferred an appeal under section 410 of the Code. The High Court dismissed the appeal of the appellant, confirmed the Murder Reference and the sentence of death awarded to the appellant/convict. The appellant then preferred a criminal petition for leave to appeal before this Court, which granted leave, "to reappraise the evidence available on record in the interest of safe administration of criminal justice". However, during the pendency of this appeal a compromise was effected by the appellant/convict with the legal heirs of the deceased.

3. Section 345 of the Code enables compounding of offences and sets out the methodology thereof. It mentions the offences

WITNESSED

Jw. Hani
Court Associate
Supreme Court of Pakistan
Islamabad

punishable under the PPC which can be compounded either before or after an accused is convicted. The table contained in subsection (1) of section 345 specifies, "persons by whom offences may be compounded". But, subsection (5) of section 345 stipulates that once an accused has been convicted, "no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard". Undoubtedly, the prescribed offences can be compounded, but the composition of such offences has to be in terms of subsection (6) of section 345 which stipulates that, "the composition ... shall have the effect of an acquittal".

4. In my opinion "the effect of an acquittal" is different from an acquittal. The guilt of an accused, that is ascertaining whether the accused has committed the offence for which he is charged, is determined by the Trial Court. Once the guilt of the accused has been determined the judgment is delivered by the Court. The judgment has two components, conviction, which means he is guilty, and the sentence, which is the punishment awarded to him. If the legal heirs of the deceased compound the offence it does not mean that the appellant/convict was not guilty of the murder for which he was convicted, which would be the case if, as a consequence of allowing the composition, he is "acquitted". Subsection (6) of section 345 also avoids creating such a fiction as it provides that the "composition of an offence ... shall have the effect of an acquittal", which means that the punishment (sentence) part of the judgment is brought to an end; neither this subsection states, nor it could, that the convict is "acquitted of the charges". The verdict of guilt (the conviction part of the judgment) that the Trial Court had recorded could only have been undone by the High Court, failing which by this Court; it cannot be undone by the legal heirs of the murdered person.

5. The law permits the legal heirs of a murdered person to compound the offence with the convict, with or without receiving *badal-i-sulh/diyat* (sections 310 and 323 PPC). When the legal heirs compounded the offence they elected not to seek retribution or the enforcement of the sentence. The very premise of compounding the offence is the acknowledgment of guilt by the accused who is then forgiven by the legal heirs; the affidavits filed by the legal heirs clearly also state this.

6. Section 338-F of the PPC stipulates that in the interpretation and application of Chapter XVI ("Offences Affecting the Human Body") "and in respect of matters ancillary or akin thereto, the Court shall be guided by the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah". The aforesaid interpretation of subsection (6) of section 345 is in conformity with a number of verses of the Holy Qur'an: *surah Al-Baqarah* (2) verses 178-9, *surah Al-Maidah* (5) verse 45, *surah Al-Isra* (17) verse 33 and *surah Ash-Shura* (42) verse 40. In these verses our Merciful Creator suggests that forgiveness and reconciliation is preferable to revenge or retaliation. A person can only be forgiven if he is guilty. The cited verses neither state nor imply that the finding of guilt is effaced.

7. Therefore, whilst I agree with the conclusion reached by my learned brother that the application for compounding the offences be accepted, I cannot agree that as a consequence the appellant/convict should be "acquitted of the charges" and thus completely exonerated. However, since section 345(6) of the Code has not been examined and interpreted in the aforesaid manner therefore the Hon'ble Chief Justice is requested to take notice of this matter under Article 184(3) of the Constitution as it is a

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question of public importance involving the enforcement of Fundamental Rights. The office is directed to place the matter before the Hon'ble Chief Justice of Pakistan for appropriate orders."

The matter was thereafter put up before the Hon'ble Chief Justice of Pakistan and his lordship was pleased to pass the following order:

"Let the issue raised in the order by my learned brother Justice Qazi Faez Isa be taken up under Art. 184(3) of the Constitution and the matter be fixed before the bench headed by my brother Justice Asif Saeed Khan Khosa."

It is in the above mentioned background that the matter has been fixed for hearing before the present Bench today.

2. We have heard the learned Assistant Attorney-General for Pakistan, the learned Advocate-General for the Islamabad Capital Territory, the learned Additional Advocate-General, Punjab, the learned Additional Advocate-General, Sindh, the learned Additional Advocate-General, Khyber Pakhtunkhwa and the learned Additional Advocate-General, Balochistan at some length. They have all submitted in complete unison that in Islamic jurisprudence and in the system of administration of criminal justice in vogue in this country a composition of a compoundable offence leads to and results in acquittal of the accused person or convict concerned. They have also submitted that any confusion created by the words "effect of an acquittal" used in section 345(6), Cr.P.C. now stands removed by the word "acquit" used in the subsequently introduced first proviso to section 338-E(1), PPC and its interpretation by this Court in the case of Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC-695).

3. The issue before us is as to whether a successful and complete compounding of an offence leads to acquittal of the accused person or convict from the allegation or charge or it is only to have an effect of acquittal which may be something short of or

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other than acquittal. After hearing the learned Law Officers and going through the relevant legal provisions and the precedent cases available on the subject we have explored and attended to the issue at hand from diverse angles and in the following paragraphs we embark upon an effort to find an answer to this question and to resolve the controversy.

4. Section 345, Cr.P.C. deals with compounding of offences and it provides as follows:

345. Compounding offences. (1) The offences punishable under the sections of the Pakistan Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:-

Offence	Sections of Penal Code applicable	Persons by whom offence may be compounded
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(2) Subject to sub-section (7), the offences punishable under the sections of the Pakistan Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:-

Offence	Sections of Penal Code applicable	Persons by whom offence may be compounded
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(2-A) Where an offence under Chapter XVI of the Pakistan Penal Code, 1860 (Act XLV of 1860), has been committed in the name or on the pretext of *karo kari*, *siyah kari* or similar other customs or practices, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case.

(3) Where any offence is compoundable under this section, the abetment of such offence or any attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence.

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(5) When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard.

(5-A) A High Court acting in the exercise of its power of revision under section 439 and a Court of Session so acting under section 439-A, may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(7) No offence shall be compounded except as provided by this section and section 311 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

A plain reading of this section shows that compounding of a compoundable offence may be possible before the trial, during the trial or even during the pendency of an appeal or a revision petition and that in some cases compounding of an offence does not require permission of the court whereas in some other cases permission or leave of the relevant court is required for composition. However, the question before us is not as to how a compounding is to take place with or without permission or leave of a court but the controversy before us is about the consequence after a valid compounding has taken place and for resolving the said controversy it is important to appreciate what compounding of an offence actually means.

5. Before we dig deep into the controversy at hand it may be advantageous to mention that there are shorter answers available to the questions involved in this matter and they may be recorded straightaway. Chapter XVI of the Pakistan Penal Code, 1860 deals with offences affecting human body including murder and causing of hurt and all such offences are compoundable by virtue of the provisions of section 309, PPC (Waiver-*Afw*), section 310, PPC (Compounding-*Sulh*) and section 345, Cr.P.C. Section 338-E(1), PPC and the first proviso to the same (falling in Chapter XVI of the Pakistan Penal Code, 1860) provide as follows:

338-E. Waiver or compounding of offences. (1) Subject to the provisions of this Chapter and section 345 of the Code of Criminal Procedure, 1898 (V of 1898), all offences under this Chapter may

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be waived or compounded and the provisions of sections 309 and 310 shall, *mutatis mutandis*, apply to the waiver or compounding of such offences:

Provided that, where an offence has been waived or compounded, the Court may, in its discretion having regard to the facts and circumstances of the case, acquit or award *ta'zir* to the offender according to the nature of the offence. -----

(bold letters have been supplied for emphasis)

These provisions show, and show quite clearly, that all the offences affecting human body including murder and causing of hurt falling in Chapter XVI of the Pakistan Penal Code, 1860 are capable of being waived or compounded and that in case of waiver or compounding of such offences the court concerned, after granting the discretionary permission or leave to compound where necessary, is to acquit the person accused or convicted if it is a case of *Ta'zir* but in a case of *Qisas* it has a discretion either to acquit or to pass a sentence of *Ta'zir* against the accused person or convict in view of the peculiar facts and circumstances of the case. It has already been clarified by this Court in the case of *Zahid Rehman v. The State* (PLD 2015 SC 77) that the discretion to punish by way of *Ta'zir* under section 311, PPC and other similar provisions after waiver or compounding of the right of *Qisas* is relevant only to cases of *Qisas* and not to cases of *Ta'zir*. It is true that section 345(6), Cr.P.C. does not speak of "acquittal" as a consequence of compounding of an offence and it only speaks of the "effect of an acquittal" but it is now clear through the subsequently introduced section 338-E, PPC that a compounding of a compoundable offence in a case of *Ta'zir* is to lead to acquittal of the accused person or convict. When the law itself, as it stands today, speaks of acquittal as a consequence of compounding of an offence then any ambiguity in that regard created by the previous state of the law may not confound us anymore.

6. Another short answer to the core question involved in this matter is available in the judgment handed down by this Court in the case of *Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan* (PLD 2010 SC 695) involving the

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same issue which is under our consideration in the present matter. In that case the respondent was an employee of a Bank and on account of his involvement in and conviction for an offence of murder he was removed from service but later on he was acquitted on the basis of a compromise with the heirs of the deceased and a question arose as to whether a compromise or compounding could validly be treated as acquittal or not for the purposes of his reinstatement in service of the Bank. This Court had categorically held in that case that compounding of an offence through a court in a case of *Tā'zir* amounted to an acquittal and speaking for the Court on that occasion one of us (Asif Saeed Khan Khosa, J) had observed as follows:

"7. ----- After introduction of the Islamic provisions in the Pakistan Penal Code, 1860 it has now also become possible for an accused person to seek and obtain his acquittal in a case of murder either through waiver/*Afw* under section 309, PPC or on the basis of compounding/*Sulh* under section 310, PPC. In the case of waiver/*Afw* an acquittal can be earned without any monetary payment to the heirs of the deceased but in the case of compounding/*Sulh* an acquittal may be obtained upon acceptance of *Badal-i-Sulh* by the heirs of the deceased from the accused person. In the present case the respondent had been acquitted of the charge of murder by the learned Sessions Judge, Lakki Marwat as a result of compounding of the offence and such compounding had come about on the basis of acceptance of *Badal-i-Sulh* by the heirs of the deceased from the respondent. -----

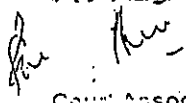
8. The provisions of the first proviso to sub-section (1) of section 338-E, PPC clearly contemplate acquittal of an accused person on the basis of compounding of an offence by invoking the provisions of section 310, PPC and the effect of such compounding has also been clarified in most explicit terms by the provisions of sub-section (6) of Section 345, Cr.P.C. in the following words:

"The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

9. The legal provisions mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of *Badal-i-Sulh* ----- and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this Court in the case of *Dr. Muhammad Islam v. Government of N-W.F.P. through Secretary, Food, Agricultural, Live Stock and Cooperative Department, Peshawar* (1998 SCMR 1993) as follows:

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are honourable for the reason

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that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal court and this Court had declared that an acquittal had no shades and there was no concept of honourable or dishonourable acquittals. It had specifically been noted by this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". -----

10. ----- Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purposes vis-à-vis the criminal charge against him as is evident from the concept of *autrefois acquit* embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of the Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, *Afw* (waiver) or *Sulh* (compounding) in respect of an offence has the effect of purging the offender of the crime. In this backdrop we have found it difficult as well as imprudent to lay it down as a general rule that compounding of an offence invariably amounts to admission of guilt on the part of the accused person -----."

(underlining has been supplied for emphasis)

7. Delving deeper into the issue we note that the concept of compounding of an offence, also termed as composition of an offence, is an old concept recognized not only in the Islamic law and the Pakistan Penal Code, 1860 but also in the Anglo-Saxon jurisprudence. In his book *An Introduction to the Philosophy of Law* (revised edition 1954) Roscoe Pound had observed about the concept of composition of an offence as follows:

"The first theory of liability was in terms of a duty to buy off the vengeance of him to whom an injury had been done whether by oneself or by something in one's power. The idea is put strikingly in the Anglo-Saxon proverb, 'Buy spear from side or bear it', that is, buy off the feud or fight it out. --- As the social interest in peace and order - the general security in its lowest terms - comes to be secured more effectively by regulation and ultimate putting down of feud as a remedy, payment of composition becomes a duty rather than a privilege --- The next step is to measure the


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composition not in terms of the vengeance to be bought off in terms of the injury. A final step is to put it in terms of reparation."

In *Black's Law Dictionary* (Ninth Edition) the definition of 'composition' includes "A payment of money or chattels as satisfaction for an injury. In Anglo-Saxon and other early societies, a *composition* with the injured party was recognized as a way to deter acts of revenge by the injured party." In the same dictionary the definition of 'Compound' includes "To agree for consideration not to prosecute (a crime)". The meaning of the word 'Compound' in *The Concise Oxford Dictionary of Current English* (Ninth Edition) includes "settle (a debt, dispute, etc.) by concession or special agreement", "condone (a liability or offence) in exchange for money etc.", "forbear from prosecuting (a felony) from private motives" and "come to terms with a person, for forgoing a claim etc. for an offence". In Pakistan the Islamic concepts of *Afw* and *Sulh* (two different ways of compounding an offence which is made compoundable by the legislature) are an important part of our criminal law and in cases of murder and causing of hurt sections 309, 310 and 338-E, PPC provide for Waiver-*Afw* (forgiveness without accepting any compensation) and Compounding-*Sulh* (compounding on accepting *badal-i-sulh*/compensation) and section 345, Cr.P.C. provides the mechanism for such compounding. According to Islamic jurisprudence *Afw* and *Sulh* are based upon forgiveness and reconciliation and in his lordship's separate note dated 21.03.2017 passed in this very matter our learned brother Qazi Faez Isa, J. had referred to the verses of the Holy Qur'an [*Surah Al-Baqarah* (2) verses 178-9, *Surah Al-Maidah* (5) verse 45, *Surah Al-Isra* (17) verse 33 and *Surah Ash-Shura* (42) verse 40] wherein our Merciful Creator has suggested that forgiveness and reconciliation is preferable to revenge or retaliation. Without burdening this judgment with copious references in that regard it may suffice to state for the present purposes that the Islamic scholars around the globe agree that *Afw* (forgiveness) means to hide an act, to obliterate, remove and pardon it and to erase and efface it from the record as if it had

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never been committed and, likewise, *Sulh* (reconciliation) means that the act or offence is forgiven and forgotten as if it had never happened. In his *A Dictionary of Islam* (The Unit Printing Press, Lahore, 1964) Thomas Patrick Hughes had recorded as follows:

"*Afu*. *Lit.* "erasing, cancelling." The word is generally used in Muhamminadan books for pardon and forgiveness. It occurs eight times in the Qur'an, e.g. Surah ii. 286, "Lord, make us not to carry what we have not strength for, but *forgive* us and pardon us and have mercy on us." Surah iv. 46, "Verily God *pardons* and *forgives*."

Al-Afu is one of the ninety-nine special names of God. It means "one who erases or cancels," "The Eraser (of sins)." See Qur'an, Surah iv. 51."

8. According to various dictionaries of English language, reference to which may not be necessary here, setting free from guilt, sin or penalty and forgiveness of an offence is also termed as absolution or absolving of the person concerned. As a consequence of *Afu* or *Sulh* resulting in obliteration and removal of the offence and its erasing and effacing from the record the accused person or convict stands absolved of what had been done by him or of what was attributed to him and such absolving effect of the act of compounding is recognized in the following treatises:

English Synonymes Explained In Alphabetical Order; with Copious Illustrations and Examples by George Crabb, A. M. (published by William Clowes and Sons, London, 6th Edition, 1837):

"TO ABSOLVE, ACQUIT.

ABSOLVE, in Latin *absolvo*, is compounded of *ab* from and *solvo* to loose, signifying to loose from that with which one is bound. ACQUIT, in French *acquitter*, is compounded of the intensive syllable *ac* or *ad*, and *quit*, *quitter*, in Latin *quietus* quite, signifying to make easy by the removal of a charge.

These terms imply the setting free from guilt or its consequences. *Absolving* may sometimes be applied to offences against the laws of man, but more frequently to offences against God; *acquitting* applies solely to offences against man. The conscience is released by *absolution*; the body, goods, or reputation, are set free by an *acquittal*.

Yet to be secret, makes not sin the less;
'Tis only hidden from the vulgar view,
Maintains indeed the reverence due to princes,

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But not absolves the conscience from the crime:
DRYDEN.

The fault of Mr. Savage was rather negligence than ingratitude; but Sir Richard Steele must likewise be acquitted of severity; for who is there that can patiently bear contempt from one whom he has relieved and supported?
JOHNSON.

To ABSOLVE, ACQUIT, CLEAR.

ABSOLVE in this case, as distinguished from the former article, (v. To absolve,) is extended to all matters affecting the conscience generally. ACQUIT (v. To absolve, acquit) and CLEAR in the sense of making clear or free from, are applied to everything which may call for blame, or the imputation of what is not right. A person may be absolved from his oath, acquitted or pronounced quit of every charge, and cleared from every imputation.

Compell'd by threats to take that bloody oath
And the act ill, I am absolv'd by both.

WALKER.

Those who are truly learned will acquit me in this point, in which I have been so far from offending, that I have been scrupulous perhaps to a fault in quoting the authors of several passages which I might have made my own.

ADDISON.

He set himself with very great zeal to clear the Romish church of idolatry.

BURNET."

English Synonymes Explained In Alphabetical Order; with Copious Illustrations by George Crabb, A. M. (published by LEIPSIC, a New Edition, 1839):

"To ABSOLVE, ACQUIT, CLEAR.

ABSOLVE, in Latin *absolvo*, is compounded of *ab* from and *solveo* to loose, signifying to loose from that with which one is bound.

ACQUIT, in French *acquitter*, is compounded of the intensive syllable *ac* or *ad*, and *quit*, *quitter*, in Latin *quietus* quite, signifying to make easy by the removal of a charge.

These 2 words convey an important distinction between the act of the Creator and the creature.



To *absolve* is the free act of an omnipotent and merciful being towards sinners; to *acquit* is the act of an earthly tribunal towards supposed offenders.

By *absolution*, we are released from the bondage of sin and placed in a state of favour with God; by an *acquittal* we are released from the charge of guilt, and reinstated in the good estimation of our fellow creatures.

One is *absolved* from an oath, *acquitted* of a charge, and *cleared* from actual guilt.

Absolve is also sometimes used in the sense of setting free from a charge, as from an obligation in which sense it comes still nearer to the words *acquit* and *clear*; but it is thus used mostly in the

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grave style, and carries with it the idea of setting one altogether free from the consequences of a charge."

Crabb's English Synonymes by George Crabb, A. M. (published by Grosset & Dunlap Publishers, New York, 1917):

"ABSOLUTION. See FORGIVE.

ABSOLVE, ACQUIT. *Absolve*, in Latin *absolvo*, is compounded of *ab*, from, and *solvere*, to loose, signifying to loose from that with which one is bound. *Acquit*, in French *acquitter*, is compounded of the intensive syllable *ac* or *ad*, and *quit*, *quitter*, from Latin *quietus*, quite, signifying to make easy by the removal of a charge.

These terms imply the setting free from guilt or its consequences. *Absolving* may sometimes be applied to offences against the laws of man, but more frequently to offences against God; *acquitting* applies solely to offences against man. The conscience is released by *absolution*; the body, goods, or reputation are set free by an *acquittal*.

See also FORGIVE.

Absolve, Acquit, Clear. - *Absolve* in this case, as distinguished from the former article, is extended to all matters affecting the conscience generally. *Acquit* and *clear*, in the sense of making clear or free from, are applied to everything which may call for blame, or the imputation of what is not right. A person may be *absolved* from his oath, *acquitted* or pronounced quit of every charge, and *cleared* from every imputation."

Webster's New International Dictionary of the English Language by William Allan Neilson, Thomas A. Knott, Paul W. Carhart (published by G. & C. Merriam Company Publishers, 2nd Edition, 1957):

"Ab-solve'

1. To set free, or release, as from some obligation, debt, or responsibility, or from the consequences of guilt or from such ties as it would be guilt to violate; to pronounce free; as, to *absolve* a subject from his allegiance.

2. To acquit; to adjudge or pronounce not guilty. Halifax was *absolved* by a majority of fourteen. *Macaulay.*

3. To free from a penalty; to pardon; remit (a sin); - said of the sin or guilt. In his name I *absolve* your perjury. *Gibbon.*

4. To finish; accomplish. The work begun, how soon *absolved*. *Milton.*

5. To resolve or explain, as a difficulty. *Obs.*

Syn. - Exonerate, discharge, forgive. See *EXCULPATE.*"

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The material mentioned above shows that obliteration and removal of the offence and its erasing and effacing from the record as a result of compounding has the effect of absolving the accused person or convict of the act, acquittal from the charge and clearance from the actual guilt and the legislature in 1898, when section 345, Cr.P.C. was introduced, was aware of the fact that in English language as well as in legal literature the word 'absolve' was synonymous with the words 'acquit' and 'clear'. The legislature was cognizant of the legal position at that time that compounding of an offence *ipso facto* amounted to absolution which automatically had the effect of acquittal from the charge and clearance from guilt and, therefore, there was hardly any occasion for the legislature to provide in section 345, Cr.P.C. that upon a successful composition of an offence the accused person or convict would be acquitted by the court concerned. It was already understood quite well that compounding of an offence would have an automatic "effect of an acquittal" and that was exactly what was legislated through section 345(6), Cr.P.C. and no need was felt to expressly provide for an order of acquittal to be passed by a court on the basis of compounding.

9. A successful and complete composition of a compoundable offence having the "effect of an acquittal" in terms of section 345(6), Cr.P.C. came under discussion in the cases of Kumarisami Chetty v. Kuppusami Chetty and others (AIR 1919 Madras 379(2)), Ram Richpal v. Mata Din and another (AIR 1925 Lahore 159), Jhangtoo Barai and another v. Emperor (AIR 1930 Allahabad 409), Dharichhan Singh and others v. Emperor (AIR 1939 Patna 141); Mt. Rambai w/o Bahadursingh v. Mt. Chandra Kumari Devi (AIR 1940 Nagpur 181), Godfrey Meeus v. Simon Dular (AIR (37) 1950 Nagpur 91) and Prithvi Bhaqat and another v. Birju Sada (AIR 1962 Patna 316) and the *ratio decidendi* of the said cases is summed up as follows:

- (i) A compounding can take place during the trial or during the pendency of an appeal or a revision

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petition and it can take place even before the case has reached the trial court for trial.

(ii) A complete compounding fulfilling the requirements of sub-sections (1) or (2) of section 345, Cr.P.C., as the case may be, cannot be withdrawn or resiled from by any party at any later stage because it has already created the effect of an acquittal of the accused person.

(iii) Composition of a compoundable offence not requiring permission of the court deprives the court of its jurisdiction to try the case or ousts the jurisdiction of the court to try the offence and the court has no other option but to acquit the accused person.

(iv) Composition of a compoundable offence not requiring permission of the court and grant of permission or leave to compound by the relevant court in cases where such permission or leave is required result in immediate acquittal of the accused person.

(v) In some of the above mentioned cases acquittal of the accused person was ordered on the basis of successful and complete composition rather than observing that the composition would only have the effect of an acquittal.

All the above mentioned precedent cases had been taken notice of by this Court in the case of Tariq Mehmood v. Naseer Ahmed, etc. (PLD 2016 SC 347) but the issue relating to compounding of an offence involved in that case was different from the one under discussion here.

10. In the context of the issue at hand it is of critical importance to notice that the heading of section 345, Cr.P.C. is 'Compounding of offences' and the said heading itself says it all that we are trying to find out. A compounding is in respect of the offence regarding which a person has been accused or convicted and it has no direct relevance to his guilt or punishment or even to his conviction or sentence and this is more so because a compounding can take place even before any finding of guilt or conviction is recorded. Through compounding the offence itself is compounded and resultantly the accused person or convict *ipso facto* stands absolved of the allegation leveled or the charge framed against him

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regarding commission of that offence and that is why there is no need for recording his acquittal in that connection because through the act of compounding the offence itself has disappeared or vanished. As already mentioned above, in English language the words "absolve", "acquit" and "clear" are synonymous words and can be used interchangeably in the context of criminal law and this was so acknowledged in the treatises referred to hereinbefore.

11. We find that the controversy over "acquittal" and "effect of an acquittal" in the context of section 345(6), Cr.P.C. and drawing a distinction in this regard between guilt and punishment may be quite unnecessary because for all practical purposes an acquittal or any other dispensation having the effect of an acquittal may not make any difference to the parties to the case or the system of administration of justice in the larger context. An acquittal of an accused person or convict from an allegation or charge of committing an offence entails that he cannot again be subjected to investigation in connection with the same allegation, he cannot be arrested, prosecuted or punished again for committing the same offence and the principle of *autrefois acquit* enshrined in Article 13(a) of the Constitution of Pakistan and also in section 403, Cr.P.C. becomes applicable to him. The acquittal of an accused person or convict also leads to his release from custody if he is in confinement and discharge of his bail bonds and sureties if he is on bail. Such consequences of an acquittal of an accused person or convict can also quite conveniently be called or termed as effects of his acquittal. In this backdrop the only rationale we can decipher as to why the legislature spoke of "effect of an acquittal" in the context of compounding of an offence and did not use the word "acquittal" in section 345(6), Cr.P.C. is that it could not employ or utilize the word acquittal in that context because an acquittal can be ordered in connection with an existing allegation or charge but where the allegation or the charge itself has disappeared, evaporated or vanished or it stands erased or effaced on account of composition of the offence itself there is hardly any occasion for recording an acquittal. In case of such a

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metamorphosis brought about by a composition of the offence the best that the legislature could do was to extend all the benefits and effects of an acquittal to the concerned person and this is exactly what had been done by it through the provisions of section 345(5), Cr.P.C.

12. The issue regarding compounding being relevant only to punishment and not to guilt of the accused person or convict may also be viewed from the angle of conviction and sentence and we note in that context that in the Code of Criminal Procedure, 1898 the legislature was quite conscious of the distinction between a conviction and a sentence or, in other words, between guilt and punishment. Section 412, Cr.P.C. speaks of conviction and sentence separately and provides for a situation where relief may be extended only in the matter of sentence and not in the matter of conviction. Sections 169 and 249, Cr.P.C. speak only of an accused person's release pending an investigation or trial when he is in custody without making any mention of his guilt. In the same statute the legislature, if it was so minded, could have provided in section 345, Cr.P.C. that as a result of compounding of an offence the person concerned would be released from custody or that he would not be liable to any punishment but his guilt in the matter would stand undisturbed but the legislature did not say that. In that section the legislature did not even provide for release of the accused person or convict from custody or his acquittal as a consequence of compounding and such silence of the legislature in those regards was a silence which said it all when it mentioned that all the effects of acquittal would automatically flow from the compounding. Such effects of acquittal could not be ordered to flow from the compounding unless the compounding itself amounted to, without saying so, nothing but acquittal by operation of the law. It may be appreciated in this context that an acquittal or the effects of it in criminal law are necessarily relevant to guilt of a person and criminal jurisprudence and law do not envisage or contemplate removal of punishment while impliedly maintaining a person's guilt. Such an approach may be debated in theological or

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sociological contexts and that too only in an academic sense but for importing the same into criminal jurisprudence and law one would have to rewrite the same which exercise we are neither ready nor equipped or qualified to undertake.

13. The stance sometimes taken in favour of keeping the relevant person's guilt intact while doing away with his punishment on the basis of compounding of an offence is premised upon considerations other than legal. According to this stance such a person should be kept away from public offices and civil services, etc. because he is an adjudged criminal who was once found guilty of an offence but he got away with his punishment because of compounding of the relevant offence. In his separate note recorded in the case of Mureed Sultan and others v. The State through P. G. Punjab and another (2018 SCMR 756) our learned brother Qazi Faiz Isa, J. had raised similar concerns in this regard as had been voiced by his lordship in his lordship's separate note dated 21.03.2017 recorded in the present matter. In the said case of Mureed Sultan and others our learned brother had observed as under:

"7. Some may question the significance of the entire discussion, and enquire, if a court has accepted the application under section 345 of the Code and the convict has been released from jail what difference would his acquittal make. There are grave consequences. A man who has committed murder but is "acquitted" merely because the legal heirs of the murdered person compound the offence, would enable the murderer, for instance, to honestly declare on a job application that he is not and has never been a convict; he could thus be eligible to apply for government employment, be employed as a teacher, be inducted into the Armed Forces, enter the judicial service or even be appointed as a judge of the superior courts. There is then the religious aspect to the discussion. The person who has committed the sin of murder if he professes his guilt or is convicted in this world, and serves out his sentence or is released as a consequence of the legal heirs forgiving him, may be spared the agony of punishment in the Hereafter."

While appreciating the intensity and sincerity of the sentiment expressed and also the gravity of the concerns voiced by our learned brother in respect of different ramifications of the issue not only in the context of public life in this world but also regarding the Hereafter we have, with utmost respect, not been able to bring

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ourselves to agree with his lordship so as to interpret the existing law in the light of some hypothetical possibilities in this world and retribution or redemption in the Hereafter. It is not for us to consider as to how such a person would be dealt with by Almighty Allah in the next world or on the Day of Judgment as our job is only to interpret and apply the law of the land as it exists. Our short response to such stance is that it is based upon nothing but good intentions and pious wishes, it stems from mere possibilities conjured up by a noble and public-spirited mind, it involves public policy and it is for the legislature to amend the relevant laws, etc. to keep such a person out of the public life, if it so desires and decides. Without introducing appropriate amendments in the criminal law in vogue in the country there is little scope for canvassing such collateral or incidental punishments for a person and as long as the law of the land stands as it is all the fruits and effects of acquittal have to be extended to such person on the basis of a complete and lawful compounding of the offence with him. Be that as it may, this Court has already rejected a similar argument based upon this very stance in the above mentioned case of Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695) with the following observations:

"9. ----- It has already been clarified by this Court in the case of Dr. Muhammad Islam v. Government of N-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar (1998 SCMR 1993) as follows:

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal court and this Court had

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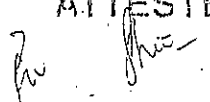
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declared that an acquittal had no shades and there was no concept of honourable or dishonourable acquittals. It had specifically been noted by this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". If that be the case then the respondent in the present case could not be stigmatized or penalized on account of his acquittal on the basis of a compromise. -----

10. As regards the submission made by the learned counsel for the appellants based upon the issue of propriety of reinstating in service a person who, by virtue of compounding of an offence of murder, is a self-condemned murderer we may observe that we have pondered over the said issue from diverse angles and have not felt persuaded to agree with the learned counsel for the appellants. Experience shows that it is not always that a compromise is entered into by an accused person on the basis of admission of guilt by him and in many cases of false implication or spreading the net wide by the complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from courts of law after arduous, expensive and long legal battles. Even in the present case the respondent and his brother were accused of launching a joint assault upon the deceased upon the bidding and command of their father and before the learned trial court the respondent's brother had maintained in unequivocal terms that he alone had murdered the deceased and the respondent and their father had falsely been implicated in this case. Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purposes vis-a-vis the criminal charge against him as is evident from the concept of *autrefois acquit* embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of the Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, *Afw* (waiver) or *Sulh* (compounding) in respect of an offence has the effect of purging the offender of the crime. In this backdrop we have found it difficult as well as imprudent to lay it down as a general rule that compounding of an offence invariably amounts to admission of guilt on the part of the accused person or that an acquittal earned through such compounding may have ramifications *qua* all spheres of activity of the acquitted person's life, including his service or employment, beyond the criminal case against him. We may reiterate that in the case of Dr. Muhammad Islam (supra) this Court had categorically observed that "All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals". The sway of those observations made by this Court would surely also encompass an acquittal obtained on the basis of compounding of the offence. It is admitted at all hands that no allegation had been leveled against the respondent in the present case regarding any illegality, irregularity or impropriety committed by him in relation to his service and his acquittal in the case of murder had removed the only blemish cast upon him. His conviction in the case of murder was the only ground on which he had been removed from service and the said ground had subsequently disappeared through his acquittal, making him reemerge as a fit and proper person entitled to continue with his service."

(underlining has been supplied for emphasis)

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14. Ordinarily an acquittal recorded by a trial court in a criminal case means that the charge framed against an accused person in respect of committing an offence has not been proved and he is, thus, judicially exonerated from the allegation. In our country in some special circumstances provided for in sections 249-A and 265-K, Cr.P.C. an acquittal can also be recorded by a trial court even before framing of a formal charge where the allegation leveled is found to be groundless or there is no probability of the accused person's conviction even if a trial is conducted. After an accused person is convicted and sentenced by a trial court he can be acquitted by a higher Court through an appeal or a revision petition and upon such acquittal his conviction and sentence are set aside. Compounding or composition of an offence is, however, a distinct dispensation of its own kind and it has to be understood in its own context without mixing or confusing it with concepts of conviction, sentence and acquittal. The references made above to Roscoe Pound's book, Black's Law Dictionary and Concise Oxford Dictionary show that composition of an offence serves a purpose different from that ordinarily served by the judicial process, but brings about reconciliation between the parties, it buys off the vengeance of him to whom an injury had been done by paying spear from side rather than bearing it, through it vengeance of the victim is bought off through reparation, it achieves satisfaction for an injury rather than punishment for the injury and it defers acts of revenge by the injured party. Likewise, to compound means to agree not to prosecute a crime, to settle a dispute by concession or special agreement, to condone an offence in exchange for money or any other consideration, to forbear from prosecuting a crime and to come to terms with a person for forgiving a claim, etc. for an offence. We understand that the true meanings and objects of the special dispensation of compounding or composition of offences are to be appreciated and recognized in this context rather than in the narrow context of conviction, sentence and acquittal and this is probably why section 345(6), Cr.P.C. speaks of a composition in

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have the effect of an acquittal and does not speak of setting aside of conviction and sentence and the resultant acquittal from charge.

15. Any controversy over the issue that a person's guilt already determined judicially cannot be undone by the victim or his heirs on their own has appeared to us to be misconceived as the same overlooks the provisions of sub-sections (5) and (5-A) of section 345, Cr.P.C. according to which

(5) When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard.

(5-A) A High Court acting in the exercise of its power of revision under section 439 and a Court of Session so acting under section 439-A, may allow any person to compound any offence which he is competent to compound under this section.

(bold letters have been supplied for emphasis)

It is, thus, obvious that in a case where a court has already convicted a person of a compoundable offence and has held him guilty there no compounding of the offence by the victim or his heirs with the convict can take effect or can be said to be successful or complete unless the relevant appellate or revisional court grants leave to compound or allows the proposed composition. The law, therefore, clearly envisages not only involvement but also decision of the relevant court in finalization of the proposed composition of offence in such a case and it cannot be said that guilt of the convicted person is undone by the victim or his heirs on their own. It goes without saying that the matter of granting or refusing leave to compound and allowing or disallowing the same lies in the discretion of the relevant court and before taking a decision in that regard the court concerned has to apply its judicial mind to the facts and circumstances of the case in their totality and also to consider desirability or otherwise of granting permission in that respect. This aspect of the matter had been

considered by this Court in the case of Naseem Akhtar and another
v. The State (PLD 2010 SC 938) and it was observed as under:

"5. In the above context, the relevant parts of the section 345(5) and (7), Cr.P.C. are reproduced as below.

S.345(5)

"When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard "

S.345(7)

"No offence shall be compounded except as provided by this section".

Before proceeding to analyze the noted provision, it may be pertinent to mention here that the expressions "an appeal is pending" and "the Court" appearing *ibid* (section 345(5) for all intents and purposes of the law shall also mean the leave petition pending before this Court. Be that as it may, because of the use of word 'No', in both the subsections the command of law is in the negative form, thus, the composition of an offence is prohibited lacking (without) the leave of the Court. As per the Black's Law Dictionary (Fifth Edition 801), the noted expression is defined to mean "Permission obtained from a Court to take some action which, without such permission, would not be allowable." Thus, the object requiring leave from the Court as per the clear intention of the legislature is neither meaningless nor purposeless and it cannot be construed that while considering the compromise plea, even of a compromise which is lawfully entered, by free consent of the legal heirs, the Court, should act in a mechanical manner and allow the same as a matter of course or routing; should sit as a silent spectator or to conduct as a post office simpliciter and affix a judicial stamp upon it. Rather it is the duty and the prerogative of the Court to determine the fitness of the case for the endorsement and sanction of the compromise and in appropriate cases, where the compromiser and offender is directly or indirectly beneficiary of the crime; the offence is committed or is caused thereof, for an obvious object of grabbing the property of the deceased by the compromiser, through his offspring, who may ultimately benefits himself (the offender) as well, the Court may refuse to give an effect to such a deal, especially coupled with the scenario when the offence is gruesome, brutal, cruel, appalling, odious, gross and repulsive which causes terror and sensation in the society."

(underlining has been supplied for emphasis)

There is no dearth of authority in our country where compounding of offences had been refused by the courts in view of some peculiar features of those cases which fact clearly demonstrates that the ultimate decision whether a compounding of an offence (in serious cases requiring permission or leave of the court as opposed to less

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serious cases involving petty offences not requiring permission of the court for the purpose) is allowed or not lies with the courts and not with the victims or their heirs. The issues highlighted by our learned brother Qazi Faez Isa, J. and mentioned above may be relevant to the concerned court at the time of granting or refusing permission or leave in respect of the proposed composition but after such permission or leave has been granted by the court and the proposed composition is successfully completed the accused person or convict is to be acquitted and such acquittal is to entail all the fruits and effects of a lawful acquittal. This Court has already declared, as referred to above, that an acquittal has no shades and there are no honourable or dishonourable acquittals.

16. It may be appreciated in this context that the law of the land permits compounding of some offences and through the act of compounding the victim or his heirs absolve the accused person or convict of the guilt and if such composition is allowed or permitted by the relevant court, where required, then because of a successful and complete composition the offence itself vanishes leaving no issue about guilt or otherwise alive. An offence is generally against the State and the society at large but the legislature has made some of the offences compoundable which is a recognition that wishes of the victims or their heirs have an important role in prosecution of such offences and adjudication regarding guilt and punishment therein, subject of course to permission or leave of the court for composition where required. In some of the precedent cases referred to above it had categorically been held that once a composition is complete in respect of a compoundable offence not requiring permission of the court the concerned court is divested of its jurisdiction to try the case or the offence. The references made to Black's Law Dictionary and Concise Oxford Dictionary also amply demonstrate that to compound means to agree not to prosecute a crime, to settle a dispute by concession or special agreement, to condone an offence in exchange for money or any other consideration, to forbear from prosecuting a crime and to come to terms with a person for forgoing a claim, etc. for an

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offence. The decision not to prosecute a person for a compoundable offence allegedly committed by him or the decision to absolve him of his guilt even where it has been judicially determined are decisions which have been given by the legislature in the hands of the victims or their heirs by making the offence compoundable and in cases where permission or leave of a court is required for composition of such offence this spirit of the law is to be kept in view and the requisite permission or leave may ordinarily not be withheld or refused unless the facts and circumstances of the case persuade the relevant court otherwise. Carrying the spirit of composition (forgiveness and reconciliation) forward we may add that grant of the requisite permission or leave by the court in such cases should be a rule and its withholding or refusal an exception. Composition of a compoundable offence is a concession extended by the legislature and also by the religion of Islam to the victims and their heirs and the same may not lightly be taken away or whittled down by the courts.

17. As a result of the discussion made above we declare the legal position as follows:

(i) As provided by the provisions of section 338-E(1), PPC and the first proviso to the same and as already declared by this Court in the case of *Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan* (PLD 2010 SC 695) as a result of a successful and complete compounding of a compoundable offence in a case of Ta'zir under section 345, Cr.P.C., with permission or leave of the relevant court where required, an accused person or convict is to be acquitted by the relevant court which acquittal shall erase, efface, obliterate and wash away his alleged or already adjudged guilt in the matter apart from leading to setting aside of his sentence or punishment, if any.

(ii) In the context of the provisions of section 345(6), Cr.P.C. the effect of an acquittal recorded by a court on the basis of a

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successful and complete compounding of a compoundable offence shall include all the benefits and fruits of a lawful acquittal.

Sq/- Asif Saeed Khan Khattak

Sq/- Jazirul Ahsani

Syed Mansoor Ali Sheikh



Islamabad
June 27, 2018
Approved for reporting.
Arif Ali
29/6/18

Certified to be True Copy
[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad