

22.12.2021

Appellant in person present. Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present.

Notices be issued to the respondents with the directions to submit written reply/comments on the next date positively, failing which their right for submission of written reply/comments shall be deemed as struck off. Adjourned. To come up for submission of written reply/comments on 16.02.2022 before the S.B at Camp Court Abbottabad.



(Salah-Ud-Din)
Member (J)

Camp Court Abbottabad

16-2-22


Due to Retirement of worthy chair-man the Tribunal Non Functional to come up for the same on Dated. 20-7-22 at camp court A.A bad

Resides

20th July 2022

None for the appellant present. Mr. Noor Zaman Khattak; District Attorney alongwith Mr. Muhammad Nazir, Assistant for the respondents present.

Written reply submitted on behalf of the respondents which is placed on file. To come up for arguments on 21.09.2022 before D.B at camp court Abbottabad.



(Kalim Arshad Khan)
Chairman


Camp Court Abbottabad


21st Sept 2022

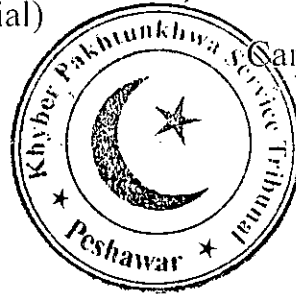
1. None for the petitioner present. Mr. Muhammad Jan, District Attorney for respondents present.

2. On previous date neither the appellant nor his counsel was present. Today the case was called for several times till last hours of the court but nobody has turned up on behalf of the appellant, therefore, this appeal is dismissed in default. Consign.

3. *Pronounced in open court in Camp Court Abbottabad and given under our hands and seal of the Tribunal on this 21st day of September, 2022.*


(Fareeha Paul)
Member(Judicial)


(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

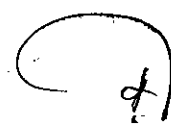


21.05.2021 Due to cancellation of tour, Bench is not available. Therefore, case is adjourned to 28.09.2021 for the same as before.


Reader

28.09.2021 Counsel for appellant present.

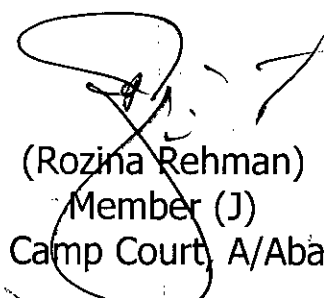
He made a request for adjournment in order to prepare the brief. Adjourned. To come up for preliminary hearing on 29.09.2021 before S.B at Camp Court, Abbottabad.


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

29.09.2021 Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of reply/comments in the office within 10 days of the receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 22.12.2021 before S.B at Camp Court, Abbottabad.



Appellant Deposited
Security & Process Fee


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 15608 /2020

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 07/12/2020 | <p>The appeal of Mr. Muhammad Junaid received today by post through Mr. Shad Muhammad Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>21-05-2021</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: center;">2</p> |

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, K.P.K. PESHAWAR**

Muhammad Junaid.....Appellant

Versus

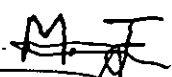
Deputy Inspector General of Police,
Hazara Range Abbottabad and
other.....Respondents

**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT**

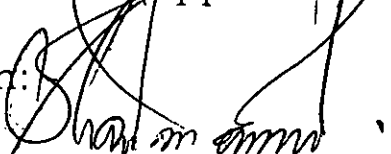
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| 6. | Wakalat Nama | - | 15 |

Dated 07/12/2020


Muhammad Junaid
(Appellant)

Through:


SHAD MUHAMMAD KHAN
Advocate Supreme Court of
Pakistan (Mansehra)

P-①

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, K.P.K. PESHAWAR**

15608/20

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16218

Dated 07/12/2020

Muhammad Junaid son of Muhammd
javed, caste Gujjar, resident of
Salayian, Tehsil and District Mansehra,
Ex-Constable No. 1329 District Police
Mansehra.....**Appellant**

Versus

- 1) Deputy Inspector General of
Police, Hazara Range Abbottabad.
- 2) District Police Officer, Mansehra
.....**Respondents**

**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT
AGAINST THE IMPUGNED ORDERS
NO. OB 239 DATED 24.09.2020 AND
29456/PA DATED 12.11.2020
PASSED BY THE RESPONDENTS MAY
GRACIOUSLY BE SET ASIDE AND
THE APPELLANT MAY KINDLY BE
RE-INSTATED INTO SERVICE.**

Filed to-day

Registrar

7/12/2020

PRAYER: -

On acceptance of instant appeal
the impugned orders passed by
the respondents may kindly be
set-aside and the appellant may

2

graciously be re-instated into service with all back benefits.

Respected Sir,

Brief facts leading to the instant appeal are arrayed as follows: -

- 1) That, Mr. Shahzad son of Ali Khan, resident of Phulra was killed by the police and the case was registered vide FIR No. 208 dated 06.11.2018 under section 302PPC, PS Phulra. Later-on the deceased party was compensated through the appointment of appellant and Muhammad Khurshid vide order book No. 90 dated 13.05.2019. The services of appellant was also regularized vide order book No. 96 dated 23.04.2020. Respondent No. 1 passed an order vide which the appellant was discharged vide order No. 239 dated 24.09.2020.

(Copy of order is annexed as Annexure "A").

- 2) That, the appellant aggrieved by the order of discharge submitted an appeal before respondent No.2 who also dismissed appeal.

(Copies of order and appeal are annexed as Annexure "B" & "C").

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- 3) That, the order of discharge is against the facts and law and is not maintainable in the eye of law.
- 4) That, the appellant was fully qualified for the post and the department itself has appointed the appellant and now they cannot take the benefits of its own lapses. Whenever any irregularity is committed in the manner of appointment, subsequently department cannot derive any dividend from its own acts.
- 5) That, the appellant was appointed who served the department and respondent No. 1 was bound to have serve a show cause notice.
- 6) That, respondent No. 1 was bound to have conducted an inquiry by issuing charge sheet, statement of allegation and there-after respondent No. 1 was at liberty to have pass any order in accordance with fact and circumstances of the case.
- 7) That, the appellant has been condemned unheard and the

order on this score is not maintainable in the eye of law.

That, petitioner seeks indulgence of this Honourable Tribunal *intr-alia*, on the following grounds: -

GROUNDS: -

- A) That, the impugned orders passed by the respondents are wrong, illegal, against the law and facts. Hence, not tenable in the eye of law.
- B) That, the appellant was appointed as constable in police department and served the department devotedly to the best satisfaction of the high-ups.
- C) That, respondent No. 1 passed an order denoting that the appointment of the appellant was irregular who was appointed as compensation to the heirs of Mr. Shahzad who was killed by the police party and the service of the appellant was also regularized. Respondent No. 1 passed the order in the light of observation given by the court which led to the discharge of the appellant from service.

D) That, it has been led down by the Apex Court that the department itself had appointed the civil servant against a post in violation of rules cannot allowed to take benefit of its lapses in order to terminate services of civil servant merely because it had committed a irregularity and violating procedure governing such appointment. The department cannot take dividend from its own fault or lapses.

E) That, the orders of both the respondents is result of misreading and non-reading of record.

F) That, the appellant is belongs to poor family and the service of the appellant was only the source of his family members.

G) That, the appeal is well within time.

H) That, other points will be discussed/raised at the time of arguments.

In view of the above circumstances and facts it is therefore, most humbly

⑥

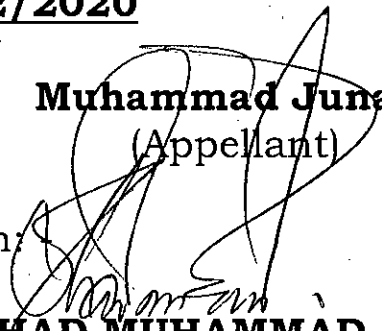
prayed and requested that on acceptance of instant appeal the impugned orders passed by the respondents may kindly be set-aside and the appellant may graciously be reinstated into service with all back benefits.

M.J

Dated 07/12/2020

Muhammad Junaid
(Appellant)

Through:


SHAD MUHAMMAD KHAN
Advocate Supreme Court of
Pakistan (Mansehra)

VERIFICATION

I, MUHAMMAD JUNAID SON OF MUHAMMD JAVED, CASTE GUJJAR, RESIDENT OF SALAYIAN, TEHSIL AND DISTRICT MANSEHRA, EX-CONSTABLE NO. 1329 DISTRICT POLICE MANSEHRA DO HEREBY VERIFY THAT THE CONTENTS OF FORE-GOING APPEAL ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.

M.J

MUHAMMAD JUNAID
(DEPONENT)

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, K.P.K. PESHAWAR**

Muhammad Junaid.....**Appellant**

Versus

Deputy Inspector General of Police,
Hazara Range Abbottabad and
other.....**Respondents**

**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT**

CORRECT ADDRESSES OF THE PARTIES

Respected Sir,

Correct addresses of the parties are as
under: -

APPELLANT

Muhammad Junaid son of Muhammd
javed, caste Gujjar, resident of
Salayian, Tehsil and District Mansehra,
Ex-Constable No. 1329 District Police
Mansehra

RESPONDENTS

- 1) Deputy Inspector General of Police,
Hazara Range Abbottabad.
- 2) District Police Officer, Mansehra

Dated 07/12/2020

M.J.

Muhammad Junaid
(Appellant)

Through

SHAD MUHAMMAD KHAN
Advocate Supreme Court of
Pakistan (Mansehra)

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, K.P.K. PESHAWAR**

Muhammad Junaid.....Appellant

Versus

Deputy Inspector General of Police,
Hazara Range Abbottabad and
other.....Respondents

**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT**

AFFIDAVIT

I, MUHAMMAD JUNAID SON OF MUHAMMD JAVED, CASTE GUJJAR, RESIDENT OF SALAYIAN, TEHSIL AND DISTRICT MANSEHRA, EX-CONSTABLE NO. 1329 DISTRICT POLICE MANSEHRA DO HEREBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT NO SUCH SUBJECT MATTER APPEAL HAS EVERBEEN FILED NOR PENDING NOR DECIDED. THAT THE CONTENTS OF FORE-GOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.

M.J.

MUHAMMAD JUNAID
(DEPONENT)



ANNEX = "A"

OFFICE OF THE DISTRICT POLICE OFFICER MANSEHRA
(Khyber Pakhtunkhwa Police)

No. 17867 /OHC, dated 24/09/2020

Tel: No. 0997-920102 and Fax No. 0997-920104

E-mail: dpomansehra@hotmail.com

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ORDER

In compliance with the order of the MCTC/Additional Session Judge-IV Mansehra vide order dated 07-09-2020, the office record transpired that the appointment of Muhammad Junaid No. 11/SPF and Muhammad Khurshid No. 68/SPF in Police Department as SPF vide OB No. 90 dated 13-05-2019 and OB No. 114 dated 21-06-2019 was made as compensation to the heirs of Mr. Shahzad s/o Ali Khan r/o Daverian-Phulra who was killed by police party vide FIR No. 208 dated 06-11-2018 U/S 302 PPC PS Phulra. Later on, both the above police constables were regularized vide OB No. 96, dated 23-04-2020. At present their regular service is 6 months and 22 days. Since, their appointment was irregularly made and the learned court has declared that the appointment of Muhammad Junaid No. 1329 and Muhammad Khurshid No. 1315 in police service on the pretext of compensation in lieu of murder of deceased is not justified and ab-initio-void.

Therefore, I, the District Police Officer, Mansehra, under power conferred upon me by Police Rules 12.21, hereby discharge Constable Muhammad Junaid No. 1329 and Constable Muhammad Khursheed No. 1315 from service with immediate effect. Since the total regular service of Constable Muhammad Junaid No. 1329 and Constable Muhammad Khursheed No. 1315 is less than three years so there shall be no appeal against an order of discharge under this rule.

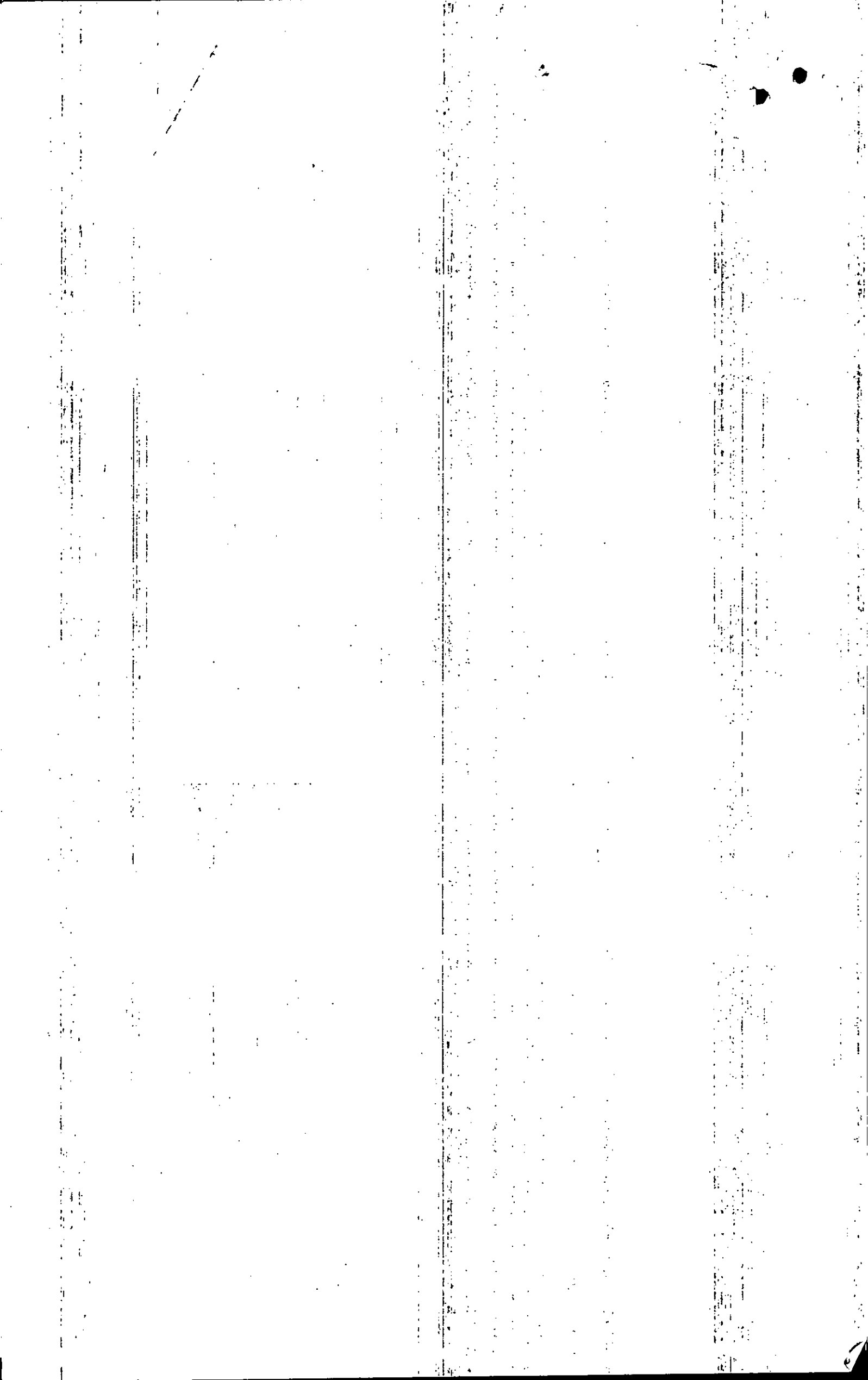
OB No. 239

Dated 24/09/2020

Attested
District Police Officer,
Mansehra

District Police Officer,
Mansehra

Shad Muhammad Khan
Advocate Supreme Court
of Pakistan.



10

Office of the Superintendent
No. 1891
Date 22/04/2020
Mulla Begum



Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department
Dated Peshawar the April 8th, 2020

NOTIFICATION

No.S0(Budget)/HT/15-29/2016 Vol-II: In pursuance of the provisions contained in Section 3 read with Section 5 of the Khyber Pakhtunkhwa Special Police Officers (Regularization of Services) Act, 2019 (Khyber Pakhtunkhwa Act No.XXVII of 2019) and on the recommendation of Provincial Police Officer, Khyber Pakhtunkhwa and approval of the Provincial Cabinet, the Home and Tribal Affairs Department is pleased to notify herewith regularization of the following Special Police Officers (SPOs) working in District Manshara under DDO Code MA4027- Law & Order Manshara as Constables (BPS-07) with effect from 01-03-2020:

| S.No | Name | Father Name | Belt No. |
|------|--------------------|----------------------------|----------|
| 1 | Babar Khan | Muhammad Shafique | 1 |
| 2 | Amir Khan | Farooz Khan | 2 |
| 3 | Babar Ali | Ghulam Khan | 3 |
| 4 | Naeem Iqbal | Muhammad Iqbal | 4 |
| 5 | Muhammad Tahir | Muhammad Ejaz | 5 |
| 6 | Yasir Shah | Syed Mazhar Hussain Shah | 6 |
| 7 | Syed Bilal Shah | Syed Makhdoom Hussain Shah | 7 |
| 8 | Faheem | Abdul Razzaq | 8 |
| 9 | Umar Tariq | Muhammad Tariq | 9 |
| 10 | Muhammad Sajid | Wali ur Rehman | 10 |
| 11 | Muhammad Junaid | Muhammad Javed | 11 |
| 12 | Bilal Bashir | Muhammad Bashir | 12 |
| 13 | Shabaz Ahmad | Muhammad Farooq | 13 |
| 14 | Gul Fraz | Riaz Muhammad | 14 |
| 15 | Arsallan Ahmad | Muhammad Yousaf Khan | 15 |
| 16 | Salma Sattar | w/o Shoaib Akhtar | 16 |
| 17 | Naheem Khan | Muhammad Javed | 17 |
| 18 | Abdul Shaheed | Khasta Khan | 18 |
| 19 | Muhammad Ejaz Zeb | Aurang Zeb | 19 |
| 20 | Muhammad Javed | Muhammad Hussain | 20 |
| 21 | Muhammad Usman | Muhammad Farooq | 21 |
| 22 | Musadiq Shalrizad | Syed Liaqat Ali Shah | 22 |
| 23 | Qamar Manzoor | Manzoor | 23 |
| 24 | Tehseen Ahmad | Qazi Muhammad Shafi Khokar | 24 |
| 25 | Nadir Haroon | Muhammad Haroon | 25 |
| 26 | Muhammad Bilal | Muhammad Faridoo | 26 |
| 27 | Shoaib | Shamriaz Akhtar | 27 |
| 28 | Muhammad Akram | Muhammad Nawaz | 28 |
| 29 | Muhammad Tahir | Ghulam Mustafa | 29 |
| 30 | Mansoor Shah | Syed Manzoor Hussain Shah | 30 |
| 31 | Manzoor Hussain | Saidur Rehman | 31 |
| 32 | Aman | Muhammad Allaf | 32 |
| 33 | Sajjad Ahmad | Aurang Zeb | 33 |
| 34 | Shoaib Ahmad | Awal Khan | 34 |
| 35 | Nasir Hussain Shah | Syed Mazhar Hussain Shah | 35 |
| 36 | Ishtiaq | Arbab | 36 |
| 37 | Muhammad Ejaz | Muhammad Maroof | 37 |

Signature
District Police Officer
Manshara

Attested.
Signature
Shad Muhammad Khan
Advocate Supreme Court
of Pakistan.

P - 11

95
97
99
100

| | | | |
|----|--------------------|-----------------------|----|
| 38 | Muhammad Arshad | Muhammad Noor | 38 |
| 39 | Syed Ali Shah | Syed Wakeel Shah | 39 |
| 40 | Ghulam Mustafa | Ashiq Hussain | 40 |
| 41 | Saqib Nawaz | Haq Nawaz | 41 |
| 42 | Ehsan Khan | Muhammad Sheeraz Khan | 42 |
| 43 | Muhammad Saqib | Ali Mardan Khan | 43 |
| 44 | Halder Ali | Muhammad Rafique | 44 |
| 45 | Wajid | Abdul Qayoom | 45 |
| 46 | Jawad | Nawaz Ahmad | 46 |
| 47 | Zahid | Shad Muhammad | 47 |
| 48 | Mubashir Noshad | Noshad Khan | 48 |
| 49 | Faizan Fida | Fida Hussain | 49 |
| 50 | Rashid | Muhammad Hussain | 50 |
| 51 | Israr Ahmad | Malik Dildar | 51 |
| 52 | Arif Dilbar | Dilbar Khan | 52 |
| 53 | Junaid Ahmad | Manzoor Ahmad | 53 |
| 54 | Fazal Rabi | Muhammad Toufeeq Khan | 54 |
| 55 | Abdur Rehman | Faqeer Muhammad | 55 |
| 56 | Fathan Khan | Muhammad Khiyal | 56 |
| 57 | Aurangzeb | Mawali | 57 |
| 58 | Muhammad Ali | Muhammad Zahoor | 58 |
| 59 | Fiaz | Noor Muhammad | 59 |
| 60 | Shoukat | Fazal ur Rehman | 60 |
| 61 | Waqar Hussain Shah | Allaf Hussain Shah | 61 |
| 62 | Uzair Shahzad | Muhammad Shezad | 62 |
| 63 | Muhammad Adil | Muhammad Khushal | 63 |
| 64 | Gul Faraz | Sardar Muhammad | 64 |
| 65 | Akram Shahzad | Muhammad Fareed | 65 |
| 66 | Muhammad Hatoon | Ali Zaman | 66 |
| 67 | Muhammad Nisar | Kachoo | 67 |
| 68 | Muhammad Khurshid | Behram Khan | 68 |
| 69 | Abdul Hakeem | Abdul Bahas | 69 |
| 70 | Muhammad Waheed | Ghulam Sarwar | 70 |
| 71 | Ahsan Rasheed | Abdul Rasheed | 71 |
| 72 | Faizan Khan | Mushtaq Ahmad | 72 |
| 73 | Sabir Hussain | Muhammad Fareed | 73 |
| 74 | Muhammad Fiaz | Khail ur Rehman | 74 |
| 75 | Khurram Shahzad | Ali Akbar | 75 |
| 76 | Razaqat | Gul Zaman | 76 |
| 77 | Muhammad Adil | Taj Muhammad | 77 |
| 78 | Hamid Hussain | Muhammad Hussain | 78 |
| 79 | Muhammad Jehangir | Muhammad Arif | 79 |
| 80 | Muhammad Adil | Muhammad Zaman | 80 |
| 81 | Fazal ur Rehman | Muhammad Ameen | 81 |
| 82 | Sheriyar Khan | Faiz Muhammad | 82 |
| 83 | Shahid Khan | Shamroz Khan | 83 |
| 84 | Habib Ullah | Samlullah | 84 |
| 85 | Fazal Ameen | Shah Jehan | 85 |
| 86 | Zakir | Khasta Khan | 86 |
| 87 | Tayub | Ghulam Mustafa | 87 |
| 88 | Amir Shahzad | Muhammad Sulman | 88 |
| 89 | Adil Shahzad | Jalil ur Rehman | 89 |
| 90 | Juma Khan | Shamsul Yameen | 90 |
| 91 | Awais Ahmed | Muhammad Idrees | 91 |
| 92 | Muhammad Khurshid | Abdul Rasheed | 92 |
| 93 | Sher Afzal | Malik ur Rehman | 93 |

District Police
Muzaffargarh

ANNEX = P^a C
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P-12

**BEFORE THE DIG HAZARA RANGE
ABBOTTABAD**

**APPEAL AGAINST THE ORDRE OF DPO
MANSEHRA, DATED: 24.09.2020 VIDE
WHICH THE APPELLANT HAS BEN
DISMISSED FROM SERVICE.**

Prayer!

**ON ACCEPTANCE OF THE INSTANT APPEAL
THE IMPUGNED ORDER OF DISCHARGE
MAY KINDLY BE SET-ASIDE AND THE
APPELLANT MAY KINDLY BE REINSTATED
ON SERVICE.**

Respected Sir,

The brief facts leading to the instant appeal are arrayed as follows.

1. That, the appellant was appointed as a constable in police department on 13.05.2019 and thereafter the appellant was serving the department devotedly to the best satisfaction of his senior officers.
2. That, the appellant was a regularized by the IGP KPK Peshawar in the light of KPK Special officers (Regularization of Service Act 2019) and approval for regularization was also accorded by provincial cabinet which led to regularization of service of the appellant and others. **(The Copy of notification is attached herewith).**
3. That, DPO Mansehra passed an order denoting that, the appointment of the appellant was irregular who was appointed as compensation to the heirs of Mr. Shehzad who was killed by the police party and the service of the appellant was also regularized. DPO Mansehra passed the order in the light of observation given

by the Court which led to the discharge of the appellant from service.

- 4. That, it has been led down by the Apex Court that the department itself had appointed the civil servant against a post in violation of rules can not nor allowed to take benefit of its lapses in order to terminate services of civil servant merely because it had committed a irregularity and violating procedure governing such appointment. The department can not take dividend from its own fault or lapses.

It is therefore, most humbly prayed and requested that, on acceptance of instant appeal in the light of above the order of discharge may kindly be set-aside and the appellant may kindly be reinstated on service.

Dated: 07.10.2020

M. J.

Muhammad Junaid
.....Appellant
Constable No. 1329

Attested.

[Signature]

Shad Muhammad Khan
Advocate Supreme Court
of Pakistan.



ANNEX = "D"

OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

P-14

0992-9310021-22

0992-9310023

r.rpohazara@gmail.com

0345-9560687

NO: 2944 /PA DATED 12/11/2020

ORDER

This order will dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Ex. Constable Muhammad Junaid No.1329 of District Mansehra against the punishment order i.e. *Discharged from Service* awarded by DPO Mansehra vide OB No.239 dated 24.09.2020.

Brief facts leading to the punishment are that the appellant was appointed as SPF constable vide OB No. 90 dated 13.05.2019 in lieu of compensation to the heirs of deceased Shazad s/o Ali Akbar r/o Deverian, Phulra, who was killed during raid of a police party vide FIR No. 208 dated 06.11.2018 u/s 302 PPC PS Phulra. Later on the appellant has been regularized vide OB No.96 dated 23.04.2020. Since, his appointment was irregularly made and the learned court has declared that the appointment of Muhammad Junaid No.1329 and Muhammad Khurshid No.1315 in Police service on the pretext of compensation in lieu of murder of deceased is not justified and *ab-initio-void*. The father of the deceased submitted an application before the trial court by virtue of which he disowned the appointments.

Consequently, in compliance with the order of MCTC/Additional Session Judge-IV Mansehra vide order dated 07-09-2020 the appellant was discharged from service under Rule 12:21 of PRs vide OB No. 239 dated 24-09-2020. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Mansehra were sought and examined/perused. The undersigned called the official in OR and heard him in person. After perusal of relevant record it has been noticed that the appointment of the appellant was irregular and unjustified. The appeal being meritless is liable to be dismissed. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-4 (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby *filed* with immediate effect.

8.10

12.12

Signature of Qazi Jamil ur Rehman

Qazi Jamil ur Rehman (PSP)
REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

No. 29465 /PA, dated Abbottabad the 12/11/2020.
CC.

- 1. The District Police Officer, MANSEHRA for information and necessary action with reference to his office Memo No.19433/GB dated 15-10-2020. Service Roll and Fuji Missal containing enquiry file of the appellant is returned herewith for record.

Signature of Shad Wahid Muhammad Khan

Shad Wahid Muhammad Khan
Advocate Supreme Court
of Pakistan.

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, K.P.K. PESHAWAR**

Muhammad Junaid.....Appellant

Versus

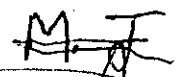
Deputy Inspector General of Police,
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**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT**


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Dated 07/12/2020


Muhammad Junaid
(Appellant)

Through:


SHAD MUHAMMAD KHAN
Advocate Supreme Court of
Pakistan (Mansehra)

P - ①

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, K.P.K. PESHAWAR**

Muhammad Junaid son of Muhammd
javed, caste Gujjar, resident of
Salayian, Tehsil and District Mansehra,
Ex-Constable No. 1329 District Police
Mansehra.....**Appellant**

Versus

- 1) Deputy Inspector General of
Police, Hazara Range Abbottabad.
- 2) District Police Officer, Mansehra
.....**Respondents**

**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT
AGAINST THE IMPUGNED ORDERS
NO. OB 239 DATED 24.09.2020 AND
29456/PA DATED 12.11.2020
PASSED BY THE RESPONDENTS MAY
GRACIOUSLY BE SET ASIDE AND
THE APPELLANT MAY KINDLY BE
RE-INSTATED INTO SERVICE.**

PRAYER: -

On acceptance of instant appeal
the impugned orders passed by
the respondents may kindly be
set-aside and the appellant may

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graciously be re-instated into service with all back benefits.

Respected Sir,

Brief facts leading to the instant appeal are arrayed as follows: -

1) That, Mr. Shahzad son of Ali Khan, resident of Phulra was killed by the police and the case was registered vide FIR No. 208 dated 06.11.2018 under section 302PPC, PS Phulra. Later-on the deceased party was compensated through the appointment of appellant and Muhammad Khurshid vide order book No. 90 dated 13.05.2019. The services of appellant was also regularized vide order book No. 96 dated 23.04.2020. Respondent No. 1 passed an order vide which the appellant was discharged vide order No. 239 dated 24.09.2020.

(Copy of order is annexed as Annexure "A").

2) That, the appellant aggrieved by the order of discharge submitted an appeal before respondent No.2 who also dismissed appeal.

(Copies of order and appeal are annexed as Annexure "B" & "C").

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- 3) That, the order of discharge is against the facts and law and is not maintainable in the eye of law.
- 4) That, the appellant was fully qualified for the post and the department itself has appointed the appellant and now they cannot take the benefits of its own lapses. Whenever any irregularity is committed in the manner of appointment, subsequently department cannot derive any dividend from its own acts.
- 5) That, the appellant was appointed who served the department and respondent No. 1 was bound to have serve a show cause notice.
- 6) That, respondent No. 1 was bound to have conducted an inquiry by issuing charge sheet, statement of allegation and there-after respondent No. 1 was at liberty to have pass any order in accordance with fact and circumstances of the case.
- 7) That, the appellant has been condemned unheard and the

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order on this score is not maintainable in the eye of law.

That, petitioner seeks indulgence of this Honourable Tribunal *intr-alia*, on the following grounds: -

GROUND: -

- A) That, the impugned orders passed by the respondents are wrong, illegal, against the law and facts. Hence, not tenable in the eye of law.
- B) That, the appellant was appointed as constable in police department and served the department devotedly to the best satisfaction of the high-ups.
- C) That, respondent No. 1 passed an order denoting that the appointment of the appellant was irregular who was appointed as compensation to the heirs of Mr. Shahzad who was killed by the police party and the service of the appellant was also regularized. Respondent No. 1 passed the order in the light of observation given by the court which led to the discharge of the appellant from service.

- D) That, it has been led down by the Apex Court that the department itself had appointed the civil servant against a post in violation of rules cannot allowed to take benefit of its lapses in order to terminate services of civil servant merely because it had committed a irregularity and violating procedure governing such appointment. The department cannot take dividend from its own fault or lapses.

- E) That, the orders of both the respondents is result of misreading and non-reading of record.

- F) That, the appellant is belongs to poor family and the service of the appellant was only the source of his family members.

- G) That, the appeal is well within time.

- H) That, other points will be discussed/raised at the time of arguments.

In view of the above circumstances and facts. it is therefore, most humbly

⑥

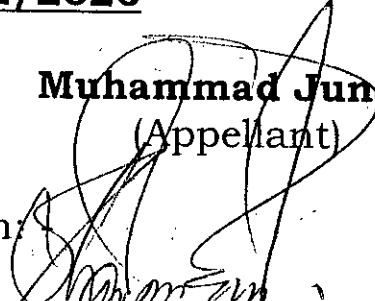
prayed and requested that on acceptance of instant appeal the impugned orders passed by the respondents may kindly be set-aside and the appellant may graciously be reinstated into service with all back benefits.

M. J

Dated 07/12/2020

Muhammad Junaid
(Appellant)

Through


SHAD MUHAMMAD KHAN
Advocate Supreme Court of
Pakistan (Mansehra)

VERIFICATION

I, MUHAMMAD JUNAID SON OF MUHAMMD JAVED, CASTE GUJJAR, RESIDENT OF SALAYIAN, TEHSIL AND DISTRICT MANSEHRA, EX-CONSTABLE NO. 1329 DISTRICT POLICE MANSEHRA DO HEREBY VERIFY THAT THE CONTENTS OF FORE-GOING APPEAL ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.

M. J

MUHAMMAD JUNAID
(DEPONENT)

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, K.P.K. PESHAWAR**

Muhammad Junaid.....**Appellant**

Versus

Deputy Inspector General of Police,
Hazara Range Abbottabad and
other.....**Respondents**

**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT**

CORRECT ADDRESSES OF THE PARTIES

Respected Sir,

Correct addresses of the parties are as
under: -

APPELLANT

Muhammad Junaid son of Muhammd
javed, caste Gujjar, resident of
Salayian, Tehsil and District Mansehra,
Ex-Constable No. 1329 District Police
Mansehra

RESPONDENTS

- 1) Deputy Inspector General of Police,
Hazara Range Abbottabad.
- 2) District Police Officer, Mansehra

Dated 07/12/2020

Muhammad Junaid
(Appellant)

Through

SHAD MUHAMMAD KHAN
Advocate Supreme Court of
Pakistan (Mansehra)

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, K.P.K. PESHAWAR**

Muhammad Junaid.....Appellant

Versus

Deputy Inspector General of Police,
Hazara Range Abbottabad and
other.....Respondents

**APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT**

AFFIDAVIT

I, MUHAMMAD JUNAID SON OF MUHAMMD JAVED, CASTE GUJJAR, RESIDENT OF SALAYIAN, TEHSIL AND DISTRICT MANSEHRA, EX-CONSTABLE NO. 1329 DISTRICT POLICE MANSEHRA DO HEREBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT NO SUCH SUBJECT MATTER APPEAL HAS EVER BEEN FILED NOR PENDING NOR DECIDED. THAT THE CONTENTS OF FORE-GOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.

MJ

MUHAMMAD JUNAID
(DEPONENT)

ATTESTED
* Aurang Zeb Swafi *
Advocate High Court
Notary Public
SO (Jud) 11/14-61/S/152019/Vol-1
Date: 15/01/2019
District Courts Mansehra

ANNEX - "A"

OFFICE OF THE DISTRICT POLICE OFFICER MANSEHRA
(Khyber Pakhtunkhwa Police)

No. 17867 /OHC, dated 24/09/2020

Tel: No. 0997-920102 and Fax No. 0997-920104

E-mail: dpomansehra@hotmail.com

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ORDER

In compliance with the order of the MCTC/Additional Session Judge-IV Mansehra vide order dated 07-09-2020, the office record transpired that the appointment of Muhammad Junaid No. 11/SPF and Muhammad Khurshid No. 68/SPF in Police Department as SPF vide OB No. 90 dated 13-05-2019 and OB No.114 dated 21-06-2019 was made as compensation to the heirs of Mr. Shahzad s/o Ali Khan r/o Daverian-Phulra who was killed by police party vide FIR No. 208 dated 06-11-2018 U/S 302 PPC PS Phulra. Later on, both the above police constables were regularized vide OB No. 96, dated 23-04-2020. At present their regular service is 6 months and 22 days. Since, their appointment was irregularly made and the learned court has declared that the appointment of Muhammad Junaid No. 1329 and Muhammad Khurshid No. 1315 in police service on the pretext of compensation in lieu of murder of deceased is not justified and ab-initio-void.

Therefore, I, the District Police Officer, Mansehra, under power conferred upon me by Police Rules 12.21, hereby discharge Constable Muhammad Junaid No. 1329 and Constable Muhammad Khurshid No. 1315 from service with immediate effect. Since the total regular service of Constable Muhammad Junaid No. 1329 and Constable Muhammad Khurshid No. 1315 is less than three years so there shall be no appeal against an order of discharge under this rule.

OB No. 239
Dated 24/09/2020

Attended
District Police Officer,
Mansehra

[Signature]
District Police Officer,
Mansehra

A.H.S. 1
[Signature]
Shah Muhammad Khan
Advocate Supreme Court
of Pakistan.



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Office of the Superintendent
No. 1891
Date 22/04/2020
Of Police Manshra

Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department
Dated Peshawar the April 8th, 2020

NOTIFICATION

No.SD(Budget)/HD/IS-29/2016 Vol-II; In pursuance of the provisions contained in Section 3 read with Section 5 of the Khyber Pakhtunkhwa Special Police Officers (Regularization of Services) Act, 2019 (Khyb. Pakhtunkhwa Act No.XXVII of 2019) and on the recommendation of Provincial Police Officer, Khyber Pakhtunkhwa and approval of the Provincial Cabinet, the Home and Tribal Affairs Department is pleased to notify herewith regularization of the following Special Police Officers (SPOs) working in District Manshra under DDO Code MA4027- Law & Order Manshra as Constables (BPS-07) with effect from 01-03-2020:

| S.No | Name | Father Name | Belt No. |
|------|--------------------|----------------------------|----------|
| 1 | Babar Khan | Muhammad Shafique | 1 |
| 2 | Amir Khan | Farooz Khan | 2 |
| 3 | Babar Ali | Ghulam Khan | 3 |
| 4 | Naeem Iqbal | Muhammad Iqbal | 4 |
| 5 | Muhammad Tahir | Muhammad Ejaz | 5 |
| 6 | Yasir Shah | Syed Mazhar Hussain Shah | 6 |
| 7 | Syed Bilal Shah | Syed Akhdoom Hussain Shah | 7 |
| 8 | Faheem | Abdul Razzaq | 8 |
| 9 | Umar Tariq | Muhammad Tariq | 9 |
| 10 | Muhammad Sajid | Wali ur Rehman | 10 |
| 11 | Muhammad Junaid | Muhammad Javed | 11 |
| 12 | Bilal Bashir | Muhammad Bashir | 12 |
| 13 | Shabaz Ahmad | Muhammad Farooq | 13 |
| 14 | Gul Fraz | Riaz Muhammad | 14 |
| 15 | Arsalan Ahmad | Muhammad Yousaf Khan | 15 |
| 16 | Salma Sallar | w/o Shoaib Akhtar | 16 |
| 17 | Naheem Khan | Muhammad Javed | 17 |
| 18 | Abdul Shaheed | Khasla Khan | 18 |
| 19 | Muhammad Ejaz Zeb | Aurang Zeb | 19 |
| 20 | Muhammad Javed | Muhammad Hussain | 20 |
| 21 | Muhammad Usman | Muhammad Farooq | 21 |
| 22 | Musadiq Shahzad | Syed Liaqat Ali Shah | 22 |
| 23 | Qamar Manzoor | Manzoor | 23 |
| 24 | Tehseen Ahmad | Qazi Muhammad Shafi Khokar | 24 |
| 25 | Nadir Haroo | Muhammad Haroon | 25 |
| 26 | Muhammad Bilal | Muhammad Faridoo | 26 |
| 27 | Shoaib | Shamriaz Akhtar | 27 |
| 28 | Muhammad Akram | Muhammad Nawaz | 28 |
| 29 | Muhammad Tahir | Ghulam Mustafa | 29 |
| 30 | Mansoor Shah | Syed Manzoor Hussain Shah | 30 |
| 31 | Manzoor Hussain | Saidur Rehman | 31 |
| 32 | Aman | Muhammad Allaf | 32 |
| 33 | Sajjad Ahmad | Aurang Zeb | 33 |
| 34 | Shoaib Ahmad | Awal Khan | 34 |
| 35 | Nasir Hussain Shah | Syed Mazhar Hussain Shah | 35 |
| 36 | Ishliq | Arbab | 36 |
| 37 | Muhammad Ejaz | Muhammad Maroof | 37 |

District Police Officer
Manshra

Attested.
Shah Muhammad Khan
Advocate Supreme Court
of Pakistan.

P - (11)

| | | | |
|----|--------------------|-----------------------|----|
| 38 | Muhammad Arshad | Muhammad Noor | 38 |
| 39 | Syed Ali Shah | Syed Wakeel Shah | 39 |
| 40 | Ghulam Mustafa | Ashiq Hussain | 40 |
| 41 | Saqib Nawaz | Haq Nawaz | 41 |
| 42 | Elisan Khan | Muhammad Sheeraz Khan | 42 |
| 43 | Muhammad Saqib | Ali Mardan Khan | 43 |
| 44 | Haider Ali | Muhammad Ralique | 44 |
| 45 | Wajid | Abdul Qayoom | 45 |
| 46 | Jawad | Nawaz Ahmad | 46 |
| 47 | Zahid | Shad Muhammad | 47 |
| 48 | Mubashir Noshad | Noshad Khan | 48 |
| 49 | Faizan Fida | Fida Hussain | 49 |
| 50 | Rashid | Muhammad Hussain | 50 |
| 51 | Israr Ahmad | Malik Dildar | 51 |
| 52 | Arif Dilbar | Dilbar Khan | 52 |
| 53 | Junaid Ahmad | Manzoor Ahmad | 53 |
| 54 | Fazal Rabi | Muhammad Toufeeq Khan | 54 |
| 55 | Abdur Rehman | Faqeer Muhammad | 55 |
| 56 | Farhan Khan | Muhammad Khlyal | 56 |
| 57 | Aurangzeb | Mawali | 57 |
| 58 | Muhammad Ali | Muhammad Zahoor | 58 |
| 59 | Fiaz | Noor Muhammad | 59 |
| 60 | Shoukat | Fazal ur Rehman | 60 |
| 61 | Waqar Hussain Shah | Allaf Hussain Shah | 61 |
| 62 | Uzair Shahzad | Muhammad Shezad | 62 |
| 63 | Muhammad Adil | Muhammad Khushal | 63 |
| 64 | Gul Faraz | Sardar Muhammad | 64 |
| 65 | Akram Shahzad | Muhammad Fareed | 65 |
| 66 | Muhammad Haroon | Ali Zaman | 66 |
| 67 | Muhammad Nisar | Kaciu | 67 |
| 68 | Muhammad Khurshid | Behram Khan | 68 |
| 69 | Abdul Hakeem | Abdul Bahas | 69 |
| 70 | Muhammad Waheed | Ghulam Sarwar | 70 |
| 71 | Atisan Rasheed | Abdul Rasheed | 71 |
| 72 | Faizan Khan | Mushlag Ahmad | 72 |
| 73 | Sabir Hussain | Muhammad Fareed | 73 |
| 74 | Muhammad Fiaz | Khalil ur Rehman | 74 |
| 75 | Khurram Shahzad | Ali Akbar | 75 |
| 76 | Razaqat | Gul Zaman | 76 |
| 77 | Muhammad Adil | Taj Muhammad | 77 |
| 78 | Hamid Hussain | Muhammad Hussain | 78 |
| 79 | Muhammad Jehangir | Muhammad Arif | 79 |
| 80 | Muhammad Adil | Muhammad Zaman | 80 |
| 81 | Fazal ur Rehman | Muhammad Ameen | 81 |
| 82 | Sheriyar Khan | Faiz Muhammad | 82 |
| 83 | Shahid Khan | Shamroz Khan | 83 |
| 84 | Habib Ullah | Samiullah | 84 |
| 85 | Fazal Ameen | Shah Jehan | 85 |
| 86 | Zakir | Khasta Khan | 86 |
| 87 | Tayub | Ghulam Mustafa | 87 |
| 88 | Amir Shahzad | Muhammad Sulaman | 88 |
| 89 | Adil Shahzad | Jalil ur Rehman | 89 |
| 90 | Juma Khan | Shamsul Yameen | 90 |
| 91 | Awais Ahmed | Muhammad Idrees | 91 |
| 92 | Muhammad Khurshid | Abdul Rasheed | 92 |
| 93 | Sher Afzal | Malik ur Rehman | 93 |

District Police
Muzaffargarh

ANNEX = ^{PA} C
BEFORE THE DIG HAZARA RANGE
ABBOTTABAD

P-12
APPEAL AGAINST THE ORDRE OF DPO
MANSEHRA, DATED: 24.09.2020 VIDE
WHICH THE APPELLANT HAS BEN
DISMISSED FROM SERVICE.

Prayer!

ON ACCEPTANCE OF THE INSTANT APPEAL
THE IMPUGNED ORDER OF DISCHARGE
MAY KINDLY BE SET-ASIDE AND THE
APPELLANT MAY KINDLY BE REINSTATED
ON SERVICE.

Respected Sir,

The brief facts leading to the instant appeal are arrayed as follows.

1. That, the appellant was appointed as a constable in police department on 13.05.2019 and thereafter the appellant was serving the department devotedly to the best satisfaction of his senior officers.
2. That, the appellant was a regularized by the IGP KPK Peshawar in the light of KPK Special officers (Regularization of Service Act 2019) and approval for regularization was also accorded by provincial cabinet which led to regularization of service of the appellant and others. **(The Copy of notification is attached herewith).**
3. That, DPO Mansehra passed an order denoting that, the appointment of the appellant was irregular who was appointed as compensation to the heirs of Mr. Shehzad who was killed by the police party and the service of the appellant was also regularized. DPO Mansehra passed the order in the light of observation given

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by the Court which led to the discharge of the appellant from service.

4. That, it has been led down by the Apex Court that the department itself had appointed the civil servant against a post in violation of rules can not nor allowed to take benefit of its lapses in order to terminate services of civil servant merely because it had committed a irregularity and violating procedure governing such appointment. The department can not take dividend from its own fault or lapses.

It is therefore, most humbly prayed and requested that, on acceptance of instant appeal in the light of above the order of discharge may kindly be set-aside and the appellant may kindly be reinstated on service.

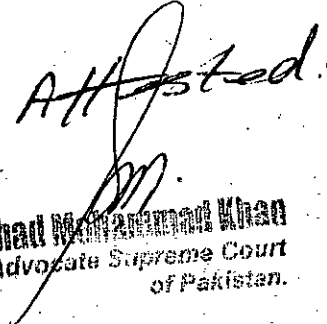
Dated: 07.10.2020

M. J.

Muhammad Junaid

.....Appellant

Constable No. 1329

Attested.

Shad Muhammad Khan
Advocate Supreme Court
of Pakistan.



ANNEX = "D"

P-14

OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

0992-9310021-22

0992-9310023

r.rpohazara@gmail.com

0345-9560687

NO: 2944 /PA DATED 12/11/2020

ORDER

This order will dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Ex. Constable Muhammad Junaid No.1329 of District Mansehra against the punishment order i.e. *Discharged from Service* awarded by DPO Mansehra vide OB No.239 dated 24.09.2020.

Brief facts leading to the punishment are that the appellant was appointed as SPF constable vide OB No. 90 dated 13.05.2019 in lieu of compensation to the heirs of deceased Shazad s/o Ali Akbar r/o Deverian, Phulra, who was killed during raid of a police party vide FIR No. 208 dated 06.11.2018 u/s 302 PPC PS Phulra. Later on the appellant has been regularized vide OB No.96 dated 23.04.2020. Since, his appointment was irregularly made and the learned court has declared that the appointment of Muhammad Junaid No.1329 and Muhammad Khurshid No.1315 in Police service on the pretext of compensation in lieu of murder of deceased is not justified and *ab-initio-void*. The father of the deceased submitted an application before the trial court by virtue of which he disowned the appointments.

Consequently, in compliance with the order of MCTC/Additional Session Judge-IV Mansehra vide order dated 07-09-2020 the appellant was discharged from service under Rule 12:21 of PRs vide OB No. 239 dated 24-09-2020. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Mansehra were sought and examined/perused. The undersigned called the official in OR and heard him in person. After perusal of relevant record it has been noticed that the appointment of the appellant was irregular and unjustified. The appeal being meritless is liable to be dismissed. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-4 (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby *filed* with immediate effect.

Qazi Jamil ur Rehman (PSP)
REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

No. 29465 /PA, dated Abbottabad the 12/11/2020.
CC.

1. The District Police Officer, MANSEHRA for information and necessary action with reference to his office Memo No.19433/GB dated 15-10-2020. Service Roll and Fuji Missal containing enquiry file of the appellant is returned herewith for record.

Shad Wajid Khan
Advocate Supreme Court
of Pakistan.

DBAM No. 38
 BC No. 10-2701
 Name of Advocate سید محمد حسن

S.No P-15
 Fee Rs. 100/-



2020-21

General Secretary
 District Bar Association
 Mansehra

وکالت نامہ

بعدالت: جناب حسین صاحب سروس ٹریڈنگ کمپنی کراچی
 عنوان: محمد حسنین نام: D/G
 منجانب: اپیلانٹ نوعیت مقدمہ: سروس ٹریڈنگ

باعث تحریر آئندہ

دریں مقدمہ عنوان بالا میں اپنی طرف سے برائے بیروی وجوہ وہی بمقام
 جناب شاد محمد خان ایڈووکیٹ سپریم کورٹ
 کو بدیں شرائط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا اور ہوتے ہوئے
 جانے وکیل موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ
 میرے خلاف ہو گیا تو وکیل موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل موصوف صدر مقام کچہری کے علاوہ
 کسی اور جگہ کچہری کے مقررہ اوقات سے پہلے یا بروز تعطیل بیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ کچہری کے علاوہ
 کسی اور جگہ سماعت ہوا یا کچہری کے اوقات کے آگے پیچھے سماعت ہونے پر مظہر کو کوئی نقصان پہنچے تو وکیل موصوف ذمہ دار
 نہ ہوں گے اور وکیل موصوف کو عرضی دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست
 بیان حلفی و تصدیق کرنے اور اسپر دستخط کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور قسم کاروبار وصول
 کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپرد عاشری و راضی نامہ و دستبرداری و اقبال دعویٰ کا اختیار بھی ہوگا
 بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا فیصلہ قبل از ڈگری اجراء ڈگری بھی وکیل موصوف
 کر بشرط ادائیگی علیحدہ محنتانہ ادا کرنے کا مجاز ہوگا اور بصورت ضرورت بدوراں مقدمہ یا اپیل و نگرانی کسی دوسرے وکیل یا بیرونی
 بجائے خود یا اپنے ہمراہ مقرر کریں اور مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے وکیل موصوف کو
 اور اگر پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو وکیل موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیروی نہ کریں اور ایسی حالت
 میں میرا مطالبہ وکیل موصوف کے برخلاف نہیں ہوگا مجھے کل ساختہ پر داختم وکیل موصوف مثل ذات خود منظور و قبول ہوگا۔
 لہذا وکالت نامہ لکھ دیا ہے اور دستخط انگوٹھا ثبت کر دیا ہے تاکہ سند رہے۔ مضمون وکالت نامہ من لیا ہے اور اچھی طرح سمجھ لیا ہے۔

20 مورخہ
 ACCEPTED

Shad Mohammad Khan
 Advocate Supreme Court
 of Pakistan.

03465808870

محمد حسنین وکیل محمد حسن سروس ٹریڈنگ کمپنی
 مکمل دفعہ منسہرہ
 13503-1572688-1

15608/2018
15608/2018

IN THE COURT OF MUHAMMAD TAHIR AURANGZEB
MODEL CRIMINAL TRIAL COURT/ASJ-IV

Sessions Case No: 30/7 of 2019
Date of Institution: 10/05/2019
Date of Decision: 07/09/2020

Place: Mansehra
FIR No. 206
Dated: 06/11/2018
Under sections: 302 PPC
Police Station: Phulra, Mansehra

The State.....

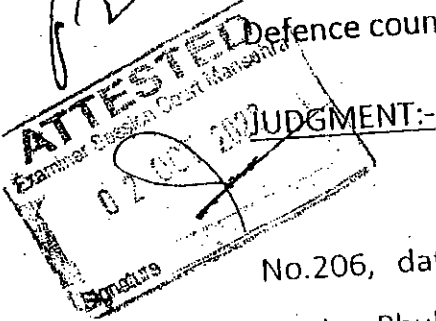
VERSUS

Ismail Khan son of Tor Khan aged about 32/33 years caste Usman
Khel, resident of Shangaldar, Judbah District Torghar.

..... (Accused facing trial)

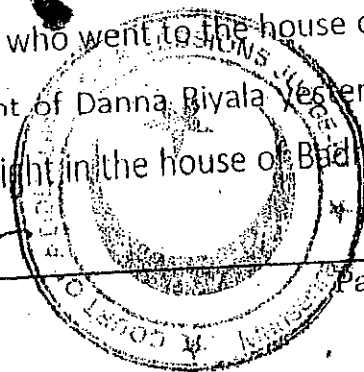
Complainant represented by: Learned APP for the State.

Defence counsel: Mr. Shehzad Ahmed Khan Jehangiri Advocate.



Accused named above, faced criminal trial in case FIR
No.206, dated 06-11-2018, U/Ss 302 PPC registered at Police
Station Phulra, Mansehra.

2. Brief facts of the case are that complainant
Muhammad Miskeen son of Ghulam, alongwith dead body of his
nephew Muhammad Shehzad alias Shada son of Ali Khan on
06.11.2018 at 10:00hours, reported the matter in the PS to the
effect that on the day of occurrence i.e. on 06-11-2018 at morning
time about 6:00 hours, his nephew who went to the house of Badri
Zaman son of Sahmatullah resident of Danna, Biyala yesterday for
the purpose of bullock. He spent night in the house of Badri Zaman



and at morning time at about 6:00 hours, a police party under the command of Muhammad Shafique Khan, SHO, PS Khaki raided the house of Ali Zaman for the purpose of arrest of proclaimed offender Ali Zaman, required in a murder case. In the meanwhile, due to the firing of police party, his nephew Muhammad Shehzad alias Shada hit and died at the spot. The occurrence was witnessed by Badri Zaman, Wazir Muhammad. Complainant charged the police party for the murder of his nephew Shehzad alias Shada. Hence, instant FIR was registered. Later on, on 02-01-2019 complainant recorded his supplementary statement u/s 164 CrPC and charged accused Muhammad Ismail Khan son of Tor Khan for murder of his nephew.

3. After completion of investigation, complete challan against accused was submitted before Court. Accused was summoned and on his appearance provisions of section 265-C Cr.P.C were complied with, and charge was framed against the accused facing trial U/Ss 302 PPC to which he pleaded not guilty and claimed trial.

4. So far, prosecution produced and examined Fifteen (15) PWs. The gist of Prosecution evidence is as under:-

(PW-1) was Muhammad Zarin FC No.167 who is marginal witness to recovery memo vide which in his presence Chan Zeb ASI took into possession from Abdur Rehman Inspector Incharge Elite Force Peshawar (Headquarter Peshawar) one rifle SMG No.4614701 alongwith Patta one empty magazine and IO marked with objected object and sealed it into parcel No.4 by affixing 3x3 seals of CZ on the same and prepared the recovery memo in his presence as well as in the presence of constable Chan Zeb No.113. Today, he has seen the recovery memo which is correct and correctly bears his signature as well as the signature of other marginal witness.

(PW-2) was Dr. Muhammad Abdullah, MO who stated that on 06.11.2018, at 12:00pm, he conducted autopsy on the dead body of Shehzad son of Ali Khan caste Gujjar resident of Dewarian aged about 25 years, brought by constable Charzed, No.24 and

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identified by Farid son of Umar Khan and Badri Zaman son of Rehmatullah and found the following:-

SYMPTOMS observed before death: Nil.

Information furnished by police. Firearm injury.

EXTERNAL APPEARANCE:

Mark of ligature on neck and dissection, etc. Nil.

CONDITION OF SUBJECT: Stout young male blood in nose and around chest with blood stained cloths torn over second button area from above. Rigor mortis not developed.

WOUNDS, BRUISES, POSITION, SIZE NATURE:

Entry wound found at upper medial border of left scapula posteriorly approximately 1cm in diameter. Inverted margins. No marks/blackening etc.

Exit wound found at upper anterior sternum just below manubrium approximately 4cm in diameter, everted margins.

Superficial scratches over nose and upper chest.

CRANIUM AND SPINAL CORD: Intact.

THORAX: sternum, bronchi and blood vessels are injured rest intact.

ABDOMEN: All organs of abdomen are intact except injured oesophagus.

MUSCLES, BONES, JOINTS: As noted above.

Remarks:

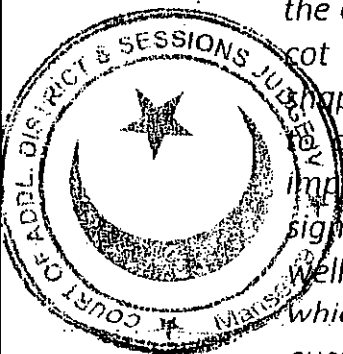
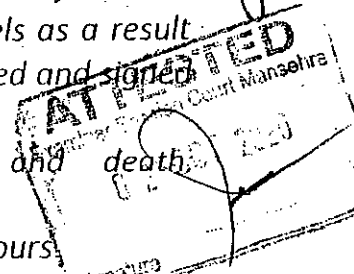
He has conducted autopsy of deceased Shehzad son of Ali Khan on 06-11-2018 at 12:00PM. In his opinion, cause of death is hemorrhagic shock due to injury to major blood vessels as a result of firearm injury. Six pages post mortem report +marked and signed clothes are handed over to police.

Probable time that elapsed between injury and death: Approximately 10 to 20 minutes.

Between death and post-mortem: Approximately 06 hours.

He has seen post-mortem report consisting of six pages including pictorial, which is in his handwriting and bears his signature correctly and same is ExPW2/1. He also endorsed his certificate on injury sheet which is ExPW2/2.

(PW-3) was Tasveer Hussain Shah, SHO who stated that on 06-11-2018, at 10:00AM, complainant Miskeen brought the dead body of deceased Muhammad Shehzad alias Shada on the cot to the PS and reported the matter to him which he reduced in shape of FIR. After recording the report, its contents were read over to complainant who after admitting the same as correct, thumb impressed the same. FIR is in his handwriting and bears his signature correctly and is ExPW3/1. He also prepared injury sheet as well as inquest report of deceased which are ExPW3/2 and ExPW3/3 which are correct and correctly bears his signatures. He handed over the dead body alongwith injury sheet and inquest report to



Constable Chanzeb to escort to the mortuary. He sent the copy of FIR to investigation branch.

(PW-4) was Muhammad Munsif No.917/MM who stated that vide road certificate No.143/21 dated 12.11.2018 he handed over sealed parcel No.1 & 3 to Zarin No.167 and vide road certificate No.144/21 dated 12.11.2018 he handed over sealed parcel No.2 to Zarin No.167 for its transmission to FSL, Peshawar. On his return the said constable handed over to him receipt bearing acknowledgment of official of FSL, Peshawar. He has seen attested copies of said road certificates which are ExPW4/1 and ExPW4/2. He was examined u/s 161 CrPC.

(PW-5) Muhammad Salim SI/OI stated that on receipt of copy of FIR, he went to the place of occurrence and prepared site plan ExPW5/1. He collected blood stained earth from the place of deceased Shahzad and sealed into parcel No.1 (ExP1). He collected four empties of 7.62 bore from the place of accused and sealed into parcel No.2 (ExP2). He prepared recovery memo ExPW5/2 in this regard. He collected blood stained garments of deceased having bullet marks brought by Chanzeb No.24 and prepared parcel No.3 (ExP3) vide recovery memo ExPW5/3. He recorded statement of PWs of recovery memo and eyewitness Badri Zaman. He sent parcel No.2 to FSL vide his application ExPW5/4. On the second day he went to Jinaza of deceased and prepared list of legal heirs of deceased which is ExPW5/5. On 07.11.2018 special investigation team was ordered and he was member of that team. The letter of constitution of team is ExPW5/5. The team has verified the already conducted investigation by him. He placed on record arrival, departure of the police team who went to the place of occurrence alongwith Shafiqur Rehman, SHO PS Khaki. The record is ExPW5/6. The accompanying officials were Shafiqur Rehman, SHO were Waheed Murad, ASI, Muhammad Ashraf, IHC, Babar Khan, IHC, Constables Khan Banadur No.921, Irfan No.937, Khanzada No.462, Tosif No.529, Shaukat No.123, Muhammad Bashir No.218, Tufail No.82, Lady constable Asima No.910. He also collected Naqal Mad No.18 regarding accompanied constable Hassan No.796, Manzoorul Haq No.2309, Abdur Razzaq No.1614, Ismail No.1579 as ExPW5/7. The SHO Shafiqur Rehman also accompanied the officials from PS Phulra. He placed on record his report through Naqal Mad No.28 as ExPW5/8. Thereafter he interrogated all the officials who accompanied the SHO and checked their arms. The members of Elite Force went to Abbottabad so they could not be interrogated, then he drafted a letter for production of members of Elite Force through SP, Investigation, Mansehra which is ExPW5/8. They were produced then and interrogated. Their arms numbers were also verified from their concerned department and collected their arms. The FSL report was received wherein it is disclosed that the fires were made

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from firearms. The report is ExPW5/9. He also sent blood stained garments and earth to FSL and the report is ExPW5/10. He also recorded statement of eyewitness Wazir Muhammad on 14.11.2018. He placed on record copy of register No.19 ExPW5/11. He interrogated Ismail, Manzoorul Haq, Hassan and Abdur Razzaq on 16.11.2018 in presence of DPO, Mansehra. They were not telling the actual position to them. They were again interrogated and they denied the allegations. He took them to Peshawar for polygraphic test on 04.12.2018 and questions were during that polygraphic test. He took them vide his application ExPW5/9 (already exhibited) and put questions to them during that polygraphic test. The test reports are ExPW5/12, ExPW5/13, ExPW5/14 & ExPW5/15. He recorded statement of Inspector who conducted polygraphic test. Thereafter he went for course. He drafted all the documents in his own handwriting which correctly bear his signatures. He used the seal of SA and recorded the statements of witnesses.

(PW-6) was Ali Khan son of Ghulam who is father of deceased stated that Shahzad deceased is his son. He was married with Mst Nagina Bibi. His mother is Mst Phullan Bibi. He was having one son Bilal at the time of his death, however the second son born after his death namely Ibrar. His son was driver by profession of Bedford. He never remained involved in any case. On the day of occurrence he was in Karachi and came to place of occurrence on information of the occurrence. He came to know from his relatives available in the village that his son went to the house of Badri Zaman on the eventful night for purchasing bullock and spent his night in that house of Badri Zaman. Early in the morning the police raided the house and murdered his son.

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(PW-7) Mst Nagina Bibi widow of Shahzad (deceased) stated that Shahzad deceased was her husband. She has two sons minor Bilal and Ibrar. Her husband was murdered by the police and he was innocent. She prayed for redressal of her grievance and conviction of the culprits.

(PW-8) was Mst Phullan Bibi wife of Ali Khan who stated that Shahzad deceased was her son. He was having two sons minor Bilal and Ibrar. Her son was murdered by the police and he was innocent. She prayed for redressal of her grievance and conviction of the culprits.

(PW-9) was Badri Zaman son of Rehmatullah who stated that one day prior to eventful day deceased Shahzad visited him for purpose of bullock and he spent his night with him as he is relative to him. He spent night at his house and early in the morning he went to ease himself in the fields adjacent to his house as they were villagers and have no washrooms in their houses. As they reached in front of house, police reached there and one of the official held him and the second official made firing on the

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deceased. The officials were 8/10 in number. The name of the official was Ismail. He also made pointations to IO at the time of preparation of site plan. He also identified the dead body before police and doctor. His statement was recorded u/s 161 CrPC.

(PW-10) was Sher Bahadur son of Sikandar who stated that he was having a house adjacent to place of occurrence. On the eventful day early in the morning the police cordon off the area and official were present on their roofs and surroundings. He came out on hearing the noise of firing and saw the dead body. On the whistle all the official started to run and escaped from the spot. He also witnessed recovery of blood stained earth and recovery of empties from the spot. He has seen the recovery memo ExPW5/2 (already exhibited) which correctly bears his thumb impression alongwith thumb impression. Sadiq.

(PW-11) was Fida Muhammad son of Gulab who stated that the IO collected blood stained garments of deceased in his presence vide recovery memo ExPW5/3 (already exhibited) and sealed into parcel. He was also present before the jirga with police after the occurrence and produced the video of same as ExPW11/1. His statement was recorded u/s 161 CrPC.

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(PW-12) Chanzeb ASI stated that on transfer of Muhammad Salim, SI/OII, he was posted as ASI/OII in PS Phulra. He has conducted partial investigation in the instant case. He received file for investigation on 26.12.2018. On 02.01.2019 complainant came to PS and recorded his supplementary statement in which he charged accused facing trial namely Ismail. Vide his application ExPW12/1 he produced complainant before Court for recording his statement u/s 164 CrPC. He vide his application ExPW12/2 applied for issuing letter regarding involvement of accused Ismail No.1579/P-113 for writing letter to SSP Elite Force, Abbottabad for his arrest and interrogation. In this respect SHO Muhammad Nawaz Khan of PS Phulra made an entry regarding his departure from the PS to Abbottabad for arrest of accused which is ExPW12/3. Copy of arrival of SHO in the Police Line, Abbottabad vide Mad No.30 is ExPW12/4. The handing over of accused to SHO in Police Line, Abbottabad vide DD No.29 dated 18.01.2019 is ExPW12/5. SHO arrested accused and issued his card of arrest which is ExPW12/6. Copy of arrival of SHO alongwith accused in PS, Phulra is ExPW12/7. He vide his application dated 19.01.2019 ExPW12/8 produced the accused before Court for police custody which was allowed for two days. During interrogation accused disclosed that he can point out the place of occurrence in presence of members of JIT and led them to the spot where he pointed the place where on the day of occurrence he was present and the place of presence of deceased. He prepared pointation memo ExPW12/9 in presence of marginal witnesses which he endorsed in the site plan with red ink

ExPW12/10. He recorded statement of accused u/s 161 CrPC. Vid his application ExPW12/11 he produced the accused before Court for recording confessional statement and he was sent to judicial lockup. He vide his application ExPW12/12 applied to SP Investigation for issuing letter to Incharge Kot, Elite Force, Peshawar for handing over SMG No.4614701 which was issued in the name of accused. He vide his application ExPW12/13 applied for issuance of reminder to the quarter concerned. After completion of investigation he handed over case file to SHO on 23.02.2019 for submission of complete challan. However the process of handing of SMG remained continued. He vide his application dated 05.03.2019 ExPW12/14 he obtained permission from SP, Investigation, Mansehra for obtaining the SMG involved in the instant case which was allowed on 07.03.2019. On 12.03.2019 he left the PS for Peshawar and reached in Headquarter Elite Force, Peshawar and made his arrival vide Naqal Mad No.9 which is ExPW12/15. On the same day Incharge Kot, Elite Force, Peshawar handed over to him SMG No.4614701. He vide recovery memo already exhibited as ExPW1/1 took the same alongwith sling Patta, one empty magazine into his possession in presence of marginal witnesses in the Kot and sealed the same into parcel No.4 and signed the same with pointed object and also affixed three seals in the monogram of CZ on the parcel. In this respect copy of receipt No.11/15 regarding receiving of SMG alongwith sling Patta and one empty magazine is ExPW12/16. He vide his application ExPW12/17 sent parcel No.2 & 4 to Arms Expert, FSL, Peshawar and the report is ExPW12/18. He drafted all the documents in his handwriting, recorded statement of PWs u/s 161 CrPC.

(PW-13) was Nawaz Sarwar, SHO who stated that he prepared injury sheet of deceased Shahzad which is ExPW13/1. He has also arrested the accused and issued his card of arrest already exhibited as ExPW12/6. After completion of investigation he has submitted complete challan against the accused as ExPW13/2.

(PW-14) was Abdul Sattar No.255 who stated that he was accompanying the IO and JIT where the accused made pointation of the spot which IO recorded vide pointation memo already exhibited as ExPW12/9. His statement was recorded by the IO.

(PW-15) Miskin son of Ghulam (complainant) stated that deceased is his nephew. He went to Danna Riyala for the purpose of bullock. Between 6 to 7am he received information that his nephew is murdered by police. So he went there and the dead body was carried by the police. He reported the matter to police vide FIR ExPW15/1. Initially they were not recording his report. Later-on they themselves ready to record his report. He reported

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whatever he heard. Later-on IO remained in touch with them. He charged all the involved police for murder of his innocent nephew.

5. Thereafter, prosecution closed its evidence, while abandoning rest of PWs mentioned in the calendar of PWs. Statement of accused was recorded u/s 342 Cr.P.C, who professed his innocence, and false implication and termed all PWs highly interested and procured, however, did not wish to produce defense evidence or to be examined on oath U/S 340 (II) Cr.PC.

6. Learned Dy PP for the state assisted by private assisted by private counsel for the complainant argued that though the accused facing trial is not directly charged in the FIR, however was charged by the complainant after his due satisfaction; that all PWs remained consistent and coherent in their deposition made regarding the occurrence; that no major or minor contradiction could be extracted from their mouths. It was finally argued that prosecution has successfully proved its case against accused facing trial beyond shadow of doubt and prayed for conviction of the accused facing trial.

7. Conversely, learned defense counsels argued that accused facing trial is innocent and has falsely been charged in the instant case; that all the PWs are highly interested, procured witnesses and they never remained consistent and coherent in their deposition against the accused and their statements are suffering from major discrepancies and contradictions. It is finally argued that prosecution has failed to prove charge against accused facing trial beyond any shadow of doubt and prayed for acquittal of the accused.

8. I have heard the arguments and record perused.

9. In the instant case, the police party from PS Khaki raided within the jurisdiction of PS Phulra in search of the proclaimed offender Ali Zaman, PO in FIR No.215 dated 23-08-2018

u/s 302 PPC. They raided the house of said PO situated within the jurisdiction of PS Phulra and during the said raid, they committed murder of Shahzad son of Ali Khan who was available in that village on that day in order to purchase animal. The FIR cannot be recorded for sufficient time as police was involved in it, however the story narrated in the FIR was that it was 6:00AM on 06-11-2018 that Shahzad who went in night to the house of Badri Zaman in said village for the purpose of purchasing Bull. Police raided the village to arrest Ali Zaman PO in supervision of Shafique Khan SHO and during said raid, police fired and murdered Shahzad, the nephew of complainant. It is an admitted fact in the record of police that the deceased was murdered in the said raid. It is a case of affixation of liability only and there is no question that the deceased was murdered or not.

10. In the instant case, there are certain points for determination. First of all that whether the deceased died in firing of police and the police has acted in good faith within the ambit of law. The second is that whether the matter was resolved between the parties. The third is whether the accused facing trial against the Command of Authority, committed the occurrence. So far as, the first point is concerned, there is no denial of the fact in police record that deceased was innocent and he never remained involve in any criminal case. He was a noble citizen of the country. The police record fully admit that the officials raided the house of PO Ali Zaman and during that raid, the deceased was hit by firing and died, so this is proved fact that the deceased died in firing of police. Now the second question arises that whether the deceased was armed and he responded the police in aggressive tone and tried to violate the law and order situation at the spot. The IO appeared in witness box and he stated that the deceased was without arms and IO has not recovered a single empty in proof of the fact that there

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was any sort of firing at the police party or there was any aggression against police at the spot. The record is completely silent on this aspect of the case. There was no explanation on the part of Police Department that under what circumstances, they felt need to use force on the crime scene. This was burden of prove of Police Department that they used the force in extreme urgency but there is nothing on record to support this. A jirga was convened in supervision of SP Investigation after the occurrence to control law and order situation in area, which is exhibited by PW11 as ExPW11/1, i.e. video film of that jirga. In the said jirga, the people of that area pardoned the police and SP Investigation made commitment with them to name one person from officials as accused. Let us suppose that the contention of Police Department that there was counter aggression by the P.O Ali Zaman or the deceased then the FIR might have been there against the aggressor which is not available on record. Similarly, if the supervisor of raid Shafique SHO was feeling that accused facing trial has violated the command of authority, there would have any complaint on his part against that official but there is nothing on record and the SHO Shafique did not record any report against the concerned official, so the belated charge against accused facing trial is just for the purpose of filling the documents. It was also brought on record that two persons from that area were employed by the Police Department namely Khurshid and Junaid by Police Department due to pressure of the locals on the police. The complainant disowned their appointments and has moved an application that he has no concern with those appointments. This Court noticed that the case was pending in evidence since long and no one was pursuing matter for complainant. The accused informed that it was patched up, so this Court has summoned the complainant who was father of deceased. He was at Karachi at that time and he stated to Court

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that how he can contest the case against the State as they are empowered and he is earning livelihood of minor sons of deceased. He disclosed that deceased was having one son at the time of death and second born after his death.

11. The Police Department as well as IO of the case after the jirga, got the nomination of accused facing trial as the actual culprit. The only evidence against him was the crime empty and the official weapon of accused Ismail. There was jirga prior to the charge against accused Ismail and after that jirga, collection of such type of evidence with a considerable delay by the IO was the sole evidence with the prosecution to prove the matter against accused facing trial. It was a case of capital punishment and such type of evidence recorded with considerable delay and corroborative in nature is always doubtful and reliance cannot be made on such type of evidence specifically when the SP Investigation committed with the locals that he will give one person as accused. This Court doubts that the junior most official was made an escape goat. The file is completely silent that how the IO came to know that at the place of alleged empty, accused facing trial was available. All the available officials were within the access of IO to get record their statements but the IO has not bothered to record their statements. IO was under obligation to disclose that whether those persons who were witnessing the occurrence in uniform were either witnesses or they were accused. The file suggests that IO has not made them witnesses or accused. This Court could hold that the prosecution has withheld the best evidence but there was no fault on the part of innocent kids of the deceased and this standard of appreciation of evidence was not permissible in such type of situation. The case diaries of the IO are completely silent about this fact that why he spared those accused or witnesses and why he has not recorded them for reaching to true facts of the case. The

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investigation conducted by the IO was dishonest and directed one
At the conclusion of the trial, this Court felt that the matter is
proved to this extent that the deceased died in the firing of police,
however this fact could not be determined whether the police
exceeded their jurisdiction or whether the deceased died in
performance of duties. It was not the duty of those officials to
associate them with investigation compulsorily, it was alone duty of
IO to record their statements. The situation developed before this
Court was that it was proved that deceased Shahzad died in firing
of police by the act of police raiding party under the authority of
State and there was no cogent evidence against single person to
connect him with commission of offence. There was no evidence
against accused facing trial to distinguish him from his other
colleagues and ultimate fate of case seems in shape of acquittal of
accused. This Court has consulted PPC, CrPC for such type of
situations where the question of vicarious liability is involved
alongwith the question that the witnesses were not recorded by
the IO and the accused were not challaned before the Court, this
Court found Section 338-F PPC which is reproduced as under:-

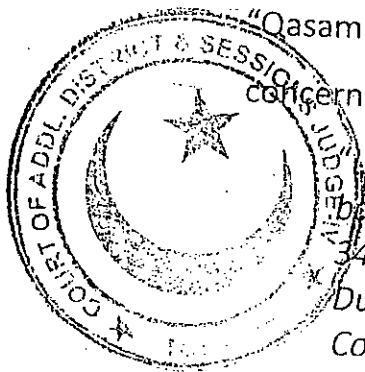
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"338-F. Interpretation. In the interpretation and application of the provisions of this Chapter, and in respect of matters ancillary or akin thereto, the Court shall be guided by the Injunction of Islam, as laid down in the Holy Quran and Sunnah."

12. The guidance in the situation of this case is obtained from the provisions of Quran & Sunnah and found the principle of "Qasamat", so in the line, this Court has issued notices to all the concerns in these words:-

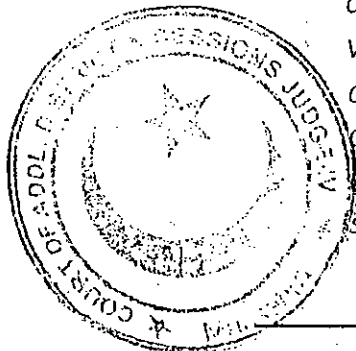
learned Dy PP for the State present. Accused Ismail Khan on bail with counsel present. Statement of accused recorded u/s 342 CrPC and arguments heard. During the course of arguments the facts revealed before the Court were that SHO of PS, Khaki was accompanying with 13



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officials armed with weapons. They went to the jurisdiction of other PS i.e. Phulra in search of PO Ali Zaman charged in a murder case. During the raid over his house, they murdered deceased of this case. The deceased was not charged in any FIR and was an innocent person. The IO has not reported any overt act on the deceased. On the basis of crime empties and weapons used alongwith the spot position of presence of the police officials, the Police Department nominated Ismail constable of Elite Force as accused. It is worth mentioning that the 13 officials were neither the witnesses nor they are accused. The investigation standard of the case was poor. The criminal case of criminal liability of the accused facing trial will be decided on the basis of evidence recorded before the Court.

The deceased in this case was Shahzad son of Ali Khan and was having no relation with the PO under raid. He was in the village of occurrence in connection with purchase of animal. The IO admitted that there was no overt act on the part of deceased and he has also not recovered any arms or empties from the place of deceased. The standard of evidence and investigation by the IO will be seen in judgment, however an innocent person died in the occurrence by the act of State. In any case his murder with all his innocence is required to be addressed by the State. Besides the original criminal responsibility of murder, it seems to be a case of vicarious liability of the State through Police Department as the murder of innocent deceased was committed by Police Department in an official raid. This Court deems it appropriate to serve notice for arguments for vicarious liability to IG, Khyber Pakhtunkhwa, DIG, Hazara Range, DPO, Mansehra, SP, Investigation, Mansehra, District Public Prosecutor, Mansehra and SHO Shafique Khan, Waheed Khan, ASI, Babar, IHC, Ashraf, IHC, Khan Bahadur 921, Irfan 937, Khan Zada 462, Shaukat 123, Toseef 529, Bashir 218, Mst Asma 810, Driver Muhabat Khan, Hussain 786, Manzoor Haq 2309, Abdur Razzaq 1614, Ibrar Ahmed, IHC, Parvez 929, Ali Zaman 75. They are directed to make their appearance through counsel or in person and argue the case. This notice for arguments will be presumed as framing of charge for vicarious liability. In case of non-appearance on the part of any noticed respondent, it will be presumed that they have no arguments in their defence. File to come up for further arguments on 05-08-2020. The Muharrir is directed to issue separate notice to each respondent mentioned above

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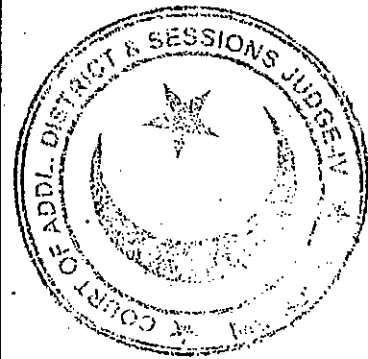
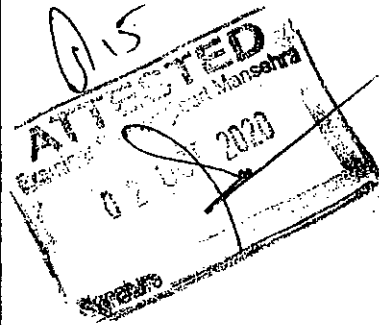
through registered post alongwith copy of this order sheet for the date fixed."

13. The notice was issued regarding vicarious liabilities of all the officials who joined the raid. Their names were reflected on file. The DPO, Mansehra represented himself through P.I. It is important to mention that DPO Mansehra was served with the notice just to notice the situation of subordinate officials. He responded to the notice of Court in accordance with law. He was committed about the prestige and dignity of his Department. He arranged for appearance of all the officials before the Court, who were available in the raid. The complainant alongwith mother of deceased and widow of deceased appeared before the Court and he was fully satisfied that the Police Officials have effected true and genuine compromise with him. The Court after inquiring the facts from the complainant, widow and mother noticed that the compromise was true and genuine. The Court recorded it, as reproduced below:

"Stated that on the report of complainant case FIR # 206 dated 06-11-2018 was registered against accused facing trial. Ismail Khan u/s 302 PPC in PS Phulra.

Deceased Shahzad Khan has left behind father, Ali Khan, mother Mst Phull Bibi, widow Mst Nagina Bibi, two minor sons namely Muhammad Bilal and Muhammad Ibrar. There is no other legal heir left by the deceased except us.

Due to intervention of elders of the locality, we the major legal heirs (father, mother and widow) have effected compromise with the accused facing trial namely Ismail Khan by waiving off our rights of Diyat and have got no objection on the acquittal of accused facing trial. The share of minors in Diyat is Rs.11,34,000/- and the members of raiding party of 18 police officials mentioned in their application will deposit the same within 90 days before Sessions Nazir, Mansehra in three equal installments. Proforma for effecting compromise (six pages) including affidavit by legal heirs and certificates by the elders is ExPA, copies of CNICs of Ali Khan (father), Mst Phull Bibi (mother) are ExPB, ExPC and copies of CNICs of our elders Ali Asghar and Sajjad Ahmed are ExPD and ExPE respectively."



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Joint statement of jirga members Ali Asghar and Sajjad Ahmed also recorded as below:-

"Stated that due to our efforts the parties have patched up the matter. Deceased Shahzad Khan has left behind father, Ali Khan, mother Mst Phull Bibi, widow Mst Nagina Bibi, two minor sons namely Muhammad Bilal and Muhammad Ibrar. There is no other legal heir left by the deceased except above named legal heirs. As per terms and conditions of compromise the 18 officials of raiding party will deposit share of minors in Diyat Rs.11,34,000/- before Sessions Nazir, Mansehra in three equal installments. Certificates on our behalf are already exhibited as ExPA and copies of our CNICs are already exhibited as ExPD and ExPE respectively."

Joint statement of officials also recorded and relevant portion is as under:-

"As per terms and conditions of compromise we, the present officials present before Court alongwith other police officials (who are not present today) of raiding party mentioned in the application will deposit the share of minors in Diyat Rs.11,34,000/-. We through application (ExPA/1) request the Court that being Government Servants are unable to pay the share of minors in Diyat in lump sum and request the Court that we may be allowed to deposit the above mentioned Diyat amount in three equal installments."

14. The issue arose that there are two minor sons of deceased and their share in Diyat amount was Rs.11,34,000/-. Eighteen Officials namely Shafique Khan SHO, Waheed Murad ASI, Ashraf Khan IHC, Ibrar Ahmed IHC, Babar Khan IHC, Khan Bahadur FC/921, Irfan FC/937, Khanzada 462/FC, Shaukat 123/FC, Toseef 529/FC, Bashir 218/FC, Mohabbat Khan driver, Parvez 929/FC, Ali Zaman 75/FC, Hussain 796/Elite, Manzoorul Haq 2309/Elite, Abdur Razzaq 1614/Elite and Ismail 1579/Elite, appeared before the Court and distributed the Diyat amount among them and each of them has committed to pay Rs.63,000/- to minors. They moved application for three monthly installments of the same which was allowed and they were directed to deposit with Nazir of Sessions Court. Rs.63,000/- each within three months. The Nazir will report

TESTED
02/02/2023
Signature
SESSIONS JUDGE
MANSEHRA


1107
the Court on expiry of 90 days regarding receipt of Rs.11,34,000 and also report in case of any default by any official. He is directed to invest the said amount after 90 days in National Savings for a period till majority of minors. The mother of minors can withdraw the profit of said amount till majority of minors for their better management.

15. Another important aspect of the case was that the complainant moved an application that Khurshid and Junaid inhabitant of Mohallah obtained their appointments in Police Department on account of death of his son. He requested that minors on gaining the majority may be appointed in Police Department. He also requested for removal of above named from the service. I would like to refer *1993 SCMR Supreme Court 1287 citation 'C'*, titled as "*Munawar Khan Vs Niaz Muhammad and others*", the government jobs are not public franchises and cannot be awarded to people on different pretext. It is a Constitutional Protected Right of Citizens of Islamic Republic of Pakistan to obtain jobs in accordance with merits. The request for appointment of minors on gaining the majority is not within the domain of this Court. The request of the complainant regarding illegal appointments of Khurshid and Junaid in police service on the pretext of compensation in lieu of murder of deceased is not justified and ab-initio-void, however the District Police Officer (DPO), Mansehra may look into the matter as it is the exclusive jurisdiction of the DPO Mansehra to deal it in accordance with law, if found any illegality in it. The said application of the complainant is referred to DPO Mansehra to deal it in accordance with law, after conducting proper inquiry.

16. As a result of compromise which was true and genuine and voluntary, accused Ismail is acquitted from the charges leveled against him. He is on bail. His sureties are absolved from


the liability of bail bonds. The share of minors namely Muhammad Bilal and Muhammad Ibrar in Diyat amount i.e. Rs.11,34,000/- will pay by the eighteen Officials namely Shafique Khan SHO, Waheed Murad ASI, Ashraf Khan IHC, Ibrar Ahmed IHC, Babar Khan IHC, Khan Bahadur FC/921, Irfan FC/937, Khanzada 462/FC, Shaukat 123/FC, Toseef 529/FC, Bashir 218/FC, Mohabbat Khan driver, Parvez 929/FC, Ali Zaman 75/FC, Hussain 796/Elite, Manzoorul Haq 2309/Elite, Abdur Razzaq 1614/Elite and Ismail 1579/Elite, and each of them has committed to pay Rs.63,000/- to minors. They are directed to deposit Rs.63,000/- each within three months in three installments with Nazir of Sessions Court. The Nazir will report the Court on expiry of 90 days regarding receipt of Rs.11,34,000/- and also report in case of any default by any official. He is directed to invest the said amount after 90 days in National Savings for a period till majority of minors. Para No.15 of this judgment is referred to DPO Mansehra for his information. Case property be disposed of in accordance with law but after period of appeal/revision. File be consigned to record room after necessary completion and compliance.

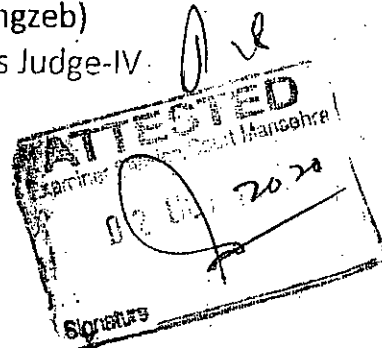
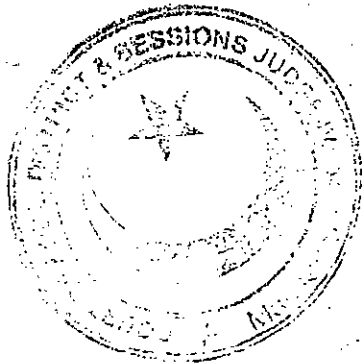
Announced
07-09-2020


(Muhammad Tahir Aurangzeb)
MCTC/Additional Sessions Judge-IV
Mansehra

CERTIFICATE

It is hereby certified that this judgment consists of Seventeen (17) pages, each page read corrected and signed by me.


(Muhammad Tahir Aurangzeb)
MCTC/Additional Sessions Judge-IV
Mansehra



4

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 15608 of 2021.

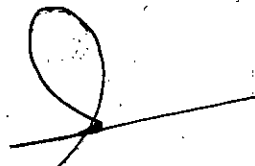
Muhammad Junaid son of Muhammad Javed, caste Gujjar,
resident of Salayian, Tehsil and District Mansehra, EX-Constable No.
1329 district Police MansehraAppellant

VERSUS

Deputy Inspector General of Police, Hazara range Abbottabad &
Others.Respondents

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| 3 | Annexure | | 6 - 17 |


Deponent

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 15608 of 2021.

Muhammad Junaid son of Muhammad Javed, caste Gujjar, resident of Salayian, Tehsil and District Mansehra, EX-Constable No. 1329 district Police MansehraAppellant

VERSUS

Deputy Inspector General of Police, Hazara range Abbottabad & Others.Respondents

Reply/ Comments On Behalf Of Respondents 01 & 02

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTION:-

- a) The appeal is not based on facts and appellant has got no cause of action or locus standi.
- b) That appeal is not maintainable in the present form.
- c) The appeal is bad for non-joinder of necessary and mis-joinder of unnecessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appellant has not come to the Honorable Tribunal with clean hands.
- f) That the appeal of the appellant is badly time barred.

FACTS:-

1. Para No. 1 of the facts to the extent of registration of FIR No. 208 needs no reply while the remaining part of the Para is incorrect, illegal, against the law and against the fact. The appellant initially while concealing the facts from the department and malafidly showing himself as one of the heir of deceased Shazad s/o Ali Khan and applied for his appointment subsequently the father of deceased Ali Khan

moved an application before trial court narrating all facts about two appointees on 05.09.2020, and on the application of father of deceased the honorable trial court gave his finding and according to the Para No. 15 of the judgment of Honourable Model criminal trial court/ASJ-IV, respondent No. 2 rightly discharged the appellant through vide OB No. 239 dated 24.09.2020 and it is worth to the mention here that the appellant has no right to file an appeal according to Rule 12-21 of Police Rules 1934, because there is a specific bar to file an appeal against the discharge order. **(Copy of judgment of model criminal trial court/ASJ-IV is as annexure A)**

2. Para No. 2 of the facts is incorrect. The appeal of the appellant before respondent No. 2 is not maintainable because a specific bar has been given in Rule 12-21, therefore the appeal of the appellant was rightly dismissed by respondent No. 02.
3. Para No. 3 of the facts is wrong and incorrect. The discharge order of appellant is proper and in accordance with law/rules and according to the Para No. 15 of the judgment of honorable court dated 07.09.2020. **(copy of discharge order is as annexure B)**
4. Para No. 04 of the facts is wrong illegal against the law and against the fact. The appellant was not qualified for the said post because he was only appointed on the basis of his misconceived and wrong statement of appellant about declaring himself as one of the legal heir deceased. Respondent No. 2 passed his order of discharge of appellant according to the Para No. 15 of the judgment of Honourable Model criminal trial court/ASJ-IV vide order dated 07.09.2020.
5. Para No. 5 of the fact is incorrect. The appellant was discharged from his post according to the Para No. 15 of the judgment of Honourable court.
6. Para No. 6 of the facts is incorrect. It was not necessary to enquire the matter against the appellant because it was

self proved from the application of the father of deceased that appellant misconceived his statement about to declare himself as heir of deceased. Therefore, while committing, fraud and misrepresentation with the department, appellant took benefit of his appointment hence, he was rightly discharged on the basis of his misrepresentation and fraud.

7. Para No. 7 of the facts is incorrect.

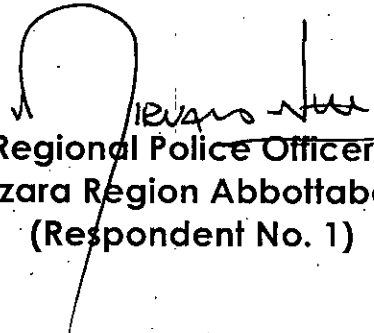
GROUNDS:-

- A. Para No. A of the ground is incorrect illegal, against the law and fact. The order passed by respondent No. 2 is in accordance with law/rules.
- B. Para No. B of the ground is incorrect. The appellant committed fraud and misrepresentation with the department.
- C. Para No. C of the ground is incorrect. The appellant was not one of legal heirs of the deceased because the father of deceased moved an application against the appellant before honorable trial court. Though it has been proved that appellant has committed fraud for taking benefit.
- D. Para No. d of the ground is incorrect. The appellant wrongly, interpreted the decision of apex court in his favour in the instant Para. The appellant was initially appointed on his wrong statement. Therefore, the appellant rightly discharged from his service, on the basis of his wrong statement.
- E. Para No. E of the ground is incorrect. The order of both the respondents are according to law rules and regulations.
- F. Para No. E of the ground is incorrect and evasive.
- G. Para No. E of the ground is incorrect.
- H. Para No. E of the ground is incorrect.

PRAYER:

In view of the above mentioned facts, the appeal in hand may kindly be dismissed with cost, being devoid of any legal force.


**District Police Officer
Mansehra
(Respondent No. 2)**


**Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 1)**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 15608 of 2021.

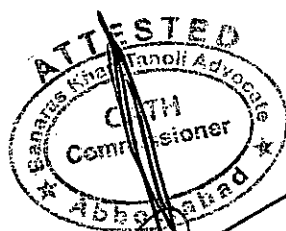
Muhammad Junaid son of Muhammad Javed, caste Gujjar,
resident of Salayian, Tehsil and District Mansehra, EX-Constable No.
1329 district Police MansehraAppellant

VERSUS

Deputy Inspector General of Police, Hazara range Abbottabad &
Others.Respondents

AFFIDAVIT

We respondents do solemnly affirm and declare that the
contents of the comments are true and correct to our knowledge
and belief and that nothing has been concealed from this
Honorable tribunal.



20/7/2022

**District Police Officer
Mansehra
(Respondent No. 1)**

**Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)**



OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

0992-9310021-22

0992-9310023

r.rpohazara@gmail.com

0345-9560687

NO: 29464 /PA DATED 12/11/2020


ORDER

This order will dispose off departmental appeal under Rule 11-4 of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Ex. Constable Muhammad Junaid No.1329 of District Mansehra against the punishment order i.e. *Discharged from Service* awarded by DPO Mansehra vide OB No.239 dated 24.09.2020.

Brief facts leading to the punishment are that the appellant was appointed as SPF constable vide OB No. 90 dated 13.05.2019 in lieu of compensation to the heirs of deceased Shazad s/o Ali Akbar r/o Deverian, Phulra, who was killed during raid of a police party vide FIR No. 208 dated 06.11.2018 u/s 302 PPC PS Phulra. Later on the appellant has been regularized vide OB No.96 dated 23.04.2020. Since, his appointment was irregularly made and the learned court has declared that the appointment of Muhammad Junaid No.1329 and Muhammad Khurshid No.1315 in Police service on the pretext of compensation in lieu of murder of deceased is not justified and *ab-initio-void*. The father of the deceased submitted an application before the trial court by virtue of which he disowned the appointments.

Consequently, in compliance with the order of MCTC/Additional Session Judge-IV Mansehra vide order dated 07-09-2020 the appellant was discharged from service under Rule 12:21 of PRs vide OB No. 239 dated 24-09-2020. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Mansehra were sought and examined/perused. The undersigned called the official in OR and heard him in person. After perusal of relevant record it has been noticed that the appointment of the appellant was irregular and unjustified. The appeal being meritless is liable to be dismissed. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-4 (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby *filed* with immediate effect.


Qazi Jamil ur Rehman (PSP)
REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

No. 29465 /PA, dated Abbottabad the 17/11/2020
CC: MANSEHRA

1. The District Police Officer, MANSEHRA for information and necessary action with reference to his office Memo No.19433/GB dated 15-10-2020. Service Roll and Fuji Missal containing enquiry file of the appellant is returned herewith for record.



OFFICE OF THE DISTRICT POLICE OFFICER MANSEHRA
Khyber Pakhtunkhwa Police)

No 17867 /OHC, dated 24/09/2020

Tel: No. 0997-920102 and Fax No. 0997-920104

E-mail: dpomansehra@hotmail.com

ORDER

In compliance with the order of the MCTC/Additional Session Judge-IV Mansehra vide order dated 07-09-2020, the office record transpired that the appointment of Muhammad Junaid No. 11/SPF and Muhammad Khurshid No. 68/SPF in Police Department as SPF vide OB No. 90 dated 13-05-2019 and OB No.114 dated 21-06-2019 was made as compensation to the heirs of Mr. Shahzad s/o Ali Khari r/o Daverian-Phulra who was killed by police party vide FIR No. 208 dated 06-11-2018 U/S 302 PPC PS Phulra. Later on, both the above police constables were regularized vide OB No. 96 dated 23-04-2020. At present their regular service is 6 months and 22 days. Since, their appointment was irregularly made and the learned court has declared that the appointment of Muhammad Junaid No. 1329 and Muhammad Khurshid No. 1315 in police service on the pretext of compensation in lieu of murder of deceased is not justified and ab-initio-void.

Therefore, I, the District Police Officer, Mansehra, under power conferred upon me by Police Rules 12.21, hereby discharge Constable Muhammad Junaid No. 1329 and Constable Muhammad Khursheed No. 1315 from service with immediate effect. Since the total regular service of Constable Muhammad Junaid No. 1329 and Constable Muhammad Khursheed No. 1315 is less than three years so there shall be no appeal against an order of discharge under this rule.


District Police Officer,
Mansehra

OB No 239

Dated 24/09/2020

بعد الت جناب ایڈیشنل سیشن جج صاحب - IV / ماڈل کریمنٹل کورٹ مانسہرہ
مقدمہ عدالت نمبر 208/18 جرم زبردفعہ 302PPC قحانہ بھلڑوہ

جناب عالی!

مؤدہ باز گذارش ہے کہ سائل کے پسر کو مقامی پولیس قحانہ بھلڑوہ نے گولی مار کر ہلاک کر دیا تھا بدین نسبت مقدمہ عنوان بالا درج رجسٹرڈ ہو اور بائین فریقین (یعنی من سائل و محکمہ پولیس) پر طے پایا تھا من سائل کے دو پسران کو محکمہ پولیس میں اہلور کا نشیبل تعینات کیا جائیگا اور سائل کے یتیم پوتوں کیلئے دیت کی رقم بھی مقرر کی گئی تھی جو تا کہ تمامال دیت کی رقم کی ادائیگی بھی نہیں ہوئی۔

یہ کہ بہرام ولد غلام حیدر نے محکمہ پولیس کو اندھیرے میں رکھتے ہوئے اور دوغ گولی سے کام لیتے ہوئے اپنے آپ کو مفذول کا دادا ظاہر کر کے اپنے پسر خورشید کو محکمہ پولیس میں تعینات کروا دیا جبکہ سائل کو اس تمام معاملہ سے بے خبر رکھا گیا اور جان بوجھ کر اپنا ذاتی مفاد حاصل کرنے کی خاطر سائل کے حقوق کو ضائع کر دیا جو کہ سائل کے ساتھ سراسر نا انصافی، ظلم اور زیادتی ہے۔ اس کے علاوہ ایک دوسرے شخص چند ولد جاوید کو بھی محکمہ پولیس میں سائل کے پسر کے قتل کے بدلہ میں تعینات کر دیا۔ کسی جاوید نے سائل کے ساتھ ایک زبانی معاہدہ بھی کیا تھا جس کی خلاف ورزی کرتے ہوئے اس نے اپنے پسر کو محکمہ پولیس میں بھرتی کر دیا۔

یہ کہ سائل ایک غریب شخص ہے اور سائل کا بیٹا قتل ہوا ہے جس کے چھوٹے چھوٹے یتیم بچے ہیں جن کا ذریعہ معاش بھی کوئی نہ ہے اور سائل کے ساتھ جو معاہدہ کیا گیا تھا کہ سائل کے دو پسران کو محکمہ پولیس میں تعینات کیا جائیگا تا کہ وہ یتیم بچوں کی کفالت کر سکیں مگر سب کچھ اس کے برعکس کر کے سائل کے حقوق کو ضائع کر دیا گیا ہے اور سائل در بدر کی ٹھوکریں کھانے پر مجبور ہے۔

Solo F.A. r B. is
Worth Peruen Pleas

لہذا استدعا ہے کہ!

مندرجہ بالا حالات و واقعات کی روشنی میں مذکور ان بالا کو محکمہ پولیس سے فی الفور فارغ کیا جائے اور اگر ممکن ہو سکے تو سائل کے ایک یا دو حقیقی پسران کو تعینات فرمائے جانے کا حکم صادر فرمایا جائے اور فاضل عدالت ہذا جو مناسب سمجھے فیما بعد صادر فرمائے۔

2/9 2020 05 ستمبر

علی خان ولد غلام سکندر پوڑیاں بھلڑوہ، تحصیل و ضلع مانسہرہ..... سائل

رابطہ نمبر 0300-2377704

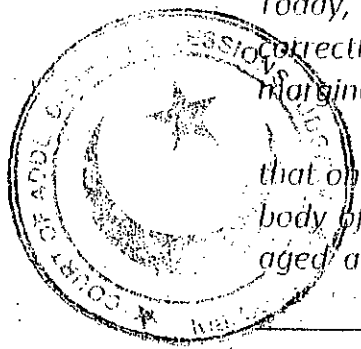
and at morning time at about 6:00 hours, a police party under the command of Muhammad Shafique Khan, SHO, PS Khaki raided the house of Ali Zaman for the purpose of arrest of proclaimed offender Ali Zaman, required in a murder case. In the meanwhile, due to the firing of police party, his nephew Muhammad Shehzad alias Shada hit and died at the spot. The occurrence was witnessed by Badri Zaman, Wazir Muhammad. Complainant charged the police party for the murder of his nephew Shehzad alias Shada. Hence, instant FIR was registered. Later on, on 02-01-2019 complainant recorded his supplementary statement u/s 164 CrPC and charged accused Muhammad Ismail Khan son of Tor Khan for murder of his nephew.

3. After completion of investigation, complete challan against accused was submitted before Court. Accused was summoned and on his appearance provisions of section 265-C Cr.P.C were complied with, and charge was framed against the accused facing trial U/Ss 302 PPC to which he pleaded not guilty and claimed trial.

4. So far, prosecution produced and examined Fifteen (15) PWs. The gist of Prosecution evidence is as under:-

(PW-1) was Muhammad Zarin FC No.167 who is marginal witness to recovery memo vide which in his presence Chan Zeb ASI look into possession from Abdur Rehman Inspector Incharge Elite Force Peshawar (Headquarter Peshawar) one rifle SMG No.4614701 alongwith Patta one empty magazine and IO marked with objected object and sealed it into parcel No.4 by affixing 3x3 seals of CZ on the same and prepared the recovery memo in his presence as well as in the presence of constable Chan Zeb No.113. Today, he has seen the recovery memo which is correct and correctly bears his signature as well as the signature of other marginal witness.

(PW-2) was Dr. Muhammad Abdullah, MO who stated that on 06.11.2018, at 12:00pm, he conducted autopsy on the dead body of Shehzad son of Ali Khan caste Gujjar resident of Dewarian aged about 25 years, brought by constable Chanzeb No.24 and



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IN THE COURT OF MUHAMMAD TAHIR AURANGZEB
MODEL CRIMINAL TRIAL COURT/ASJ-IV

Sessions Case No: 30/7 of 2019
Date of Institution: 10/05/2019
Date of Decision: 07/09/2020

Place: Mansehra
FIR No. 206
Dated: 06/11/2018
Under sections: 302 PPC
Police Station: Phulra, Mansehra

The State.....

VERSUS

Ismail Khan son of Tor Khan aged about 32/33 years caste Usman
Khel, resident of Shangaldar, Judbah District Torghar.

(Accused facing trial)

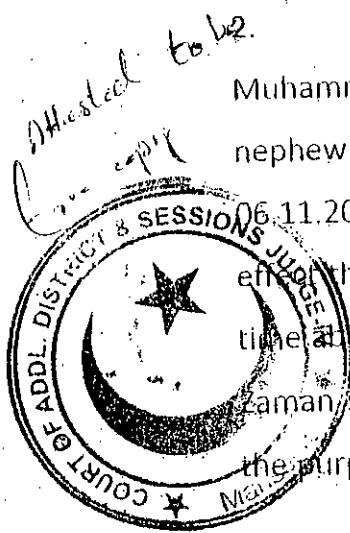
Complainant represented by: Learned APP for the State.

Defence counsel: Mr. Shehzad Ahmed Khan Jehangiri Advocate.

JUDGMENT:-

Accused named above, faced criminal trial in case FIR
No.206, dated 06-11-2018, U/Ss 302 PPC registered at Police
Station Phulra, Mansehra.

Brief facts of the case are that complainant
Muhammad Miskeen son of Ghulam, alongwith dead body of his
nephew Muhammad Shehzad alias Shada son of Ali Khan on
06.11.2018 at 10:00hours, reported the matter in the PS to the
effect that on the day of occurrence i.e. on 06-11-2018 at morning
time about 6:00 hours, his nephew who went to the house of Badri
Zaman son of Rehmatullah resident of Danna Riyala yesterday for
the purpose of bullock. He spent night in the house of Badri Zaman

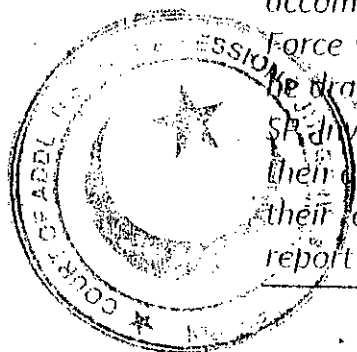


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Constable Chanzeb to escort to the mortuary. He sent the copy of FIR to investigation branch.

(PW-4) was Muhammad Munsif No.917/MM who stated that vide road certificate No.143/21 dated 12.11.2018 he handed over sealed parcel No.1 & 3 to Zarin No.167 and vide road certificate No.144/21 dated 12.11.2018 he handed over sealed parcel No.2 to Zarin No.167 for its transmission to FSL, Peshawar. On his return the said constable handed over to him receipt bearing acknowledgment of official of FSL, Peshawar. He has seen attested copies of said road certificates which are ExpPW4/1 and ExpPW4/2. He was examined u/s 161 CrPC.

(PW-5) Muhammad Salim SI/OII stated that on receipt of copy of FIR, he went to the place of occurrence and prepared site plan ExpW5/1. He collected blood stained earth from the place of deceased Shahzad and sealed into parcel No.1 (Exp1). He collected four empties of 7.62 bore from the place of accused and sealed into parcel No.2 (Exp2). He prepared recovery memo ExpW5/2 in this regard. He collected blood stained garments of deceased having bullet marks brought by Chanzeb No.24 and prepared parcel No.3 (Exp3) vide recovery memo ExpW5/3. He recorded statement of PWs of recovery memo and eyewitness Badri Zaman. He sent parcel No.2 to FSL vide his application ExpW5/4. On the second day he went to Jhaza of deceased and prepared list of legal heirs of deceased which is ExpW5/5. On 07.11.2018 special investigation team was ordered and he was member of that team. The letter of constitution of team is ExpW5/5. The team has verified the already conducted investigation by him. He placed on record arrival, departure of the police team who went to the place of occurrence alongwith Shafiqur Rehman, SHO PS Khaki. The record is ExpW5/6. The accompanying officials were Shafiqur Rehman, SHO were Waheed Murad, ASI, Muhammad Ashraf, IHC, Babar Khan, IHC, Constables Khan Banadur No.921, Irfan No.937, Khanzada No.462, Tosif No.529, Shaukat No.123, Muhammad Bashir No.218, Tufail No.82, Lady constable Asima No.910. He also collected Naqal Mad No.18 regarding accompanied constable Hassan No.796, Manzoorul Haq No.2309, Abdur Razaq No.1614, Ismail No.1579 as ExpW5/7. The SHO Shafiqur Rehman also accompanied the officials from PS Phulra. He placed on record his report through Naqal Mad No.28 as ExpW5/8. Thereafter he interrogated all the officials who accompanied the SHO and checked their arms. The members of Elite Force went to Abbottabad so they could not be interrogated, then he drafted a letter for production of members of Elite Force through SI investigation, Mansehra which is ExpW5/8. They were produced there and interrogated. Their arms numbers were also verified from their concerned department and collected their arms. The FSL report was received wherein it is disclosed that the fires were made



M. I.

Sessions Case No.30/7 of 2019
The State Vs Ismail Khan.

identified by Farid son of Umar Khan and Badri Zaman son of Rehmatullah and found the following:-

SYMPTOMS observed before death: Nil.

Information furnished by police. Firearm injury.

EXTERNAL APPEARANCE:

Mark of ligature on neck and dissection, etc: Nil.

CONDITION OF SUBJECT: Stout young male blood in nose and around chest with blood stained cloths torn over second button area from above. Rigor mortis not developed.

WOUNDS, BRUISES, POSITIOIN, SIZE NATURE:

Entry wound found at upper medial border of left scapula posteriorly approximately 1cm in diameter. Inverted margins. No marks/blackening etc.

Exit wound found at upper anterior sternum just below manubrium approximately 4cm in diameter, everted margins.

Superficial scratches over nose and upper chest.

CRANIUM AND SPINAL CORD: Intact.

THORAX: sternum, bronchi and blood vessels are injured rest intact.

ABDOMEN: All organs of abdomen are intact except injured oesophagus.

MUSCLES, BONES, JOINTS: As noted above.

Remarks:

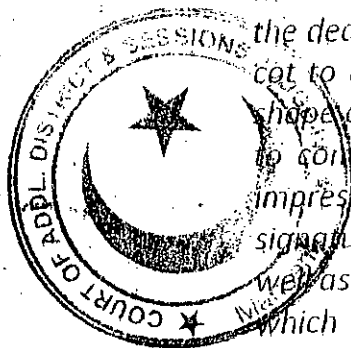
He has conducted autopsy of deceased Shehzad son of Ali Khan on 06-11-2018 at 12:00PM. In his opinion, cause of death is hemorrhagic shock due to injury to major blood vessels as a result of firearm injury. Six pages post mortem report +marked and signed clothes are handed over to police.

Probable time that elapsed between injury and death: Approximately 10 to 20 minutes.

Between death and post-mortem: Approximately 06 hours.

He has seen post-mortem report consisting of six pages including pictorial, which is in his handwriting and bears his signature correctly and same is ExpPW2/1. He also endorsed his certificate on injury sheet which is ExpPW2/2.

(PW-3) was Tasveer Hussain Shah, SHO who stated that on 06-11-2018, at 10:00AM, complainant Miskeen brought the dead body of deceased Muhammad Shehzad alias Shada on the cot to the PS and reported the matter to him which he reduced in shape of FIR. After recording the report, its contents were read over to complainant who after admitting the same as correct, thumb impressed the same. FIR is in his handwriting and bears his signature correctly and is ExpPW3/1. He also prepared injury sheet as well as inquest report of deceased which are ExpPW3/2 and ExpPW3/3 which are correct and correctly bears his signatures. He handed over the dead body alongwith injury sheet and inquest report to



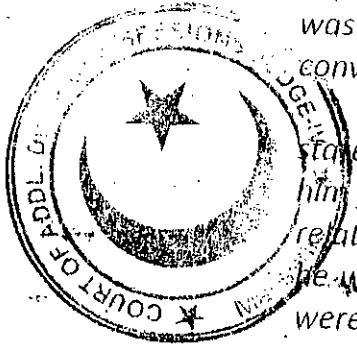
from firearms. The report is ExPW5/9. He also sent blood stained garments and earth to FSL and the report is ExPW5/10. He also recorded statement of eyewitness Wazir Muhammad on 14.11.2018. He placed on record copy of register No.19 ExPW5/11. He interrogated Ismail, Manzoorul Haq, Hassan and Abdur Razzaq on 16.11.2018 in presence of DPO, Mansehra. They were not telling the actual position to them. They were again interrogated and they denied the allegations. He took them to Peshawar for polygraphic test on 04.12.2018 and questions were during that polygraphic test. He took them vide his application ExPW5/9 (already exhibited) and put questions to them during that polygraphic test. The test reports are ExPW5/12, ExPW5/13, ExPW5/14 & ExPW5/15. He recorded statement of Inspector who conducted polygraphic test. Thereafter he went for course. He drafted all the documents in his own handwriting which correctly bear his signatures. He used the seal of SA and recorded the statements of witnesses.

(PW-6) was Ali Khan son of Ghulam who is father of deceased stated that Shahzad deceased is his son. He was married with Mst Nagina Bibi. His mother is Mst Phullan Bibi. He was having one son Bilal at the time of his death, however the second son born after his death namely Ibrar. His son was driver by profession of Bedford. He never remained involved in any case. On the day of occurrence he was in Karachi and came to place of occurrence on information of the occurrence. He came to know from his relatives available in the village that his son went to the house of Badri Zaman on the eventful night for purchasing bullock and spent his night in that house of Badri Zaman. Early in the morning the police raided the house and murdered his son.

(PW-7) Mst Nagina Bibi widow of Shahzad (deceased) stated that Shahzad deceased was her husband. She has two sons minor Bilal and Ibrar. Her husband was murdered by the police and he was innocent. She prayed for redressal of her grievance and conviction of the culprits.

(PW-8) was Mst Phullan Bibi wife of Ali Khan who stated that Shahzad deceased was her son. He was having two sons minor Bilal and Ibrar. Her son was murdered by the police and he was innocent. She prayed for redressal of her grievance and conviction of the culprits.

(PW-9) was Badri Zaman son of Rehmatullah who stated that one day prior to eventful day deceased Shahzad visited him for purpose of bullock and he spent his night with him as he is relative to him. He spent night at his house and early in the morning he went to ease himself in the fields adjacent to his house as they were villagers and have no washrooms in their houses. As they reached in front of house, police reached there and one of the official held him and the second official made firing on the

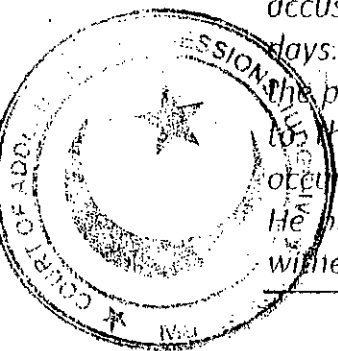


deceased. The officials were 8/10 in number. The name of that official was Ismail. He also made pointations to IO at the time of preparation of site plan. He also identified the dead body before police and doctor. His statement was recorded u/s 161 CrPC.

(PW-10) was Sher Bahadur son of Sikandar who stated that he was having a house adjacent to place of occurrence. On the eventful day early in the morning the police cordon off the area and official were present on their roofs and surroundings. He came out on hearing the noise of firing and saw the dead body. On the whistle all the official started to run and escaped from the spot. He also witnessed recovery of blood stained earth and recovery of empties from the spot. He has seen the recovery memo ExPW5/2 (already exhibited) which correctly bears his thumb impression along with thumb impression Sadiq.

(PW-11) was Fida Muhammad son of Gulab who stated that the IO collected blood stained garments of deceased in his presence vide recovery memo ExPW5/3 (already exhibited) and sealed into parcel. He was also present before the jirga with police after the occurrence and produced the video of same as ExPW11/1. His statement was recorded u/s 161 CrPC.

(PW-12) Chanzeb ASI stated that on transfer of Muhammad Salim, SI/OII, he was posted as ASI/OII in PS Phulra. He has conducted partial investigation in the instant case. He received file for investigation on 26.12.2018. On 02.01.2019 complainant came to PS and recorded his supplementary statement in which he charged accused facing trial namely Ismail. Vide his application ExPW12/1 he produced complainant before Court for recording his statement u/s 164 CrPC. He vide his application ExPW12/2 applied for issuing letter regarding involvement of accused Ismail No.1579/P-113 for writing letter to SSP Elite Force, Abbottabad for his arrest and interrogation. In this respect SHO Muhammad Nawaz Khan of PS Phulra made an entry regarding his departure from the PS to Abbottabad for arrest of accused which is ExPW12/3. Copy of arrival of SHO in the Police Line, Abbottabad vide Mad No.30 is ExPW12/4. The handing over of accused to SHO in Police Line, Abbottabad vide DD No.29 dated 18.01.2019 is ExPW12/5. SHO arrested accused and issued his card of arrest which is ExPW12/6. Copy of arrival of SHO alongwith accused in PS, Phulra is ExPW12/7. He vide his application dated 19.01.2019 ExPW12/8 produced the accused before Court for police custody which was allowed for two days. During interrogation accused disclosed that he can point out the place of occurrence in presence of members of JIT and led them to the spot where he pointed the place where on the day of occurrence he was present and the place of presence of deceased. He prepared pointation memo ExPW12/9 in presence of marginal witnesses which he endorsed in the site plan with red ink



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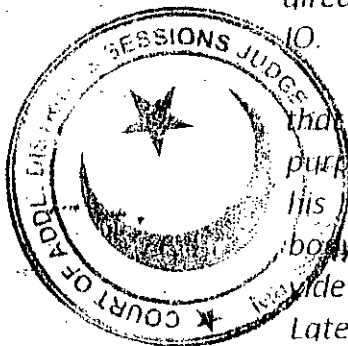
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ExPW12/10. He recorded statement of accused u/s 161 CrPC. Vide his application ExPW12/11 he produced the accused before Court for recording confessional statement and he was sent to judicial lockup. He vide his application ExPW12/12 applied to SP Investigation for issuing letter to Incharge Kot, Elite Force, Peshawar for handing over SMG No.4614701 which was issued in the name of accused. He vide his application ExPW12/13 applied for issuance of reminder to the quarter concerned. After completion of investigation he handed over case file to SIO on 23.02.2019 for submission of complete challan. However the process of handing of SMG remained continued. He vide his application dated 05.03.2019 ExPW12/14 he obtained permission from SP, Investigation, Mansehra for obtaining the SMG involved in the instant case which was allowed on 07.03.2019. On 12.03.2019 he left the PS for Peshawar and reached in Headquarter Elite Force, Peshawar and made his arrival vide Naqal Mad No.9 which is ExPW12/15. On the same day Incharge Kot, Elite Force, Peshawar handed over to him SMG No.4614701. He vide recovery memo already exhibited as ExPW1/1 took the same alongwith sling Patta, one empty magazine into his possession in presence of marginal witnesses in the Kot and sealed the same into parcel No.4 and signed the same with pointed object and also affixed three seals in the monogram of CZ on the parcel. In this respect copy of receipt No.11/15 regarding receiving of SMG alongwith sling Patta and one empty magazine is ExPW12/16. He vide his application ExPW12/17 sent parcel No.2 & 4 to Arms Expert, FSL, Peshawar and the report is ExPW12/18. He drafted all the documents in his handwriting, recorded statement of PWs u/s 161 CrPC.

(PW-13) was Nawaz Sarwar, SHO who stated that he prepared injury sheet of deceased Shahzad which is ExPW13/1. He has also arrested the accused and issued his card of arrest already exhibited as ExPW12/6. After completion of investigation he has submitted complete challan against the accused as ExPW13/2.

(PW-14) was Abdul Sattar No.255 who stated that he was accompanying the IO and JIT where, the accused made pointation of the spot which IO recorded vide pointation memo already exhibited as ExPW12/9. His statement was recorded by the IO.

(PW-15) Miskin son of Ghulam (complainant) stated that deceased is his nephew. He went to Danna Riyala for the purpose of bullock. Between 6 to 7am he received information that his nephew is murdered by police. So he went there and the dead body was carried by the police. He reported the matter to police vide FIR ExPW15/1. Initially they were not recording his report. Later-on they themselves ready to record his report. He reported



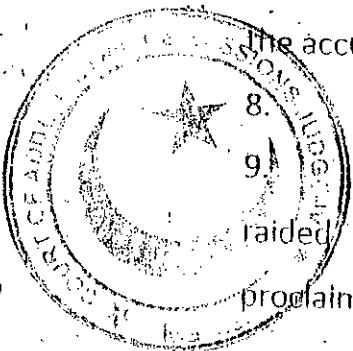
whatever he heard. Later-on IO remained in touch with them. He charged all the involved police for murder of his innocent nephew.

5. Thereafter, prosecution closed its evidence, while abandoning rest of PWs mentioned in the calendar of PWs. Statement of accused was recorded u/s 342 Cr.P.C, who professed his innocence and false implication and termed all PWs highly interested and procured, however, did not wish to produce defense evidence or to be examined on oath U/S 340 (II) Cr.PC.

6. Learned Dy PP for the state assisted by private assisted by private counsel for the complainant argued that though the accused facing trial is not directly charged in the FIR, however was charged by the complainant after his due satisfaction; that all PWs remained consistent and coherent in their deposition made regarding the occurrence; that no major or minor contradiction could be extracted from their mouths. It was finally argued that prosecution has successfully proved its case against accused facing trial beyond shadow of doubt and prayed for conviction of the accused facing trial.

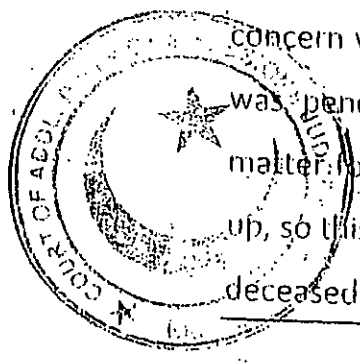
7. Conversely, learned defense counsels argued that accused facing trial is innocent and has falsely been charged in the instant case; that all the PWs are highly interested, procured witnesses and they never remained consistent and coherent in their deposition against the accused and their statements are suffering from major discrepancies and contradictions. It is finally argued that prosecution has failed to prove charge against accused facing trial beyond any shadow of doubt and prayed for acquittal of the accused.

8. I have heard the arguments and record perused.
9. In the instant case, the police party from PS Khaki raided within the jurisdiction of PS Phulra in search of the proclaimed offender Ali Zaman, PO in FIR No.215 dated 23-08-2018.



M. C.

was any sort of firing at the police party or there was any aggression against police at the spot. The record is completely silent on this aspect of the case. There was no explanation on the part of Police Department that under what circumstances, they felt need to use force on the crime scene. This was burden of prove of Police Department that they used the force in extreme urgency but there is nothing on record to support this. A jirga was convened in supervision of SP Investigation after the occurrence to control law and order situation in area, which is exhibited by PW11 as ExPW11/1, i.e. video film of that jirga. In the said jirga, the people of that area pardoned the police, and SP Investigation made commitment with them to name one person from officials as accused. Let us suppose that the contention of Police Department that there was counter aggression by the P.O Ali Zaman or the deceased then the FIR might have been there against the aggressor which is not available on record. Similarly, if the supervisor of raid Shafique SHO was feeling that accused facing trial has violated the command of authority, there would have any complaint on his part against that official but there is nothing on record and the SHO Shafique did not record any report against the concerned official, so the belated charge against accused facing trial is just for the purpose of filling the documents. It was also brought on record that two persons from that area were employed by the Police Department namely Khurshid and Junaid by Police Department due to pressure of the locals on the police. The complainant disowned their appointments and has moved an application that he has no concern with those appointments. This Court noticed that the case was pending in evidence since long and no one was pursuing matter for complainant. The accused informed that it was patched up, so this Court has summoned the complainant who was father of deceased. He was at Karachi at that time and he stated to Court



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14

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u/s 302 PPC. They raided the house of said PO situated within the jurisdiction of PS Phulra and during the said raid, they committed murder of Shahzad son of Ali Khan who was available in that village on that day in order to purchase animal. The FIR cannot be recorded for sufficient time as police was involved in it, however the story narrated in the FIR was that it was 6:00AM on 06-11-2018 that Shahzad who went in night to the house of Badri Zaman in said village for the purpose of purchasing Bull. Police raided the village to arrest Ali Zaman PO in supervision of Shafique Khan SHO and during said raid, police fired and murdered Shahzad, the nephew of complainant. It is an admitted fact in the record of police that the deceased was murdered in the said raid. It is a case of affixation of liability only and there is no question that the deceased was murdered or not.

10. In the instant case, there are certain points for determination. First of all that whether the deceased died in firing of police and the police has acted in good faith within the ambit of law. The second is that whether the matter was resolved between the parties. The third is whether the accused facing trial against the Command of Authority, committed the occurrence. So far as, the first point is concerned, there is no denial of the fact in police record that deceased was innocent and he never remained involve in any criminal case. He was a noble citizen of the country. The police record fully admit that the officials raided the house of PO Ali Zaman and during that raid, the deceased was hit by firing and died, so this is proved fact that the deceased died in firing of police. the second question arises that whether the deceased was armed and he responded the police in aggressive tone and tried to violate the law and order situation at the spot. The IO appeared in witness box and he stated that the deceased was without arms and IO has not recovered a single empty in proof of the fact that there

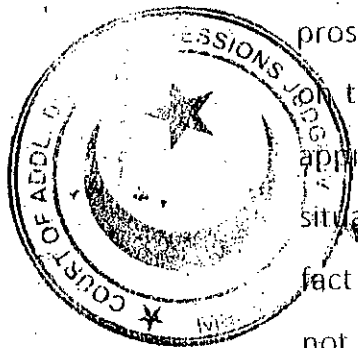




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that how he can contest the case against the State as they are empowered and he is earning livelihood of minor sons of deceased. He disclosed that deceased was having one son at the time of death and second born after his death.

11. The Police Department as well as IO of the case after the jirga, got the nomination of accused facing trial as the actual culprit. The only evidence against him was the crime empty and the official weapon of accused Ismail. There was jirga prior to the charge against accused Ismail and after that jirga, collection of such type of evidence with a considerable delay by the IO was the sole evidence with the prosecution to prove the matter against accused facing trial. It was a case of capital punishment and such type of evidence recorded with considerable delay and corroborative in nature is always doubtful and reliance cannot be made on such type of evidence specifically when the SP Investigation committed with the locals that he will give one person as accused. This Court doubts that the junior most official was made an escape goat. The file is completely silent that how the IO came to know that at the place of alleged empty, accused facing trial was available. All the available officials were within the access of IO to get record their statements but the IO has not bothered to record their statements. IO was under obligation to disclose that whether those persons who were witnessing the occurrence in uniform were either witnesses or they were accused. The file suggests that IO has not made them witnesses or accused. This Court could hold that the prosecution has withheld the best evidence but there was no fault the part of innocent kids of the deceased and this standard of appreciation of evidence was not permissible in such type of situation. The case diaries of the IO are completely silent about this fact that why he spared those accused or witnesses and why he has not recorded them for reaching to true facts of the case. The



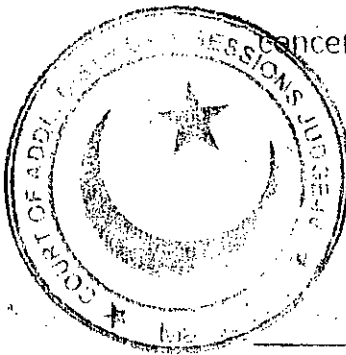
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investigation conducted by the IO was dishonest and directed one. At the conclusion of the trial, this Court felt that the matter is proved to this extent that the deceased died in the firing of police, however this fact could not be determined whether the police exceeded their jurisdiction or whether the deceased died in performance of duties. It was not the duty of those officials to associate them with investigation compulsorily, it was alone duty of IO to record their statements. The situation developed before this Court was that it was proved that deceased Shahzad died in firing of police by the act of police raiding party under the authority of State and there was no cogent evidence against single person to connect him with commission of offence. There was no evidence against accused facing trial to distinguish him from his other colleagues and ultimate fate of case seems in shape of acquittal of accused. This Court has consulted PPC, CrPC for such type of situations where the question of vicarious liability is involved alongwith the question that the witnesses were not recorded by the IO and the accused were not challaned before the Court, this Court found Section 338-F PPC which is reproduced as under:-

"338-F. Interpretation. In the interpretation and application of the provisions of this Chapter, and in respect of matters ancillary or akin thereto, the Court shall be guided by the Injunction of Islam as laid down in the Holy Quran and Sunnah."

12. The guidance in the situation of this case is obtained from the provisions of Quran & Sunnah and found the principle of "Qasamat", so in the line, this Court has issued notices to all the concerns in these words:-

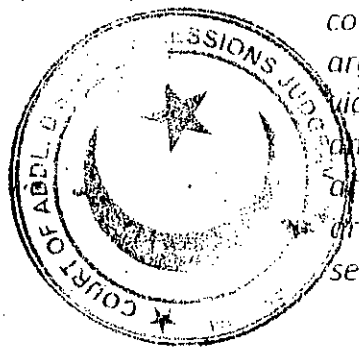
"Learned Dy PP for the State present. Accused Ismail Khan on bail with counsel present. Statement of accused recorded u/s 342 CrPC and arguments heard. During the course of arguments the facts revealed before the Court were that SHO of PS, Khaki was accompanying with 13



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officials armed with weapons. They went to the jurisdiction of other PS i.e. Phulra in search of PO Ali Zaman charged in a murder case. During the raid over his house, they murdered deceased of this case. The deceased was not charged in any FIR and was an innocent person. The IO has not reported any overt act on the deceased. On the basis of crime empties and weapons, used alongwith the spot position of presence of the police officials, the Police Department nominated Ismail constable of Elite Force as accused. It is worth mentioning that the 13 officials were neither the witnesses nor they are accused. The investigation standard of the case was poor. The criminal case of criminal liability of the accused facing trial will be decided on the basis of evidence recorded before the Court.

The deceased in this case was Shahzad son of Ali Khan and was having no relation with the PO under raid. He was in the village of occurrence in connection with purchase of animal. The IO admitted that there was no overt act on the part of deceased and he has also not recovered any arms or empties from the place of deceased. The standard of evidence and investigation by the IO will be seen in judgment, however an innocent person died in the occurrence by the act of State. In any case his murder with all his innocence is required to be addressed by the State. Besides the original criminal responsibility of murder, it seems to be a case of vicarious liability of the State through Police Department as the murder of innocent deceased was committed by Police Department in an official raid. This Court deems it appropriate to serve notice for arguments for vicarious liability to IG, Khyber Pakhtunkhwa, DIG, Hazara Range, DPO, Mansehra, SP, Investigation, Mansehra, District Public Prosecutor, Mansehra and SHO Shafique Khan, Waheed Khan, ASI, Babar, IHC, Ashraf, IHC, Khan Bahadur 921, Irfan 937, Khan Zada 462, Shaukat 123, Toseef 529, Bashir 218, Mst Asma 810, Driver Muhabat Khan, Hussain 786, Manzoor Haq 2309, Abdur Razzaq 1614, Ibrar Ahmed, IHC, Parvez 929, Ali Zaman 75. They are directed to make their appearance through counsel or in person and argue the case. This notice for arguments will be presumed as framing of charge for vicarious liability. In case of non-appearance on the part of any noticed respondent, it will be presumed that they have no arguments in their defence. File to come up for further arguments on 05-08-2020. The Muharrir is directed to issue separate notice to each respondent mentioned above



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through registered post alongwith copy of this order sheet for the date fixed."

13. The notice was issued regarding vicarious liabilities of all the officials who joined the raid. Their names were reflected on file. The DPO, Mansehra represented himself through P.I. It is important to mention that DPO Mansehra was served with the notice just to notice the situation of subordinate officials. He responded to the notice of Court in accordance with law. He was committed about the prestige and dignity of his Department. He arranged for appearance of all the officials before the Court, who were available in the raid. The complainant alongwith mother of deceased and widow of deceased appeared before the Court and he was fully satisfied that the Police Officials have effected true and genuine compromise with him. The Court after inquiring the facts from the complainant, widow and mother noticed that the compromise was true and genuine. The Court recorded it, as reproduced below:

"Stated that on the report of complainant case FIR # 206 dated 06-11-2018 was registered against accused facing trial Ismail Khan u/s 302 PPC in PS Phulra.

Deceased Shahzad Khan has left behind father, Ali Khan, mother Mst Phull Bibi, widow Mst Nagina Bibi, two minor sons namely Muhammad Bilal and Muhammad Ibrar. There is no other legal heir left by the deceased except us.

Due to intervention of elders of the locality, we the major legal heirs (father, mother and widow) have effected compromise with the accused facing trial namely Ismail Khan by waiving off our rights of Diyat and have got no objection on the acquittal of accused facing trial. The share of minors in Diyat is Rs.11,34,000/- and the members of raiding party of 18 police officials mentioned in their application will deposit the same within 90 days before Sessions Nazir, Mansehra in three equal installments. Proforma for effecting compromise (six pages) including affidavit by legal heirs and certificates by the elders is ExPA, copies of CNICs of Ali Khan (father), Mst Phull Bibi (mother) are ExPB, ExPC and copies of CNICs of our elders Ali Asghar and Sajjad Ahmed are ExPD and ExPE respectively."



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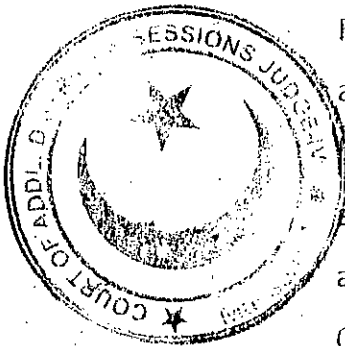
Joint statement of jirga members Ali Asghar and Sajjad Ahmed also recorded as below:-

"Stated that due to our efforts the parties have patched up the matter. Deceased Shahzad Khan has left behind father, Ali Khan, mother Mst Phull Bibi, widow Mst Nagina Bibi, two minor sons namely Muhammad Bilal and Muhammad Ibrar. There is no other legal heir left by the deceased except above named legal heirs. As per terms and conditions of compromise the 18 officials of raiding party will deposit share of minors in Diyat Rs.11,34,000/- before Sessions Nazir, Mansehra in three equal installments. Certificates on our behalf are already exhibited as ExPA and copies of our CNICs are already exhibited as ExPD and ExPE respectively."

Joint statement of officials also recorded and relevant portion is as under:-

"As per terms and conditions of compromise we, the present officials present before Court alongwith other police officials (who are not present today) of raiding party mentioned in the application will deposit the share of minors in Diyat Rs.11,34,000/-. We through application (ExPA/1) request the Court that being Government Servants are unable to pay the share of minors in Diyat in lump sum and request the Court that we may be allowed to deposit the above mentioned Diyat amount in three equal installments."

14. The issue arose that there are two minor sons of deceased and their share in Diyat amount was Rs.11,34,000/-. Eighteen Officials namely Shafique Khan SHO, Waheed Murad ASI, Ashraf Khan IHC, Ibrar Ahmed IHC, Babar Khan IHC, Khan Bahadur FC/921, Irfan FC/937, Khanzada 462/FC, Shaukat 123/FC, Toseef 529/FC, Bashir 218/FC, Mohabbat Khan driver, Parvez 929/FC, Ali Zaman 75/FC, Hussain 796/Elite, Manzobul Haq 2309/Elite, Abdur Razzaq 1614/Elite and Ismail 1579/Elite, appeared before the Court and distributed the Diyat amount among them and each of them has committed to pay Rs.63,000/- to minors. They moved application for three monthly installments of the same which was allowed and they were directed to deposit with Nazir of Sessions Court. Rs.63,000/- each within three months. The Nazir will report

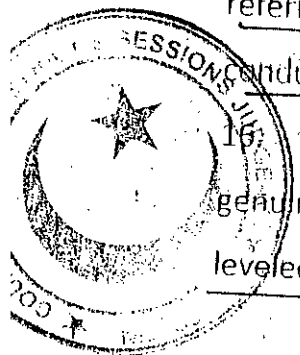


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The Court on expiry of 90 days regarding receipt of Rs.11,34,000/- and also report in case of any default by any official. He is directed to invest the said amount after 90 days in National Savings for a period till majority of minors. The mother of minors can withdraw the profit of said amount till majority of minors for their better management.

15. Another important aspect of the case was that the complainant moved an application that Khurshid and Junaid inhabitant of Mohallah obtained their appointments in Police Department on account of death of his son. He requested that minors on gaining the majority may be appointed in Police Department. He also requested for removal of above named from the service. I would like to refer 1993 SCMR Supreme Court 1287 citation 'C', titled as "Munawar Khan Vs Niaz Muhammad and others", the government jobs are not public franchises and cannot be awarded to people on different pretext. It is a Constitutional Protected Right of Citizens of Islamic Republic of Pakistan to obtain jobs in accordance with merits. The request for appointment of minors on gaining the majority is not within the domain of this Court. The request of the complainant regarding illegal appointments of Khurshid and Junaid in police service on the pretext of compensation in lieu of murder of deceased is not justified and ab-initio-void, however the District Police Officer (DPO), Mansehra may look into the matter as it is the exclusive jurisdiction of the DPO Mansehra to deal it in accordance with law, if found any illegality in it. The said application of the complainant is referred to DPO Mansehra to deal it in accordance with law, after conducting proper inquiry.

As a result of compromise which was true and genuine and voluntary, accused Ismail is acquitted from the charges leveled against him. He is on bail. His sureties are absolved from



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the liability of bail bonds. The share of minors namely Muhammad Bilal and Muhammad Ibrar in Diyat amount i.e. Rs.11,34,000/- will pay by the eighteen Officials namely Shafique Khan SHO, Waheed Murad ASI, Ashraf Khan IHC, Ibrar Ahmed IHC, Babar Khan IHC, Khan Bahadur FC/921, Irfan FC/937, Khanzada 462/FC, Shaukat 123/FC, Toseef 529/FC, Bashir 218/FC, Mohabbat Khan driver, Parvez 929/FC, Ali Zaman 75/FC, Hussain 796/Elite, Manzoorul Haq 2309/Elite, Abdur Razzaq 1614/Elite and Ismail 1579/Elite, and each of them has committed to pay Rs.63,000/- to minors. They are directed to deposit Rs.63,000/- each within three months in three installments with Nazir of Sessions Court. The Nazir will report the Court on expiry of 90 days regarding receipt of Rs.11,34,000/- and also report in case of any default by any official. He is directed to invest the said amount after 90 days in National Savings for a period till majority of minors. Para No.15 of this judgment is referred to DPO Mansehra for his information. Case property be disposed of in accordance with law but after period of appeal/revision. File be consigned to record room after necessary completion and compliance.

Announced
07-09-2020

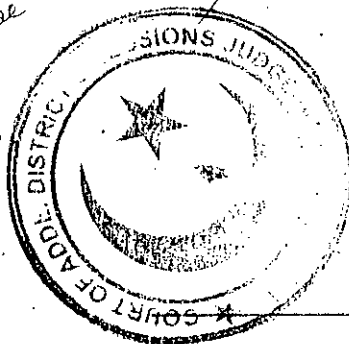

(Muhammad Tahir Aurangzeb)
MCTC/Additional Sessions Judge-IV
Mansehra

CERTIFICATE

It is hereby certified that this judgment consists of Seventeen (17) pages, each page read corrected and signed by me.


(Muhammad Tahir Aurangzeb)
MCTC/Additional Sessions Judge-IV
Mansehra

*Attested
be true copy*



SRC + OHC

*PR 12:21 کی روشنی میں ہر دو لوگوں کے سامنے
خلاف کا روایتی کریمنل*