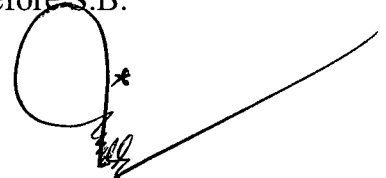


15.07.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present..

Reply/comments on behalf of respondent not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up for reply/comments on 18.08.2022 before S.B.

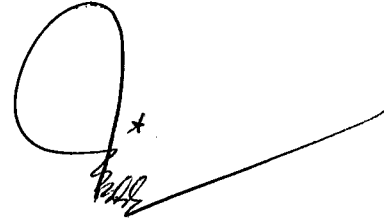


(MIAN MUHAMMAD)  
MEMBER (E)

18.08.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Munawar Khan, ADEO for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Adjourned by way of last chance. To come up for reply/comments on 06.10.2022 before S.B.



(Mian Muhammad)

06.10.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG Behramand Khan, Assistant Director for the respondents present.

Written reply/comments have not been submitted. Learned AAG requested for further time. Last opportunity is granted. To come up for written reply/comments on 26.10.2022 before S.B.

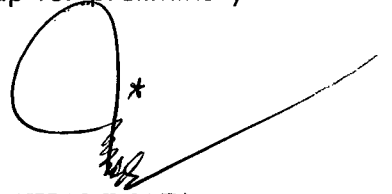


(Mian Muhammad)  
Member (E)

26.04.2022

Learned counsel for the appellant present.

Learned counsel for the appellant seeks adjournment to further prepare the brief. Adjourned. To come up for preliminary hearing on 29.04.2022 before S.B.



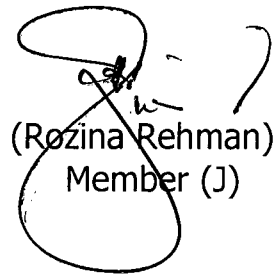
(MIAN MUHAMMAD)  
MEMBER(E)

29.04.2021

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

Points raised need consideration. Instant 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, notice be issued to respondents for submission of written reply/comments. To come up for reply/comments on 15.07.2022 before S.B.

*Rs 500/-*  
Appellant Deposited  
Security Process Fee  
*A. J. 29/4/22*






(Rozina Rehman)  
Member (J)

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- \_\_\_\_\_ 7813/2021 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/11/2021	<p>The appeal of Mr. Sabir Shah presented today by Syed Noman Ali Bukhari 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>
2-	09.02.2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>09/02/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 26.04.2022 for the same as before.</p> <p style="text-align: right;"> Reader</p>

**BEFORE THE KP SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 7813 /2021

Sabir Shah

V/S

Govt Of KP

**INDEX**

S.NO	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-07
2.	Copy of appointment order	--A--	08-10
3.	Copy of Session Judgment	--B--	11-25
4.	Copy of LHC Rawalpindi Bench Judgment	--C--	26-28
5.	Copy of Arrival report	--D--	29
6.	Copy of affidavit on judicial stamp	--E--	30
7.	Copy of letter dated 21/04/2020	--F--	31
8.	Copy of letter dated 15.10.2020	--G--	32
9.	Copy of letter dated 11.11.2020	--H--	33
10.	Copy of letter	--I--	34-35
11.	Copy of departmental appeal	--J--	36-37
12.	Vakalat nama	----	38

  
APPELLANT

Sabir Shah

THROUGH

  
(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT

  
(SYED NOMAN ALI BUKHARI)  
ADVOCATE HIGH COURT,

&  
(SHAHKAR KHAN YOUSAFZAI)  
ADVOCATE PESHAWAR.

D

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

**APPEAL NO. \_\_\_\_\_/2021**

Sabir Shah S/o Tamash Khan SST (BPS-16)  
R/o Garhi Karigaran Alam Gudar Bara Khyber Agency.

**(Appellant)**

**VERSUS**

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director of Education (E&SE), Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer Khyber Tribal District AT Jamrud.

**(Respondents)**

-----

**APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL  
ACT, 1974 FOR DIRECTING RESPONDENTS TO ADJUST  
THE APPELLANT AGAINST HIS POST WITH ALL BACK  
AND CONSEQUENTIAL BENEFITS AND AGAINST NOT  
TAKING ACTION ON THE DEPARTMENTAL APPEAL OF  
THE APPELLANT WITHIN THE STATUTORY PERIOD OF  
NINETY DAYS.**

**PRAYER:**

**THAT ON ACCEPTANCE OF THIS APPEAL, THE  
RESPONDENTS MAY KINDLY BE DIRECTED TO ADJUST  
THE APPELLANT ON HIS POST AND FURTHER DIRECTED  
TO GIVE SALARY ONWARD AFTER HIS ADJUSTMENT OF  
THE APPELLANT ON HIS POST AS THE APPELLANT IS  
STILL ON THE STRENGTH OF THE DEPARTMENT. THE  
DEPARTMENT MAY FURTHER BE DIRECTED TO GRANT  
ALL BACK BENEFITS INCLUDING ARREARS TO THE  
APPELLANT BEING APPELLANT NOT REMAINED  
GAINFUL EMPLOYED AND CONFINED IN JAIL. ANY  
OTHER REMEDY WHICH THIS AUGUST TRIBUNAL**

2

**DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.**

**RESPECTFULLY SHEWETH:  
FACTS:**

1. That the appellant was appointed as TT in the Year 2002 and later on the appellant was recommended by Public Service Commission against the post of SST in BPS-16 vide order dated 27.03.2012. The appellant since appointment performing his duty regularly whatsoever assigned to him and no complaint has been filed against him regarding his performance of his duty. **(Copy of appointment order is attached as annexure-A)**
2. That a FIR registered again the appellant on 5.11.2014 at Police Station NAF Attock (Punjab) under section 9(c) of CNSA 1997. The appellant was arrested in the said case. So the appellant remained absent due to above mention reason.
3. That the appellant convicted in the said FIR and sentence to undergo 10 years and six months (RI) with a fine of Rs. 3 Lacs by the Session Judge Special Court-C and NSA Rawalpindi on 16.01.2018. **Copy of the judgment is attached as Annex-B.**
4. That the appellant challenge the Judgment of CNSA Court in CRL. Appeal NO. 424/2018 in the Lahore High Court, Rawalpindi Bench Rawalpindi. The said appeal was heard by the Honorable Lahore High Court Rawalpindi Bench and accepted the appeal of the appellant vie Judgment dated 18.11.2019 and set aside the judgment of Session Judge Special Court CNSA Rawalpindi and acquitted the appellant of the charge and released the appellant. **(Copy of Judgment is attached as Annex-C.**
5. That after releasing from the Jail, appellant submitted his arrival report to District Education Officer District Khyber on 29.11.2019 later on the appellant also submitted affidavit on Judicial Stamp for the same purpose. **(Copy of arrival report and judicial stamp are attached as Annex-D & E.**
6. That the same request was forwarded to DEO (Male) Khyber Tribal at Jamrud to Director E&SE Khyber Pakhtunkhwa vide letter dated 21.04.2020 wherein DEO requested for consideration with opinion that the appellant is free from all charges and no more guilty. **Copy of the letter is attached as Annex-F.**

7. That on the basis of said letter inquiry committee was constituted whom gave recommendation in favour of the appellant mention below:-

- i. His pay may kindly be started
- ii. Arrear and all other back benefits may kindly be granted.
- iii. Any other penalty (major/minor) if any may be withdrawn.
- iv. A general circular may kindly be issued to all DEOs of KP.
- v. To keep the record upto date, take quick action and send the report to the Director E&SE KP for further necessary action in such cases.

The above mentioned fact is evident from the letter dated 15.10.2020 sent by the Deputy Director Establishment Merged District to Secretary E&SE Khyber Pakhtunkhwa, Peshawar, therein also mentioned the history of the case and request of the DEO Khyber for reinstatement/adjustment as SST of appellant. **Copy of the letter dated 15.10.2020 is attached as Annex-G.**

8. That in response to the said letter the Section Officer tender opinion/guideness vide letter dated 11.11.2020 from the Secretary Law Deptt as to whether that Lahore High Court Judgment can be challenged in next higher forum or otherwise. In the said letter the Section Officer also mentioned that the recommendation of inquiry report are also in favour of appellant with the remarks that his pay may kindly be started, arrears and all other back benefits may kindly be granted. Any other penalty (major/minor) if any may be withdrawn. **Copy of the letter dated 11.11.2020 is attached as Annex-H.**

9. That the Deputy Director Establishment Merged District wrote a letter dated 05.03.2021 to Incharge Anti-Narcotics Force Attock Punjab with the request to appraise this office as to whether the Judgment dated 18.11.2019 of the Lahore High Court Rawalpindi Bench has been challenged in Supreme Court of Pakistan or otherwise. In response to the letter Inspector Police Station ANF Attock provided information on 11.03.2021 regard the case. **Copy of letter dated 05.03.2021 and letter dated 11.03.2021 are attached as Annexure-I.**

10. That thereafter, the deptt: not take any action for the adjustment of the appellant despite recommendations of the inquiry officer and not releasing the salary of the appellant. It is also pertinent to mentioned here that the department did not take any disciplinary action against the appellant and he is still on the strength of the department, therefore, at last appellant filed departmental appeal for his adjustment/reinstatement and releasing of salaries, which was not responded within the statutory period of ninety days. **(Copy of departmental appeal is attached as Annexure- J)**

11. That now the appellant has no other remedy except to file the instant appeal for redressal of his grievance on the following grounds amongst others.

**GROUND:**

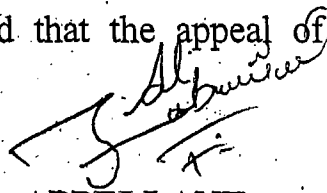
- A) That not taking action on the departmental appeal of the appellant and not adjusting the appellant on his post as he still on the strength of the department are against the law, rules and material on record.
- B) That no disciplinary action has been taken by the respondent department on his absence but just stop pay and the appellant is still on the strength of the department, therefore the appellant is liable to be adjusted on his post.
- C) That the recommendation of the inquiry officer is also in favor of the appellant and the reports of the DEO is also favor the appellant but despite that the appellant was not adjusted which is illegal.
- D) That not adjusting the appellant just for the reason the Judgment is challenged in the supreme court is illegal and against the law and rules.
- E) That the appellant was not intentionally absent from his duty but due to confinement in jail in wrongful case and was compelled to remain absent from his duty.
- F) That the appellant is legally entitled for is pay under section 17 of the Civil Servant Act 1973 of Khyber Pakhtunkhwa Peshawar. Being remained on the strength of the department throughout the period and not a again full employee during that period. Hence the impugned order is liable to be modified.
- G) That on the basis of FR-54 the appellant is entitled to all back benefits.
- H) That has the appellant was not applied not gainfully intervening period therefore keeping in view the judgment reported of Honorable Supreme Court reported as 2007 PLC (C.S) Page#346 the appellant is entitled to all salaries.
- I) That similarly the Honorable Supreme Court of Pakistan in similar like situation in judgment reported as 2015 PLC (C.S) Page#366 his held that the officials after exonerated and acquitted from the criminal charge will be entitle to all back benefits. Thus on the score of this judgment the appellant is entitled to the back benefits.



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- J) That another case reported as 2007 SCMR Page # 855 the Honorable Supreme Court of Pakistan has held that the grant of service back benefits to an employed who has been illegally kept away from employment is the rule and the denial of such benefits to such a reinstated employee is an exception on the proof of such a person having remained gainfully employed during such period.
- K) That the appellant was not adjusted on the basis of criminal case and subsequently acquitted from the criminal case, thus there remained no ground to penalize the appellant to be deprived of his legally rights of back benefits and adjustment. Therefore, the appellant is legally entitled to remuneration of back benefits and adjustment.
- L) That he is still on the strength of the department and it is his legal right to be adjusted on his post.
- M) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

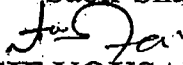
It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.



APPELLANT

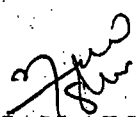
Sabir Shah

THROUGH



(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT



(SYED NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT,

&

(SHAHKAR KHAN YOUSAFZAI)

ADVOCATE PESHAWAR.

6

**BEFORE THE KP SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. \_\_\_\_\_/2021

Sabir Shah

V/S

Govt Of KP

**CERTIFICATE:**

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

  
DEPONENT

**LIT OF BOOKS:**

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.

  
(SYED NOMAN ALI BUKHARI)  
ADVOCATE HIGH COURT

7

**BEFORE THE KP SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. \_\_\_\_\_ /2021

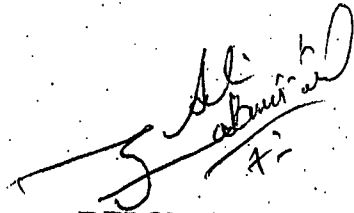
Sabir Shah

V/S

Govt Of KP

**AFFIDAVIT**

I, Sabir Shah, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.



DEPONENT

Sabir Shah

7th Appointment Order SST(G)

8



**Directorate of Elementary and Secondary Education  
Khyber Pakhtunkhwa Peshawar**

PH No. 091-9210389, 9210938,  
9210437, 9210957, 9210468  
Fax 091-9210936  
E-mail [desekpk@yahoo.com](mailto:desekpk@yahoo.com)

**Notification.**

Consequent upon the recommendation of the Khyber Pakhtunkhwa Public Service Commission, appointment of the following candidates is hereby ordered against the post of Secondary School Teacher (SST Gen) in BPS-16 (Rs.10000-800-34000) plus usual allowances as admissible under the rules on regular basis under the existing policy of the Provincial Government, in Teaching Cadre on the terms and condition given below with immediate effect and further Services placed at the disposal of Director of Education FATA for further posting against vacant SST General posts:-

S.#	Name	Father's Name	Domicile	Zone	Permanent Address	Place of posting
1	Niaz Muhammad	Abdur Rauf	Bajaur Agency	1	Vill: Inam Kharo Chinagai PO Inayat Killi Tehsil Mamund Bajaur Agency	Services placed at the disposal of Director of Education FATA for further posting against vacant SST Gen posts.
2	Khalid Usman	Kakim Jan	F.R Bannu	1	Tanga Gurbaz FR Bannu	--DO--
3	Siraj ul Arifcen	Muhammad Abdul Aziz	F.R Bannu	1	Distt: & Tehsil Bannu PO Mamash Khel C/O Star Public School FR Bannu	--DO--
4	Abdur Rauf Shah	Iftikhar Shah	Khyber Agency	1	Jan Badshah Medicose Tehsil & PO Jamrud Khyber Agency	--DO--
5	Khan Azam Afridi	Haji Sarfaraz Arfidi	Khyber Agency	1	Pla Printing & packages Plot No: W-19-20, Industrial Estate, Hayatabad Peshawar	--DO--
6	Sabir Shah	Tamash Khan	Khyber Agency	1	Gurhi Karigaran Alam Gudar Bara Khyber Agency	--DO--
7	Sher Bahadar	Maiwa Hassan	Khyber Agency	1	Nala Khujoori Tehsil & PO Bara Khyber Agency	--DO--

17  
 Asstt. Agency Education Officer  
 Bara Khyber Agency at Jamrud

7<sup>th</sup> Appointment Order SST(G)

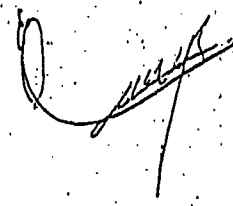
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9

8	Jawad Hussain	Sardar Hussain	Kurram Agency	1	Irani Medical Store, Opp: Telephone Exchange, Para Chinar	--DO--
9	Sardar Hussain	Gul Majeed	Mohmand Agency	1	Mohmand Agency, Tehsil Lakaro PO Sando Khel Vill: Amrai Kore	--DO--
10	Anwar Maqsood	Zard Ali Khan	N.W Agency	1	Vill: Khadi PO & Tehsil Mir Ali NWA	--DO--
11	Javed Iqbal	Yar Bat Khan	S.W Agency	1	Vill: Ghowak Tehsil & PO Ladha SWA	--DO--
12	Miran Gul	Qutab Khan	S.W Agency	1	Sarki Kol, Wana, SWA	--DO--
13	Muhammad Wali	Shah Wali	S.W Agency	1	Vill: Kanigurram Tehsil Ladha, SWA	--DO--
14	Abdul Qayyum	Ghai Zullah Jan	S.W Agency	1	Village Tabai Langar Khel Tehsil & PO Sara rogha SWA	--DO--

**Terms and conditions:-**

- 1 His services will be considered regular but without Pension & Gratuity in terms of Section-19 of the NWFP Civil Servant Act, 1973 as amended vide NWFP Civil Servants (Amendment) Act, 2005. He will however be entitled to Contributory Provident Fund in such a manner and at such rates as per prescribed by the Govt.
- 2 In case, he is already in Government service and working against pensionable post on regular basis before 1st day of July 2001, without any service break, on application to Khyber Pakhtunkhwa Public Service Commission through proper channel and selection by the Commission, is appointed and allowed choice of option either to retain benefit of pension & gratuity as allowed to him under his previous terms of appointment or to avail the benefit of Contributory Provident Fund allowed to him under new appointment.
- 3 His services are liable to termination on one month's notice from either side. In case of resignation without notice his one-month pay/allowances shall be forfeited to the Government.
- 4 He should join his post within 30 days of the issuance of this notification. In case of failure to join their post within one month of the issuance of this notification, his appointment will expire automatically and no subsequent appeal etc shall be entertained.
- 5 He would be on probation for a period of one year extendable for another one year.
- 6 He will be governed by such rules and regulations as may be issued from time to time by the Govt.
- 7 His services can be terminated at any time, in case his performance is found unsatisfactory during probationary period. In case of misconduct, he shall be proceeded under the rules framed from time to time.
- 8 Charge report should be submitted to all concerned.



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7th Appointment Order SST(G)

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- 9 The Director of Education FATA would furnish a certificate to the effect that the candidate has joined the post or otherwise after one month of the issue of his posting orders.
- 10 The Director of Education FATA will verify their documents before release of pay.
- 11 His seniority will be maintained as determined by the Khyber Pakhtunkhwa Public Service Commission.
- 12. No TA/DA will be allowed to the appointee for joining his duty.

(Muhammad Rafiq Khattak)  
 Director  
 Elementary and Secondary Education  
 Khyber Pakhtunkhwa Peshawar.

4573-80

Endst: No. / File No.2/A-14/SST/PSC/Apptt: Dated Peshawar the 27/03/2012.

- Copy forwarded for information and necessary action to the: -
- 1. Accountant General Khyber Pakhtunkhwa Peshawar.
  - 2. Secretary Khyber Pakhtunkhwa Public Service Commission Peshawar.
  - 3. Director of Education FATA Warsak road Peshawar.
  - 4. All Agency Accounts Officers in FATA
  - 5. Official Concerned.
  - 6. PS to the Secretary to Govt: Khyber Pakhtunkhwa E&SE Department.
  - 7. PA to the Director E&SE Khyber Pakhtunkhwa, Peshawar.
  - 8. M/File

Dy: Director (Estab)  
 Elementary and Secondary Education  
 Khyber Pakhtunkhwa Peshawar

*[Signature]* 27/3/2012  
 27/3/2012

The State Vs. Sabir Shah.  
Judgment.

Assistant Director was constituted. The raiding party while boarding on official vehicles bearing No.633751 and bearing No. 1726 driven by Nasir Iqbal and Muhammad Fazil drivers, reached at G.T. Road near Burhan Interchange and started a secret surveillance of the Cherad cars coming from Peshawar side. At about 2:00 AM (night), the car bearing No. 196-572 Karachi white colour was seen coming from Peshawar side. PW-5/IO signaled the car in question to stop. The driver of the car tried to escape but was stopped with the help of the officials and official vehicles. PW-5/IO apprehended the accused. On query, he disclosed his name Sabir Shah Afridi son of Tamash Afridi. On further query, accused after some hesitation admitted the presence of the narcotics in his car. In pursuance of his disclosure, PW-5/IO made the search of the car, opened the Bonet and found a secrete cavity built at the water bottle place. PW-5/IO opened the secrete cavity with the tool and got recovered eight packets of polythene bags wrapped with the khaki insulation tape. On opening the same, it was found to contain charas garda. PW-5/IO weighed the recovered packet of charas one by one on the spot and found having a weight of 01 KG each. Total weight turned to be 08 KGs charas garda. Out of the each recovered packet 10/10 gram was separated and made into sealed parcels with the stamp of GN for chemical analysis. The remaining recovered packets of charas garda alongwith packing material were made into separate sealed parcel in presence of Naveed Ahmed HC (given up) and Javaid Iqbal (PW-4). On further search of the car IO/PW-5 got recovered registration book of the car. PW-5/IO took into possession recovered charas garda (P-1) alongwith packing material, its sample, registration book (P-2), car

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16/9/01  
Dr. Amir

(13)

alongwith the key (P-3) vide recovery memo Exh-PB attested by Naveed Ahmed HC (given up) and Javaid Iqbal constables (PW-4).

PW-5 Gohar Nabi Baig, Sub Inspector made a personal search of the accused and got recovered cash Rs.700/- (P-4), original CNIC (P-5), mobile phone alongwith the SIM (P-6) which he took into the possession vide recovery memo Exh-PC attested by Naveed Ahmed HC (given up) and Javaid Iqbal constables (PW-4).

PW-5 Gohar Nabi Baig, Sub Inspector drafted a complaint Ex-PA/1 against the accused and dispatched the same to the PS ANF Attock through Muhammad Fazil driver. PW-5 formally interrogated the accused at the spot and recorded the statements of the PWs U/s 161 of Cr.PC. IO/PW-5 prepared a visual site plan Exh-PD of the place of recovery. In the meanwhile, Muhammad Fazil driver came on the spot with original complaint and copy of FIR. On the complaint FIR No.36/14 Ex-PA was registered. IO made a formal arrest of accused and prepared information slip to collect the previous criminal record of the accused. IO/PW-5 incorporated the case number on the recovery memos as well as relevant documents and sealed parcel. On return to PS, Gohar Nabi Baig, Sub Inspector/IO handed over the case property i.e recovered narcotic substance, sealed sample parcels, vehicle charade car bearing No.196-572 Karachi alongwith its key and registration book and articles recovered from the accused to Moharrar Malkhana Muhammad Qasim, HC for keeping it in safe custody at Malkhana and its onward transmission to the office of NIH Islamabad. On 06.11.2014, IO/PW-5 sent sample parcels of this case for its onward

10/9/14  
Naveed Ahmed HC



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transmission to NIH through Umair Sultan constable. On the same day IO obtained two days physical remand of the accused and interrogated him. On return of Umair Sultan constable IO/PW-5 recorded the statements of Moharrar Malkhana Muhammad Qasim Khan HC and Umair Sultan constable. On 08.11.2014, IO/PW-5 sent the accused in judicial lock up. On 19.11.2014 IO/PW-5 handed over the file to SHO for submission of incomplete challan. On receipt of report of chemical examiner Ex-PE/1-8 in positive, Gohar Nabi Baig, Sub Inspector/IO got prepared and sent supplementary challan in the court regarding this fact.

10/11/15  
10/11/15  
10/11/15

3. As a result of usual investigation, police found the accused guilty and submitted the Challan against him in the Court of learned Illaqa Magistrate, which was sent to this Court. After fulfilling codal formalities, charge against the accused was framed on 17-01-2015. Accused did not plead guilty and claimed for trial, thereafter prosecution was asked to adduce its evidence.

4. Prosecution in evidence produced as many as five PWs in toto. Gist of their evidence is as under:

5. Muhammad Imran HC while appearing as PW-1 deposed that on 05-11-2014, he received complaint, drafted and dispatched by Gohar Nabi Baig, Sub Inspector through Muhammad Fazal, driver. On the basis of which, he chalked out formal FIR Ex-PA without any addition or omission. After registration of FIR, he sent original complaint, containing his report Ex-PA/1 with copy of FIR to place of recovery to concerned IO through same driver.

substance while boarding on Cherad car No.196-572 Karachi white colour is coming on G.T. Road near Burhan Interchange from Peshawar. Upon this information a raiding party consisting of Gohar Nabi SI/IO (PW-5), Naveed Ahmed HC (given up), M. Fazil driver and other ANF officials alongwith him under the supervision of Shehzad Ali Kawish Assistant Director was constituted. The raiding party while boarding on officials vehicles bearing No.6333751 and vehicle No.1726 driven by Nasir Iqbal and Muhammad Fazil, reached at G.T. Road near Burhan Interchange and started a secrete surveillance of the cherad cars coming from Peshawar side. At about 2:00 AM (night) the car bearing No.196-572 Karachi white colour was seen coming from Peshawar side. PW-5 Gohar Nabi Baig Sub Inspector signaled the car in question to stop. The driver of the car tried to manage his escape but was stopped with the help of the officials and official vehicles. The driver of the car was apprehended by the Investigating Officer. Investigating Officer/PW-5 made a query to the accused. On query accused disclosed his name Sabir Shah Afridi son of Tamash Afridi accused present in court. Investigating Officer inquired the accused regarding the presence of narcotics substance as per spy information. The accused after some hesitation admitted the presence of the narcotics in his car. Gohar Nabi Sub Inspector/Investigating Office in pursuance of the disclosure, opened the bonnet of car and found secret cavity built in the water place. The Investigating Officer opened the secrete cavity with the tools and got recovered eight packets of polythene bags wrapped with the khaki insulation tape. On opening, these were found to contain charas garda. The Investigating Officer weighed the recovered

*Dr. Emayy Uf*

16/01

6. **Muhammad Umair Sultan Constable** while appearing as PW-2 deposed that on 06-11-2014, Gohar Nabi Baig, Sub Inspector handed over to him application in Urdu, docket in English and sample of seal and directed him to go to Moharrar Malkhana, Muhammad Qasim Khan HC, who handed over to him 08 sealed parcels of Charas Garda, with the seal of GN. He deposited said parcels in the office of NIH Islamabad, intact.

7. **Muhammad Qasim Khan ASI** while appearing as PW-3 deposed that on 05-11-2014, Gohar Nabi baig, Sub Inspector handed over to him, 08 sealed parcels of samples of charas garda, weighing 10/10 grams, one sealed parcel of remaining case property charas garda, with the seal of GN, registration book and key of vehicle bearing No. 196-572 /Karachi Chrade of white colour and other articles of personal search as per recovery memos, parked vehicle in compound of PS. He made entry in register No-19 correctly and kept all the articles in safe custody in Malkhana.

On 06-11-2014, Umair sultan constable came to him with application in Urdu, docket in English and sample of seal. He handed over to him, 08 sealed parcels of samples of charas garda, weighing 10/10 grams, with the seal of GN with road certificate. He left for deposit of parcels in the office of NIH Islamabad, intact.

8. **Muhammad Javed Constable** while appearing as PW-4 deposed that on 05.11.2014, at about 12:30 AM (night), Shehzad Ali Kawish Assistance Director received the telephonic information that one notorious drug smuggler with a huge quantity of narcotics

Dr. Umair N  
16/11/14

17

packet of charas garda one by one and found having a weight of 01 KG each. Total 08 KGs charas garda was recovered. Out of the each recovered packets 10/10 gram was separated and made into sealed parcels with the stamp of GN for chemical analysis. The remaining recovered packets of charas garda alongwith packing material were made into separate sealed parcel by the Investigating Officer. On further search of the car Investigating Officer got recovered registration book of the car. Gohar Nabi Baig /IO took into possession recovered charas garda (P-1) alongwith packing material, its sample, registration book (P-2), car alongwith the key (P-3) vide recovery memo Exh-PB. He alongwith Naveed Ahmed HC (given up) attested said recovery memo.

*Handwritten notes:*  
Naveed Ahmed HC  
Gohar Nabi Baig

Gohar Nabi Baig Sub. Inspector/Investigating Officer made a personal search of the accused and got recovered a cash Rs.700/- (P-4), Original CNIC (P-5) and Mobile phone alongwith the SIM (P-6) which PW-5 took into the possession vide recovery memo Exh-PC. He alongwith Naveed Ahmed HC (given up) attested said recovery memo. He got recorded his statement u/s 161 Cr.PC.

9. Gohar Nabi Baig Inspector/IO while appearing as PW-5 also reiterated the facts of the case from start to its culmination, which have already been discussed in the earlier paragraph of this Judgment.

10. Learned Public Prosecutor gave up PW Naveed Ahmed HC being un-necessary and closed the prosecution evidence.

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11. After closure of the prosecution evidence, statement of the accused u/s 342 of Cr.P.C recorded in which he denied each and every piece of prosecution put to him. In reply to question as to why this case against him and why the PWs deposed against him, Sabir Shah accused stated as under:-

*"I am innocent. I have no nexus with the alleged narcotics substance as well as the vehicle in question. Neither, I am the owner of the said vehicle nor the driver. In-fact, I was arrested by the ANF officials from Bus Stop Pirwadhal with two other Pathans who were let off by the complainant after taking huge amount. No narcotics substance was recovered from my possession. The alleged recovered narcotics substance was foisted upon me by the complainant in connivance with his uniform brothers on the asking of my enemies who had civil dispute with me. All the PWs are ANF officials. They have falsely deposed against me being a subordinate of complainant"*

Deputy  
10/10/01

12. The accused neither opted to produce defence evidence nor to make his statement on oath u/s 340 (2) Cr.P.C in disproof of the charge/allegations.

13. I have heard the arguments of learned Special Prosecutor for ANF and gone through the available record with his assistance.

14. In order to prove its case, prosecution has produced 05 PWs in toto out of whom PW-1 Muhammad Imran HC, PW-2 Muhammad Umair Sultan Constable and PW-3 Muhammad Qasim

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Khan ASI are the formal witnesses. The other two PWs whose statements required deeper appreciation in this case are PW-4 Muhammad Javaid Constable and PW-5 Gohar Nabi Baig Inspector/IO. Statements of prosecution witnesses were confidence inspiring, straight forward and seemed to be truthful. These witnesses remained consistent in their deposition with regard to date, time and place of recovery and the manner in which said recovery was affected. Admittedly, none of the prosecution witness had any enmity, grudge and grouse with the accused, nor it was even suggested. In absence of that there is no reason, that's why he should be falsely implicated and huge quantity of contraband has been foisted upon him. The evidence of the prosecution remained consistent on all material aspect of the case particularly despite a lengthy cross-examination to which they are subjected. The defence has failed to create any dent in the veracity of testimony of above said witnesses. Statements of both of the witness were straight forwarded and seems to be truthful. Moreover, samples were sent to NIH, Islamabad, report of which was positive.

16/10/19  
✓  
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15. Admittedly accused Sabir Shah was the driver of the car. Soon after his arrest, he made disclosure regarding the presence of the narcotics substance in his car and pursuant to the pointation so made by the accused, recovery of contraband items was affected. The disclosure so made followed by the recovery was something not in the knowledge of the ANF officials, therefore, in my view, the disclosure followed by the recovery is a circumstance within the meaning of Article 40 of the Qanun-e-Shahadat Order, 1984 and can

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be used against the defence by the prosecution. Secondly the recovery of contraband items stand established not only through the evidence of the prosecution rather the defence has not deputed the recovery from the car. So in such circumstances, the burden otherwise shifts upon the defence to prove the fact that the accused was not aware of the contraband items concealed in the secret cavity of the car. Moreover, keeping in view the provisions contained in Section 29 of the Control of Narcotic Substances Act, 1997, since narcotic substance has been recovered from the possession of the accused and if he has failed to account for it satisfactorily, then there is ample justification to draw adverse inference and presumption that the commission of crime alleged with him.

16/9/19  
D.O. Envy V

16. Coming to the ownership of car, there is no cavil with the fact that the accused is not the owner of the car nor for that matter this is the case of prosecution that the accused was the owner of the car. The liability within the ambit of section 6 of CNSA, 1997 extends to a person, who is in possession of contraband items. Section 6 of CNSA 1997 besides its other ingredients specifically prohibits the possession, transportation and delivery of narcotics and the case of accused falls within the four corners of section 6 of the Act 1997.

As far as the lack of knowledge on the part of the accused is concerned, according to the prosecution case, the recovery from the secret cavity was effected at the pointation of the accused. Secondly there is no evidence on the part of accused that he was having no nexus with the car. Thirdly the accused Sabir Shah even did not bother to enter in the witness box to confirm and

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substantiate his version that he had no nexus and concern with the car, therefore, in view of overwhelming evidence of prosecution, it is not only difficult rather impossible to believe that the accused was having no knowledge of contraband items. In the case of "Kashif Amir Vs. State" reported as PLD 2010 Supreme Court 1052, the honourable Supreme Court has observed as under:--

"3.----- It is well settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics, having knowledge of the same as no condition or qualification has been made in section 9 (b) of CNSA that the possession should be an exclusive one and can be joint one with two or more persons. Further, when a person is driving the vehicle, he is in-charge of the same and it would be under his control and possession, hence, whatever articles lying in it would be under his control and possession. Reference in this behalf may be made to the case of "Muhammad Noor Vs The State (2010 SCMR 917)". Similarly, in the case of "Nadir Khan Vs. State (1988 SCMR 1899)" this court has observed that knowledge and awareness would be attributed to the in-charge of the vehicle. Another aspect of the case is that once the prosecution has prima facie established its case then under section 29 of the CNSA burden shifts upon the accused to prove contrary to the plea of the prosecution. Reliance in this behalf may be made to the case of "Ismaeel Vs. The State (2010 SCMR 27)" wherein this court, while relying upon the cases of "Muhammad Arshad Vs. The State (2007 SCMR 1378)" and "Mst. Taj Bibi Vs. The State (2007 SCMR 1591)" has held that the Chemical Examiner's reports regarding Charas and Opium were sufficient to prove that the substance recovered from the accused was

deputy  
1/1/11



Charas which can be used to cause intoxication, the prosecution had discharged its initial onus while proving that substance was recovered from him whereas the petitioner had failed to discharge its burden in terms of section 29(d) of CNSA. In this behalf reference cant also be made to the case of "Ikram Hussain Vs. state (2005 SCMR 1487)" wherein it has been held that in terms of section 29 (d) of the Control of Narcotics Substances Act, 1997 unless otherwise proved, the presumption would be that the person who is found in possession of the narcotics has committed an offence."

17. The scrutiny of record further confirms that the prosecution has successfully proved the recovery of contraband items from the secret cavity of the car. The accused has not entered into witness box to record his statement u/s 340 (2) of Cr. PC nor he has produced any defence witness. However he has recorded his statement u/s 342 of Cr. PC, therein he denied from his arrest from the car. There is no cavil with the legal proposition that an accused is not bound to take special plea qua his Innocence, even in normal cases once an accused takes special plea than he is required to prove the same. As far as the cases under CNS Act are concerned, the prosecution is required to discharge the initial burden, whereas in this case accused does not dispute the recovery except lack of knowledge on his part. Since the accused is respectively driver of the car, therefore, he was under legal obligation to satisfy the conscious of the court by creating reasonable circumstance justifying the inference that he was in infact not aware of concealment of contraband items. Here in this case not only the accused has failed

16/9/91  
Judge  
16/9/91  
16/9/91

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his enemies who had civil dispute with him. The accused remained failed to show any background of bitterness or ill-will between him and ANF officials so as to prompt the later to falsely involve him in case of such a heinous nature. Nothing is available on record which could give slightest indication that the accused was apprehended by the ANF police at the behest of his enemies and the huge quantity of narcotics substance was foisted upon the accused. Thus, the bare and bald allegation made by the accused has no force and substance as no material data has been brought on file to justify the said plea of the accused even otherwise it seems to be an afterthought attempt. In view of above, the plea of substitution raised by the accused, in the peculiar circumstances of the case is nothing but merely an attempt to hide his own guilt. Thus defence version being false, fabricated and after thought is not credible and same is hereby repelled. Moreover keeping in view the quantity and the price of the contraband which is definitely in millions, the question of foisting the same against the accused does not appeal to a prudent mind.

10/10/07  
12

19. As a result of above discussion, I hold accused Sabir Shah is guilty of committing offence U/S 9-C of CNSA, 1997. Accordingly, accused Sabir Shah Afridi, S/o Tamash Khan, aged about 41 years, R/o Aalam Godar Garhi Karigaran, Tehsil: Bara, District: Khyber Agency is hereby convicted u/s 9-C of CNSA, 1997 and sentenced to undergo ten (10) years and six (06) months (R.I) with a fine of Rs.300,000/- (Rupees three hundred thousand only). In case of non-payment of fine, he shall further suffer SI for one (01) years. Convict is given benefit of section 382-B Cr.P.C.

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20. The convict is present in court in custody. He is sent back to jail to undergo the sentences awarded to him today, in accordance with law.

21. Case property i.e. contraband material be confiscated in favour of the State. Same be dealt with in accordance with law after the expiry of period of appeal/revision, if any.

22. Separate proceedings be carried out in accordance with law regarding vehicle bearing No.196-572, Chaerad car as it has been used in transportation of narcotic. S.H.O PS concerned is directed to submit photocopy of registration book of the vehicle and Supurdagi Nama (if any) for proceeding u/s 32 of CNSA. Ahimad is directed to prepare separate file and put up on receipt of copy of registration book.

23. Copy of this judgment be delivered to the convict free of cost. Copy of this judgment be also forwarded to the Incharge of prosecution as required u/s 373 Cr.P.C.

24. File be consigned to the Record Room after its due completion.

Announced.  
16-01-2018.

*Raja Pervez Akhtar 16/01*  
(Raja Pervez Akhtar)  
Sessions Judge/  
Judge, Special Court CNSA,  
Rawalpindi.

It is certified that this judgment consists of 15 pages. Each page of it has been dictated, read over corrected and signed by me.

Dated.  
16-01-2018.

*Raja Pervez Akhtar*  
(Raja Pervez Akhtar)  
Sessions Judge/  
Judge, Special Court CNSA,  
Rawalpindi.

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Examiner  
General Station Section  
National Police Centre

For PKM 106

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Annexure - C

Form No: HCJD/C-121

C (26)

6

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH, RAWALPINDI**  
(JUDICIAL DEPARTMENT)

Crl. Appeal No. 424 of 2018

*Sabir Shah Afridi*

.....Appellant

*versus*

*The State*

.....Respondent

**JUDGMENT**

Date of hearing:	18.11.2019
Appellant by	Mr. Muhammad Arqam Arshad, Advocate.
State by:	Raja Tauqeer Ahmd Satti, Special Prosecutor ANF with Arshad ASI.

**Muhammad Tariq Abbasi, J** – Through the instant appeal, the appellant namely Sabir Shah Afridi (*hereinafter referred to as the appellant*), has called in question the judgment dated 16.01.2018, passed by the learned Sessions Judge/Special Judge CNS, Rawalpindi, whereby in case FIR No. 36, dated 05.11.2014, registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 (*hereinafter referred to as the Act*), at Police Station ANF, District Attock, he has been convicted under Section 9(c) of the Act and sentenced to rigorous imprisonment for 10 years and 06 months, alongwith fine of Rs.3,00,000/-, in default whereof to further undergo simple imprisonment for one year, with benefit to Section 382-B Cr.P.C.

2. The prosecution case was that upon a spy information, when on 05.11.2014 at 2:00 AM (night), a vehicle bearing registration No. 196-  
driven by the appellant, was overpowered

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packets of polythene bags containing 'charas garda', wrapped in an insulation tap, each weighing 01 kilogram, total weighing 08 kilograms were recovered.

3. Gohar Nabi Inspector/Investigating officer (PW-5) separated 10 grams from each of the above mentioned packets as sample and prepared 08 sample parcels. The remaining quantity was also made into sealed parcels and all were taken into possession through recovery memo (Ex.PB), attested by Naveed Ahmad Head Constable (given up PW) and Muhammad Javed Iqbal Constable (PW-4). To know nature of the alleged recovered substance, the above mentioned sample parcels were forwarded to National Institute of Health, Drugs Control and Traditional Medicines Division, Islamabad, Pakistan, from where, the reports (Ex.PE/1-8) was made, while holding the contents of the parcels as 'charas garda'.

4. It has been observed that in the case in hand, eight sample parcels, were prepared and sent to National Institute of Health, Drugs Control and Traditional Medicines Division, Islamabad, from where the reports (Ex.PE/1-8) were made, but without disclosure of any test, performed for reaching at the result, described in the reports. In this way, the said proceedings of the laboratory, in the light of the law laid down by the august Supreme Court of Pakistan in case titled 'KHAIR-UL-BASHAR Versus THE STATE' reported as (2019 S C M R 930) by a learned Division Bench of this Court in case titled 'ZAFAR IOBAL Versus THE STATE and another' reported as 2019 Y L R 1916, could not be held as justified, hence the reports (Ex.PE/1-8) could not be given any legal value. When the above said reports are excluded from the account of evidence, nothing else is left on the record

TESTED  
 Copy Submitted  
 on Lahore High Court  
 Rawalpindi Bench

28

Cel. Appeal No. 424/2018

3

W

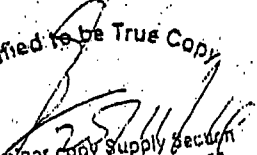
5. The above mentioned facts and circumstances, have made the charge, against the appellant, doubtful. In such like situation, an accused is always entitled for due benefit of acquittal not as a matter of grace or concession but as a right. In this regard, we are fortified by the dictum laid down by the august Supreme Court of Pakistan in cases titled 'AYUB MASIH Versus THE STATE' reported as (PLD 2002 Supreme Court 1048) and 'TARIQ PERVEZ Versus THE STATE' reported as 1995 SCMR 1345, wherein it is held that if a simple circumstance creates reasonable doubt in a prudent mind about guilt of an accused, then he will be entitled to such benefit not as a matter of grace or concession, but as of right.

6. Resultantly, the instant appeal is accepted, the impugned judgment is set-aside and the appellant is acquitted of the charge, while extending him the benefit of doubt. The appellant is in custody, hence be released forthwith, if not required to be detained in any other case. The disposal of the case property shall be as directed by the learned trial Court, in the Impugned judgment.

  
(Raja Shahid Mehmood Abbasi)  
Judge

  
(Muhammad Tariq Abbasi)  
Judge

Certified to be True Copy

  
Examiner Copy Supply Secum  
Authorised Under Article-07  
Qanun-Shahadat Order 1984



To

District Education Officer,  
District Khyber,  
Khyber Pakhtunkhwa.

Annexure - D  
(29)

Subject: ARRIVAL REPORT.

Dear Sir,

With due respect and to state that I Sabir Shah S/o Tamash Khan S.S.T  
is hereby submit arrival Report for duty at GMS Shin Kamar on this day  
29/11/2019 (F.N).

Your's faithfully,

*Amich*  
*[Signature]*  
Head Master  
GMS Sheen Kamar  
Bara Khyber Agency

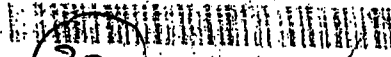
*[Signature]*  
(Sabir Shah)  
H/M GMS Shin Kamar  
Bara District Khyber

Head Master  
G.M.S Shin Kamar  
Bara Khyber Agency

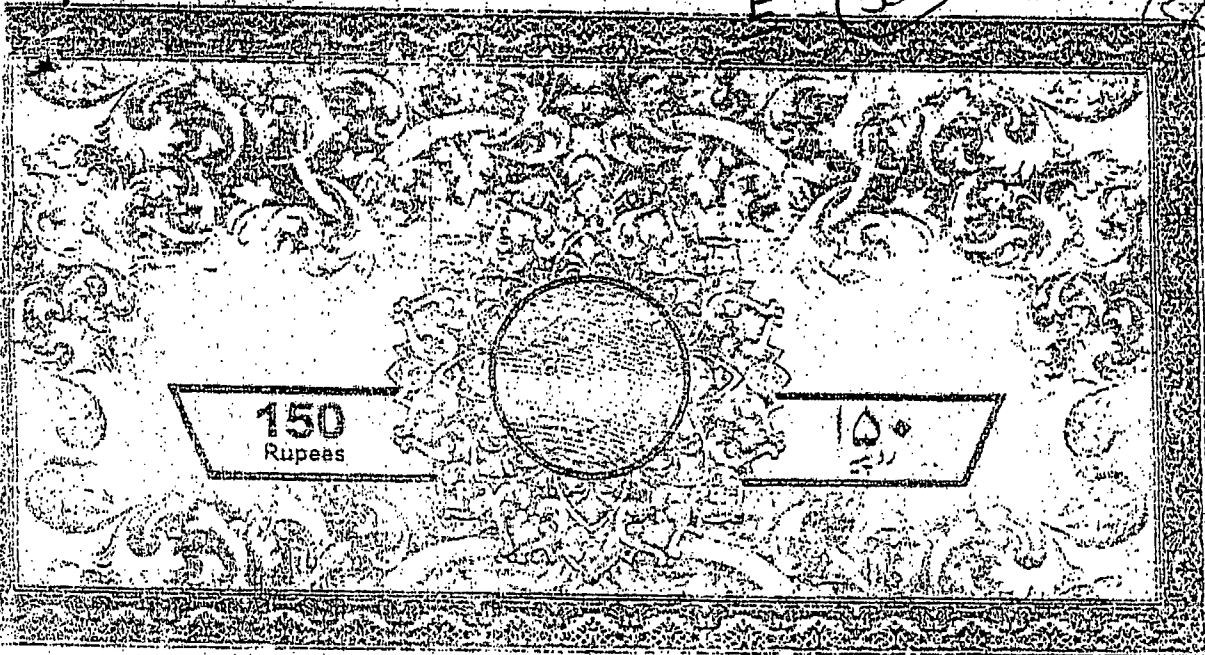
Accepted by

*[Signature]*  
Asstt. Dir.  
Khyber Tribal District At Jamrud

3/2



E (30)



150 Rupees

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To

AS(E)

*Please process in light of rules.*

The Director,  
Elementary & Secondary Education,  
Merged Areas Khyber Pakhtunkhwa.

Subject:  
Dear Sir,

REINSTATEMENT IN SERVICE.

*[Handwritten signature and circular stamp]*

It is submitted that the undersigned was appointed in Theology Teacher (BS-07) in 06-09-2002 and promoted to the position of SST (G) in 2012. I was involved in a false FIR No. 53 dated 05-11-2014 at Police Station ANF Attock. My appeal was accepted by Rawalpindi Bench, Lahore High Court and the impugned judgment was set aside and the decision was in my favor (copy annexed). Now I have already submitted arrival report for duty copy (enclosed).

Keeping in view you are requested to issue my reinstatement in service with all back benefits enable me to join my new assignments.

With Regards



*[Handwritten signature in Urdu]*

(Sahir Shah Afridi)

*[Handwritten signature]*

*The  
Letter No. to Secretary to Govt. of KPK  
E&S Education Department is 4283 Dated 15-10-2020*



OFFICE OF THE DISTRICT EDUCATION  
 KHYBER TRIBAL DISTRICT JAMRUD  
 No. 18326 Date 21/11/2020

F (31)

The Director Elementry & Secondary Education  
 Khyber Pakhtunkhwa.

Subject: Re-INSTATEMENT IN SERVICE.

Kindly refer to your letter no. 326 dated. 09/01/2020 on the subject noted above and to state that one Mr. Sabir Shah had been appointed on the recommendation of Khyber Pakhtunkhwa Public Service Commission as SET BPS -16 on 27/03/2012 and posted at GMS SAJIN KAMAR BARA DISTRICT KHYBER. The teacher concerned sent to jail in some kinds of doubts of smuggling of opium (bars) on 05/11/2014. The monthly salary of the teacher concerned was stop by this office on 31/12/2014 due to his willful absence. The judgement of Lahore High court Rawalpindi Bench Rawal Pindi dated 18-11-2019 shows that he is free from all charges and is no more guilty. Report is submitted for information and for favourable consideration please.

*[Signature]*  
 DISTRICT EDUCATION OFFICER  
 KHYBER TRIBAL DISTRICT AT JAMRUD  
 Dated: 21/11/2020

Copy forwarded to the  
 Additional Director Merged District Warsak Road Peshawar.

*[Signature]*  
 DISTRICT EDUCATION OFFICER  
 KHYBER TRIBAL DISTRICT AT JAMRUD



DIRectorate of ELEMENTARY &  
SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA

PHONE: 0999999999  
FAX: 0999999999

NO. 15/10/2019 DATED 15/10/2019  
M. MUHAMMAD TAHAMMAD SST (BS-17) PERSONAL

G1 32

15/10/2019

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department

Subject: - RE-INSTATEMENT/ADJUSTMENT.  
R/Sir,

I am directed to refer to the subject cited above and to enclose here with a copy of inquiry report pertaining to the adjustment case in respect of Mr. Sabir Shah Ex SST (BS-16) Govt. Middle School Shin Kamar District Khyber (Annexure-A). The recommendations of the inquiry are reproduced below:-

- i. His Pay may kindly be started.
- ii. Arrear and all other back benefits may kindly be granted.
- iii. Any other penalty (Major/Minor) if any may be withdrawn.
- iv. A general Circular may kindly be issued to All D.E.Os of K.P. to keep the record up to date, take quick action and send a report to the Director E.&S.E. P.K. for further necessary action in such cases.

HISTORY OF THE CASE IS AS UNDER:-

- i. Mr. Sabir Shah Ex SST was appointed as SST (BS-16) through Khyber Pakhtunkhwa Public Service Commission on 27-03-2012. Prior to his appointment he served against the post of TT since 07-09-2002.
- ii. That a FIR registered against the said Ex SST on 05-11-2014 at Police Station ANF Attock (Punjab) under section 9 (c) of CNSA 1997 recovery of Chars Garda weighing 08 KGs (Annexure-B).
- iii. The said accused Ex SST convicted in the said FIR and sentenced to undergo ten (10) years and Six Months (RI) with a fine of Rs. 300,000/- by the Session Judge/Judge, Special Court CNSA Rawalpindi on 16-01-2018 (Annexure-C).
- iv. Later on the Lahore High Court Rawalpindi Bench judgment dated 18-11-2019 has accepted the appeal of the said Ex SST and set-aside the Judgment of Session Judge/Judge, Special Court CNSA Rawalpindi and acquitted the Ex SST of the charge (Annexure-D).
- v. It is regretted to mention that during the whole trail/process of the subject case the District Education Officer Khyber has neither sent any report to this office nor the suspension order issued by this office, while the D.E.O. concerned only stopped his pay.
- vi. The said Ex SST remained absent from duty from the date of FIR i.e. 05-11-2014 up to till now. However he submitted his arrival report to the D.E.O Khyber on 29-11-2019 (Annexure-E).

Now the District Education Officer Khyber submitted his case for re-instatement/adjustment as SST.

Hence the case is submitted for your kind perusal and guidance please.

Encl: As Above

Endst No. \_\_\_\_\_

DEPUTY DIRECTOR (ESTAB)  
MERGED DISTRICTS



H (33)

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**  
No. SO(PE)/5-19/Re-Instatement/Mr. Sabir Shah Ex-SST/2020  
Dated Peshawar the 11.11.2020

To.

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Law Department,  
Peshawar.

Subject: - RE-INSTATEMENT/ADJUSTMENT

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith a copy of Directorate of Elementary & Secondary Khyber Pakhtunkhwa letter No. 4283/ dated 15.10.2020 alongwith connected documents in respect of Mr. Sabir Shah Ex-SST (BS-16) GMS Shin Kamar District Khyber and to state that Mr. Sabir Shah Ex. SST was appointed as SST through Khyber Pakhtunkhwa public service commission on 27-03-2012. An FIR registered against the said SST on 05-11-2014 at Police station ANF Attock (Punjab) and convicted him in the said FIR under section 9 (C) CNSA 1997 on recovery of Chars Garda weighing 08 K.Gs. He was sentenced to undergo ten years and six months (RI) with a fine of Rs.300000/- by the Session Judge, Special Court CNSA Rawalpindi on 16-01-2018. The Lahore High Court Rawalpindi bench in a Judgment dated 18-11-2019 has accepted his appeal and set-aside the Judgment in favour of Ex-SST and acquitted him of charge.

The recommendations of the Inquiry report are also in his favour with the remarks that his pay may kindly be started, arrears and all others benefits may kindly be granted. Any other penalty (Major/Minor) if any be withdrawn.

In views of the above, it is, therefore requested to tender your opinion/guidance in the instant case to this department as to whether that Lahore High Court Judgment can be challenged in next higher forum or otherwise.

Yours Faithfully,

Encl: as above.

Endstt: of even Number & Date:

Copy forwarded to:-

1. The Director, E&SE Khyber Pakhtunkhwa Peshawar w/r to his letter quoted above.
2. PS to Secretary, E&SE Department, Peshawar.

SECTION OFFICER (PRIMARY)

SECTION OFFICER (PRIMARY)



DIRECTORATE OF ELEMENTARY &  
SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA

3053  
NO. 85/03/021  
GATE NO. 182-171 PESHAWAR

I (34)

To

The In-charge  
Anti-Narcotics Force Attock  
Punjab.

Subject: - RE-INSTATEMENT/ADJUSTMENT.

I am directed to enclose here with a copy of letter No. SO (PE) E&SED/5-19/  
Re-instatement/Mr. Sabir Ex SST/2020 dated 15-02-2021 along with a copy of Judgment of  
Lahore High Court Rawalpindi Bench dated 18-11-2019 in favour of Mr. Sabir Shah Afridi  
with the request to appraise this office as to whether the Judgment dated 18-11-2019 has been  
challenged by you in the Supreme Court of Pakistan or otherwise please.

Encl: As Above

Deputy Director (Estab)  
Merged Districts

Endst No.

Copy to the:-

1. Section Officer (Primary) Elementary & Secondary Education Department w/r to his letter No. cited above.
2. PA to Additional Director (Estab) Merged Districts Khyber Pakhtunkhwa Peshawar.

Deputy Director (Estab)  
Merged Districts



**GOVERNMENT OF PAKISTAN**  
**MINISTRY OF INTERIOR & NARCOTICS CONTROL**  
**NARCOTICS CONTROL DIVISION**  
**POLICE STATION, ANTI NARCOTICS FORCE**  
**ATTOCK**

35

No. 1656/PS/ANF/ATK/21/63

7

Dated: 14 Mar, 2021

To:

**The Deputy Director (Estab)**  
**Directorate of Elementary & Secondary Education KPK**  
**Peshawar.**

Info:

**The Regional Directorate**  
**Anti Narcotics Force**  
**North Region**

Subject:

**Re-Instatement/Adjustment**

Reference:

**Directorate of Elementary & Secondary Education KPK letter No.3053**  
**Dated 05.03.2021.**

1. It is intimated that CrI M.A.317/2020 in case FIR No.36/2014 dated 05.11.2014 U/S 9-C, CNSA/1997 St. Vs Sabir Shah Afridi Police Station Anti Narcotics Force Attock is pending in Supreme Court of Pakistan, Islamabad.
2. Forwarded for information and further necessary action, please.

Encl: **(as above)**



*M. Hussain*

(Ifikhar Hussain)  
- Inspector  
Police Station ANF Attock

NDM - Directorate of EESE KPK. Pesh.

Diry No: 1057 Dated: 15-3-2021

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To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department.

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Subject: Mercy Petition Regarding the Re-instatement in Service of the Petitioner Sabir Shah  
SST (BPS.16)

R/Sir,

With humble emission it is stated with great beseech as under:

**Brief History of the case :**

- Diary NO: 768*
- I. The petitioner was appointed as Secondary School Teacher SST (BS.16) through Khyber Pakhtunkhwa Public Service Commission on 27/03/2012. Prior to his appointment he served against the post of Theology Teacher TT (BPS. ) since 07/09/2002. (Annexure -A). An FIR was registered against the petitioner SST on 05/11/2014 at Police Station ANF Attock Punjab under section 9 (c) of CNSA 1997. recovery of Chars (Garda) weighing 08 KGs.
  - III. The said petitioner was convicted in the FIR and sentenced to undergo Ten (10) Years and Six (06) Months RI with a fine of Three lacs, Rs. 300, 000/- by the session judge, Judge of special court CNSA Rawalpindi on 16/01/2018. (Annexure-B).
  - IV. Later on the Lahore High Court Rawalpindi Bench judgement dated 18/11/2019 has been accepted the appeal of the said petitioner and set aside the Judgement of session Judge/Judge of Special Court CNSA Rawalpindi and acquitted the petitioner of the charge. (Annexure-C).
  - V. It is regretted to mention that during the whole trail/ process of the subject case the District Education Officer Khyber has neither been sent any report nor the suspension order has been issued by the office. The DEO concerned one has stopped his salary only.
  - VI. The said petitioner remained absent from duty from the date of FIR (05/11/2014) upto till now. However he submitted his arrival report to DEO Khyber on 29/11/2019. (Annexure-D)

Now the District Education Officer Khyber has submitted his case for the re-instatement/ adjustment of the petitioner as SST, hence case is provided here for your kind perusal and guidance on the following grounds:

**Grounds for Re-Submission of Case:**

- A. That the recommendations of the inquiry report are also in my favour with the remarks that my pay kindly be started, Arrears and all other benefits may kindly granted. Any other penalty ( Major/Minor) if any be withdrawn.
- B. That very honourable equital of the petitioner and the long absence from service were beyond his control and hence not wilful.
- C. That whenever the petitioner has been equited now the department becomes legally bound to allow the petitioner to join the service and to release his salaries along with all back benefits too.
- D. That the notification of the Government of Khyber Pakhtunkhwa Establishment and Administration Department (Regulation Wing) which stated that when Supreme Court of



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Pakistan has not issued specific directions of stay then the department will obey the order of the high court. (Copy of the Notification is attached): (Annexure-E).

- E. The order No: XX of Supreme Court Rule No 1 1980 " The filling of a petition for leave to appeal or an appeal shall not prevent execution of the decree or order appealed against, But The Court may, subject to such terms and conditions as it may deem fit to impose, Order a stay of execution of the decree or order, or order a stay of proceedings, An any case under appeal to The Court". (Annexure-F)
- F. That the petitioner is ready to give an affidavit that if the supreme court reverse the acquittal order of the petitioner, he will return the salaries.
- G. That the reinstatement of the petitioner shall be made in subject to the condition of Supreme Court order.

As I am facing financial problems and have no other source of income and suffered long. It is humbly requested for acceptance of the application by the petitioner and may kindly be allowed to join his service and may also be released his salaries with all back benefits too.

Petitioner

Sabir Shah SST(G) BPS-16

Cell No 0313 5575500

Date 23/8/2021