

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE  
TRIBUNAL PESHAWAR.**

**Service Appeal No: 7813/2021**


**Sabir Shah SST BS-16, District Khyber.....Appellant.**

**VERSUS**

**Secretary E&SE Department, Khyber Pakhtunkhwa & others.....Respondents**

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**Assistant Director (Lit: II)**  
E&SE Department, Khyber  
Pakhtunkhwa, Peshawar.

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

Service Appeal No: 7813/2021

Sabir Shah SST BS-16, District Khyber .....Appellant.

Re-submitted to  
and filed.

Registrar

**VERSUS**

Secretary E&SE Department, Khyber Pakhtunkhwa & others.....Respondents

**JOINT PARAWISE COMMENTS ON & FOR BEHALF OF RESPONDENTS No: 1 TO 3.**

Respectfully Sheweth :-

The Respondents submit as under:-

**PRELIMINARY OBJECTIONS.**

- 1 That the Appellant has got no cause of action locus standi.
- 2 That the Appellant has concealed material facts from this Honorable Tribunal.
- 3 That the instant Service Appeal is based on mala fide intentions for illegal service benefits against the SST Post in the Department.
- 4 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 5 That the instant Service Appeal is against the prevailing law & rules.
- 6 That the Appeal is not maintainable in its present form.
- 7 That the Appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 8 That the instant Service Appeal is barred by law and limitation.
- 9 That the Appellant is estopped by his own conduct to file the instant Appeal.
- 10 That the Appellant is not an aggrieved person within the meaning of Article 212 of the Constitution of 1973 in the given circumstances of the case in hand.
- 11 That an FIR under 9 ( c ) of CNSA, 1997 was registered against the appellant on 5-11-2014 at PS ANF, District Attock Punjab, wherein the appellant was convicted for imprisonment of 10 (ten) years with 06 months (RI) with a fine of Rs.3 Lacs vide Judgment 16-1-2018 passed by the learned Session Judge Special Court-C & NSA Rawalpindi.

(2)

12 That a Criminal Appeal against the judgment dated 18-11-2019 of the Honorable Lahore High Court Rawalpindi Bench is pending adjudication on behalf of the Petitioner / Department in the August Supreme Court of Pakistan.

### ON FACTS

1. That para -1 needs no comments being pertains to the service record of the appellant against the TT post of the year 2002 and SST of the year 2012 in the Department.
2. That Para-2 is correct and an FIR No.36 dated 5-11-2014 registered under Section 9 ( c) of CNSA act of 1997 at PS ANF, District Attock, Punjab was registered against the appellant for drugs trafficking, wherein the appellant was convicted vide judgment dated 16-1-2018 and was convicted for a imprisonment of 10 (ten) years with 06 months (RI) with a fine of Rs.3 Lacs vide Judgment 16-1-2018 passed by the learned session judge special court-C & NSA Rawalpindi. **(Copy of the judgment dated 16-1-2018 is Annex-A)**
3. Pertains to his record, needs no comments.
4. That para-4 is correct that aggrieved from the judgment dated 16-1-2018, the appellant has filed a criminal appeal No.424/2018 in the Honorable Lahore, High Court Lahore Rawalpindi Bench, which was heard and decided on dated 18-11-2019 whereby the Judgment dated 16-1-2018 of the Learned Special Judge- C Rawalpindi was set-aside in favor of the appellant, where against a criminal appeal was filed before the august Supreme Court of Pakistan which is still pending for disposal before the apex court **(copy of the Judgment dated 18-11-2019 is Annex-B)**. Correct to the extent of set asiding the impugned Judgment of Learned Session Court, however, Department inquiry can run side by side.
5. That Para-5 is incorrect & denied that no arrival report has been submitted by the appellant to the Respondent No.3 for his resumption of duty against the SST post upon his release from the Judicial Lockup in compliance of the Judgment dated 18-11-2019 of the High Court, hence the plea of the appellant is liable to be rejected.
6. That Para-6 is correct that vide letter No.18326 dated 21-4-2020 an inquiry through Principal GHSS Tehkal Bala was conducted by the Department who submitted has repot on 14-9-2020 in favor of the appellant by ignoring the material facts regarding the pendency of Criminal Appeal against the Judgment dated 18-11-2019 of the Lahore High Court Rawalpindi Bench before the august Supreme Court of Pakistan on behalf of the Department , hence the department cannot interfere into the matter till final disposal of the case by the Apex Court of Law as the matter in question is subjudice.

7. That Para-7 pertains to record.

8. That Para-8 pertains to record.

9. That para-9 is correct regarding the pendency of Criminal Appeal before the Apex Court of law against the judgment dated 18-11-2019 of the LHC, Rawalpindi Bench against the appellant as communicated vid elater dated 11-3-2021 by the ANF attached as (Annex-C)

10. That Para-10 pertains to the record.

11. The para- 11 is incorrect.

**ON GRONDS.**

A. *Incorrect & denied.*

B. *Incorrect & denied.*

C. *Incorrect & denied. Detail reply of this ground has already been given in the forgoing paras.*

D. *Incorrect & denied.*

E. Subject to record.

F. *Incorrect & denied.*

G. Pertain to record.

H. Pertain to record.

I. Pertain to record.

J. Pertain to record.


K. *Incorrect & denied.*

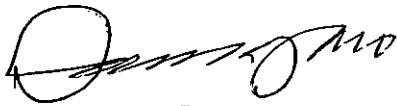
L. *Incorrect & denied.*

M. However the department also seek leave of this Honorable Service Tribunal to submit additional grounds, record and case law at the time of arguments on the date fixed.

In view of the above made submissions, it is most humbly submitted that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Department in the interest of justice.

Dated: \_\_/\_\_/2022.

  
**SECRETARY**  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 1)

  
**DIRECTOR**  
E&SE Pakhtunkhwa, Peshawar.  
(Respondents No: 2 & 3)

**AFFIDAVIT**

**I, Dr. Hayat Khan Assistant Director (Litigation-II)** E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant Para Wise Comments are true & correct to the best of my knowledge & belief.

  
**Deponent**

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Annexure - B  
1

The State Vs. Sabir Shah.  
Judgment.

**IN THE NAME OF ALMIGHTY ALLAH, THE MOST MERCIFUL  
AND THE MOST BENEFICIAL.**

**IN THE COURT OF RAJA PERVEZ AKHTAR,  
SESSIONS JUDGE/ JUDGE SPECIAL COURT, CNSA,  
RAWALPINDI.**

**(Narcotics Case No.157 of 2014)**

The State

Versus

1. **Sabir Shah Afridi, S/o Tamash Khan, aged about 41 years, R/o Aalam Godar Garhi Karigaran, Tehsil: Bara, District: Khyber Agency.**

(Accused)

**Case FIR No. 36 dated 05-11-2014, Offence U/S 9 (c) of CNSA,  
1997, Police Station ANF Attock.**

**JUDGMENT:**

1. The above named accused was sent up by the police of Police Station ANF Attock to face trial in case FIR No.36 dated 05-11-2014, registered U/S 9-C of CNSA, on the allegation of recovery of Charas Garda weighing 08 KGs from his possession.

2. The case of prosecution in brief is 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 substance while boarding on Cherad car bearing No.196-572 Karachi white colour is coming on G.T. Road near Burhan Interchange from Peshawar. Upon the said information a raiding party comprising of Gohar Nabi Baig Inspector (PW-5), Muzaffar Hussain SI, Navid Ahmed HC (given up), Muhammad Javaid Iqbal (PW-4), Jhangir Khan, Rizwan Ullah, Ameer Hussain constables under the supervision of Shehzad Ali Kawish

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The State Vs. Sabir Shah.  
Judgment.

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

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16/10/14  
Gohar Nabi Baig

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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

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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.

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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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.

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Dr. Amir V

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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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

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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. Ahlmad 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*  
(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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Form No: HCJD/C-121  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH, RAWALPINDI**  
(JUDICIAL DEPARTMENT)

**CrI. 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 Ahrnd 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-  
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)

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)

and by a learned Division Bench of this Court in case titled 'ZAFAR IQBAL 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

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on Lahore High Court  
Rawalpindi Bench

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Crl. Appeal No. 424/2018

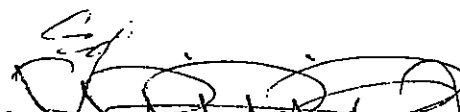
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5. The above mentioned facts and circumstances, have made the charge, against the appellant, doubtful. In such like situation, an accused is always entitled for due benefit of acquittal not as a matter of grace or concession but as a right. In this 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

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Qanun-Shahadat Order 1984



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

No. 1656/PS/ANF/ATK/21/62

Dated: 11 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 Pakistanm, Islamabad.
2. Forwarded for information and further necessary action, please.

Encl: **(as above)**

DA / Jehangir  
15/3/21

11/3/21  
(16105) (11)

(Iftikhar Hussain)  
Inspector  
Police Station ANF Attock