

45

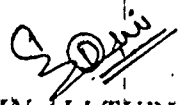
neither having any relationship with Raham Sher and nor has he entered into any conspiracy with him.

The statement of Raham Sher and Mujeeb-ur-Rahman as recorded during proceedings of the instant enquiry does not bear sufficient independent material against the defaulting official with respect to receiving bribe and involving in conspiracy with others for burning the Judicial Record. They have however, during investigation of criminal case recorded their statements before the magistrate, which they allege to be under coercion, but are considered to be with their freewill; as all statements recorded in court are presumed to be willful.

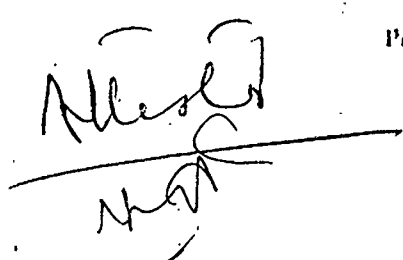
It is worth consideration that the special court Anti Corruption NWFP, Peshawar, convicted the official under enquiry for offences under section 409/161/436-PPC and U/s 5(2) of the prevention of corruption Act, 1947 and have held the accused liable for offences against the public office/trust. The order of conviction passed by the learned Special Judge, Anti Corruption NWFP, Peshawar dated 21.08.06 was upheld by the august Peshawar High Court, Peshawar through judgment dated 14.11.06 and the accused were set free on the imprisonment already undergone.

These observations of the courts is irrebuttable proof of misconduct and corruption of the accused/official under enquiry and a sufficient ground for penalty under the NWFP E&D rules 1973. Mere conviction in criminal case is even a sufficient ground for imposition of major penalty against the public officer.

In these circumstances, I am of the view that accused/official under enquiry deserves to be proceeded against under the E&D rules and I propose that major penalty within the meanings of section 4[(ii)[(B)(IV)]] be imposed against the official under enquiry and he be dismissed from Service w.e.f the date of his conviction i.e. 21.08.06

  
MOHSIN ALI TURK,  
Senior Civil Judge/Enquiry Officer,  
Charsadda.

Dated: 15.12.06



N 46

23-12-06

Office Of the

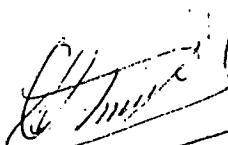
**DISTRICT & SESSIONS JUDGE, CHARSADDA**

**OFFICE ORDER:**

Whereas, Mr. Noor Shah Ali was appointed as a Junior Clerk/Moharrir in the establishment of undersigned, who was nominated by the co-accused for entering into conspiracy with his co-accused for setting on fire the Judicial record of the Court of Civil Judge-I, Shabqadar and receiving bribe in this connection.

Whereas, he has been tried by the Special Court Anti Corruption for the charges leveled against him U/S 409/161/436 PPC and Section 5(2) dated 21/08/2006 of the Prevention of Corruption Act and convicted. The said order of conviction was also upheld by the Hon'ble, Peshawar High Court, Peshawar vide judgment dated 17/10/2006. In this respect an inquiry was conducted under (Efficiency & Disciplinary) Rule-1973, which was completed on 18/12/2006 and he was served with a notice of show cause by the undersigned for personal hearing. Today he appeared and failed to prove himself not guilty.

Therefore, he is dismissed from service w.e.f. 21/08/2006.

  
(GHULAM MOHY-UD-DIN MALIK)  
District & Sessions Judge,  
Charsadda

**OFFICE OF THE DISTRICT & SESSIONS JUDGE, CHARSADDA**

Endst: No 7763-68 /DJ-15/CHD Dated 23/12/2006

**Copy forwarded to:**

1. The Worthy Registrar, Peshawar High Court, Peshawar
2. The Senior Civil Judge/JM, Charsadda
3. The Civil Judge/JM-I, Shabqadar
4. The District Account Office, Charsadda
5. The Accountant of this Court is directed to make necessary entry in the service record of the official in accordance with law and ensure the recovery of salary, if paid to the said official after the date of conviction i.e. 21/08/2006.
6. The official concerned.

  
ATTESTED

EXAMINER

18/11/07  
Copying Agency Branch  
Court of Distt & Sessions Judge  
Charsadda

District & Sessions Judge  
Charsadda

23-01-2007

Q 47

Before the Peshawar High Court, Peshawar



D.A. No. \_\_\_\_\_/2007.

Noor Shah Ali son of Jamroz Khan r/o Shabqader Sokhta Tehsil & Shabqader District Charsadda, ex-junior Clerk, Civil Judge/Judicial Magistrate, Shabqader.

(Appellant)

Versus

The District & Sessions Judge, Charsadda.

(Respondents)

DEPARTMENTAL APPEAL IN RESPECT OF NOOR SHAH ALI JUNIOR CLERK/MUHARRIR AGAINST THE ORDER OF DISMISSAL FROM SERVICE DATED 23-12-2006 BY DISTRICT & SESSIONS JUDGE, CHARSADDA RECEIVED BY THE APPELLANT ON 04-01-2007

**RESPECTFULLY SHEWETH:**

1. That the impugned order is illegal, without jurisdiction and without lawful authority.
2. That the impugned judgment / order of dismissal is against the facts on record, and law on the subject.
3. That inadmissible evidence has been taken into account while passing the impugned judgment/order.
4. That same person is the complainant and he himself has investigated the case, besides having recorded confessional statement of co-accused.
5. That the appellant has simply been charged on the statement of co-accused, who has resiled from his statement ultimately.
6. That the judgment of the Court of Anti-Corruption as maintained by the Hon'ble High Court, has been made the basis of impugned dismissal order, which is illegal and also lack of application of mind by the learned Session Judge, Charsadda, while passing the above mentioned order of dismissal.
7. That the impugned order of dismissal is not speaking order, and has been passed without application of judicial mind, and is also against the provisions of law.
8. That the Authority passing the order has over-looked the fact that the appellant has filed an appeal before the Hon'ble Supreme Court of Pakistan, which is pending, and proprietary required that no adverse order should have

ATTESTED  
EXAMINER  
Peshawar High Court

been passed against the appellant till the decision of the case by the Hon'ble Supreme Court of Pakistan.

9. That even otherwise the mere conviction by a court of law does not constitute a valid judicial ground for taking action under Civil Servants Efficiency & Discipline Rules, 1973.
10. That no proper judicial inquiry has been conducted in accordance with law and rules.
11. That the law and Rules have been utterly violated in processing the case of the appellant. The appellant has been condemned unheard, besides discriminated on several grounds.
12. That the private person Raham Sher had his own axe to grind and was successful in getting initiated proceedings against the servant of Judiciary. The said Raham Sher then retracted from statement and he was tried as an accused in the matter.
13. That there is no judicial evidence to connect the appellant with the commission of the offence and there is every likelihood of his acquittal by the Hon'ble Supreme Court of Pakistan.
14. That the evidence collected against the appellant was cooked up, manufactured, fabricated and engineered just to penalize innocent Government official and that also at the behest of a criminal who had burnt the record room.
15. That in any case the punishment met out is too harsh and severe in the circumstances of the case.

It is therefore, humbly prayed that on acceptance of this Departmental appeal/representation of the appellant may be re-instated in service by setting aside the impugned order. Any other order deemed proper in the circumstances of the case may also be passed. The appellant may be allowed to put forward any other argument/documents at the time of hearing of this Departmental appeal.

**Prayer for inter relief.**

It is most respectfully prayed that pending disposal of the departmental /representation the impugned order may be suspended and the appellant may be allowed to work against his post and he be paid salary in accordance with law.

Appellant

Dated. 23.1.2007

(Noor Shah Ali)  
S/o Jamroz Khan r/o Shabqader Sokhta T  
Shabqader District Charsadda, ex-jur  
Judge/Judicial Magistrate, Shabqader

  
**Mian Muhibullah Kakakhel**  
Advocate  
Supreme Court of Pakistan,

R. 49

22-12-2009

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT

...D.A. No. 23 of ..... 2007

JUDGMENT

Date of hearing ..... 21/12/2009 .....

Appellant ..... *M. Ali Shah Ali* .....

Respondent ..... *D.A.S.J., Chaudhry* .....

**SHAH JEHAN KHAN YOUSAFZAI, J.-** The appellant along with Liaqat Ali etc were tried by Senior Special Judge, Anti-Corruption, NWFP, Peshawar in case F.I.R. No. 343 dated 31.5.2005 under Section 409/436/161/165-A/182 PPC read with Section 5(2) Prevention of Corruption Act registered at Police Station Shabqadar, who were found guilty of the offence and awarded conviction and sentence as under:-

1. Under Section 409 PPC, he was sentenced to five years R.I. with a fine of Rs. 25,000/- or in default to suffer further six months S.I.;
2. Under Section 161 PPC and sentenced to two years R.I. with a fine of Rs. 75,000/- or in default to suffer further one year S.I.;
3. Under Section 436 PPC and sentenced to five years R.I. with a fine of Rs. 20,000/- or in default to suffer four months S.I.;
4. Under Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced to three years R.I. with a fine of Rs. 10,000/- or in default to suffer further three months S.I..

2. The conviction of the appellant was maintained by this Court through Cr.A. No. 569/2006 decided on 14.11.2006 but his substantive sentence was reduced to period already undergone. He further challenged

ATTESTED  
*[Signature]*  
EXAMINER  
Peshawar High Court

his conviction through Cr.A. No. 279/2008 in the Supreme Court of Pakistan but the same was also dismissed through judgment dated 14.9.2009.

4. In the aforesaid circumstances, the appellant was rightly dismissed from service under the Civil Servants (Efficiency & Discipline) Rules, 1973. This Departmental Appeal is found without any substance which is hereby dismissed.

*Sd/- Shahjehan Khan Yousafzai*

Announced.  
Dt: 22.12.2009

CERTIFIED TO BE TRUE COPY

*[Signature]*  
Examiner

Peshawar High Court Peshawar  
Authorized Under Section 75 Acts Order

*7-1-2010*

7462
Date of Presentation of Application <i>07/01/2010</i>
No of Pages <i>412</i>
Copying Fee <i>✓</i>
Urgent Fee
Total <i>8.00</i>
Date of Preparation Copy <i>07/01/2010</i>
Date of Delivery of Copy <i>07/01/2010</i>
Acquired by <i>[Signature]</i>

**BEFORE THE SERVICE TRIBUNAL, NJWFP, PESHAWAR**

Service Appeal No. 104 2010

N.J.W.F.P. Peshawar  
Service Tribunal  
Diary No. 119  
Dated 15/11/2010

S. Noor Shah Ali S/o Jamrooz Khan  
R/o Sokhta Shabqadar, District Charsadda  
Ex. Junior Clerk/Moharrer Court of  
Civil Judge/Judicial Magistrate,  
Shabqadar, District Charsadda.....Appellant

**Versus**

- 1. District & Sessions Judge Charsadda.
- ② Administrative Judge Peshawar High Court,  
Peshawar, *Through Registrar Pesh. High Court, Peshawar.*
- 3. Civil Judge/Judicial Magistrate, Shabqadar  
District Charsadda.  
.....Respondents

*Report no. 2  
Presented against  
in side order  
Shd MO of dt 24/8/10.*

**Appeal against office order No. 7763-65/DJ-15/CHD, dated 23.12.2006 of respondent No. 1 whereby appellant was dismissed from service with effect from 21.08.2006 or order dated 22.12.2009, of respondent No. 2 whereby representation of appellant was rejected for no legal reason.**

*Filed to-day  
15/11/2010*

**Respectfully Sheweth:**

- 1. That appellant was appointed as Junior Clerk/Moharer and was posted with District &

Sessions Judge, Charsadda. At the time of occurrence, he was performing duty with Civil Judge/Judicial Magistrate, Shabqadar.

2. That FIR No. 343 dated 31.05.2005 P.S. Shabqadar u/s 452/506/342/436/477/148/149 PPC wherein no one was charged for the commission of offence, however, one Raham Sher recorded confessional statement in the court where in appellant alongwith Liaqat Ali, Junior Clerk/Moharrer were named as counterparts. Later on the Section of law were changed through Section 409/436/161/165-A/182 PPC read with 5(2) of the prevention of Corruption Act, 1947. (Copy of the FIR as annex;-'A').
3. That on implicating of the appellant in the case, he was served with show cause notice regarding burning of record of some cases which was replied on 20.09,.2005 by the appellant and denied the allegations. (Copy as annex; 'B' & 'C').
4. That on 01.10.2005 appellant was suspended from service by ADJ Charsadda. (Copy as annex; 'D').
5. That on the same day, i.e. 01.10.2005 appellant was served with statement of allegation without charge sheet by ADJ Charsadda and not by the Enquiry Officer himself. The statement of allegation was replied on 08.11.2005 and denied the allegations. (Copy as annex; 'E' & 'F').



6. That on 09.01.2006 and 13.01.2006 statements of Raham Sher and appellant were recorded when in the meanwhile the court of Special Judge(P) Anti Corruption, Peshawar initiated Criminal proceedings against appellant, Raham Sher, Liaqat Ali and convicted them for 5 years and fine on 21.08.2006 and thereafter on 20.10.2006, the Enquiry Officer stopped the enquiry proceedings against the defaulters with direction to wait for the decision of the trial court in the offences. (Copy as annex; 'G' 'H', 'I' & 'J').
7. That appellant filed appeal before the Peshawar High Court, Peshawar for setting aside the conviction and sentence of the Special Judge(P) Anti Corruption, Peshawar which was allowed on 14.11.2006 by treating the undergone sentence as sufficient. (Copy as annex; 'K').
8. That on 22.11.2006, the Enquiry Officer recorded/statement of Mujeeb-ur-Rehman who categorically stated that he was forced by the police as well as by the Enquiry officer to give statement against appellant, etc. and the said bailiff who was similarly placed person with appellant was made witness against appellant etc and the bailiff was then exonerated of the charges and is still serving the department as bailiff. (Copy as annex; 'L').

9. That without completing rest of the enquiry proceeding i.e. recording of statements of witnesses, giving opportunity of cross examination, serving with final show cause notice and personal hearing being mandatory and by substituting another Enquiry Officer, the later submitted the enquiry report to the authority on 15.12.2006 by proposing major penalty of dismissal from service with effect from 21.08.2006. (Copy as annex; 'M').
10. That on 23.12.2006 District & Sessions Judge without serving appellant with final show cause notice and supply of Enquiry Proceeding, appellant was dismissed from service with effect from 21.08.2006 retrospectively. (Copy as annex; 'N').
11. That on 23.01.2007, appellant submitted appeal before respondent No. 2 which was rejected on 22.12.2009. (Copies as annex; 'O' & 'P').

Hence this appeal, inter alia, on the following grounds.

**Grounds**

- a) That appellant has more service than 14 years in his credit and no benefit of the rendered services were ever given to him.
- b) That on perusal of the record, it is quite clear that the enquiry was not conducted in accordance with the rule on the subject.


Appellant was behind the bar since 23.08.2005 till 14.11.2006. The Enquiry Officer never visited him in jail to either record statement of witnesses if any, or to provide him opportunity of defence.

- c) That it was obligatory for the authority to serve appellant with final show cause notice and to supply him all the Enquiry Proceedings to enable him to submit comprehensive reply but such mandatory requirement was ignored which vitiates all the proceeding.
- d) That one Mujeeb-ur-Rehman bailiff of the court of respondent No. 1 who was in equal footing with other counterparts was made approver and appellant, etc. were dealt with severely and as per the judgments all similarly placed persons will be dealt with similarly and equally on similar charges but PW-4 Mujeeb-ur-Rehman was exonerated from the charges and is serving the court of respondent No. 1 as bailiff till date while appellant was dismissed from service, thus discriminated.
- e) That criminal action and departmental action as per the judgments of the Supreme Court of Pakistan can go side by side even at variance decisions yet in the case in hand, the original as well as appellate authority were influenced by

the conviction of appellant, yet mandatory requirement in the departmental action were not observed.


- f) That show cause notice and statement of allegations were served upon the appellant by respondent No. 1 himself and not the Enquiry Officer. This glaring illegality vitiates all the proceedings to be null and void and then the impugned order becomes void-ab-initio.
- g) That original as well as appellate order were not made in accordance with law but with ulterior motive, so are illegal, improper, unjust without lawful authority and of no legal effect. Hence liable to be reversed.

It is, therefore, most humbly prayed that on acceptance of the appeal, the impugned order dated 23.12.2006 or 22.12.2009 of respondent No. 1 & 2 be set-aside and appellant be re-instated in service with all back benefits.



Appellant

Through



Saadullah Khan Marwat  
Advocate

Dated 14.01.2010



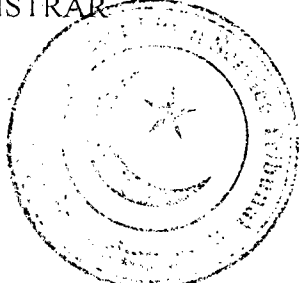
R  
-

A. No. 104/2010

57

16/1/2018

As per direction of the Hon'ble Chairman this appeal is accelerated and fixed for arguments before larger Bench on 29/1/2019 instead of 14/3/2019. Parties and their counsel be informed accordingly.

*[Signature]*  
REGISTRAR  


29.1.2019

Mr. Saadullah Khan Marwat Advocate for appellants and Addl. AG alongwith Mahboob Ali, Senior Clerk for the respondents present.

Learned counsel for the appellants states that in view of judgment reported as 2016-SCMR-1206, he is under instructions to request for return of appeal in hand in order to seek remedy at the appropriate forum.

Office shall retain a copy of complete brief and return the original appeal to the appellants.

*[Signature]*  
Chairman

*[Signature]*  
(M. Hamid Mughal)  
Member

*[Signature]*  
(M. Amin Khan Kundi)  
Member

*[Signature]*  
(Ahmad Hassan)  
Member

*[Signature]*  
(Hussain Shah)  
Member

Certified copy  
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Registrar

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Date of  
6-8-20  
29-1-19  
08-2-19  
08-2-19

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W.P. No. \_\_\_\_\_ / 2019

Noor Shah Ali

versus

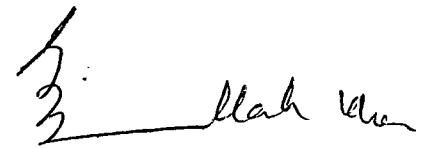
District Judge &amp; Others

**NOTICE**

1. District & Sessions Judge,  
Charsaddar.
2. Registrar, Peshawar High Court,  
Peshawar.
3. Civil Judge / Judicial Magistrate,  
Shabqadar District Charsadda

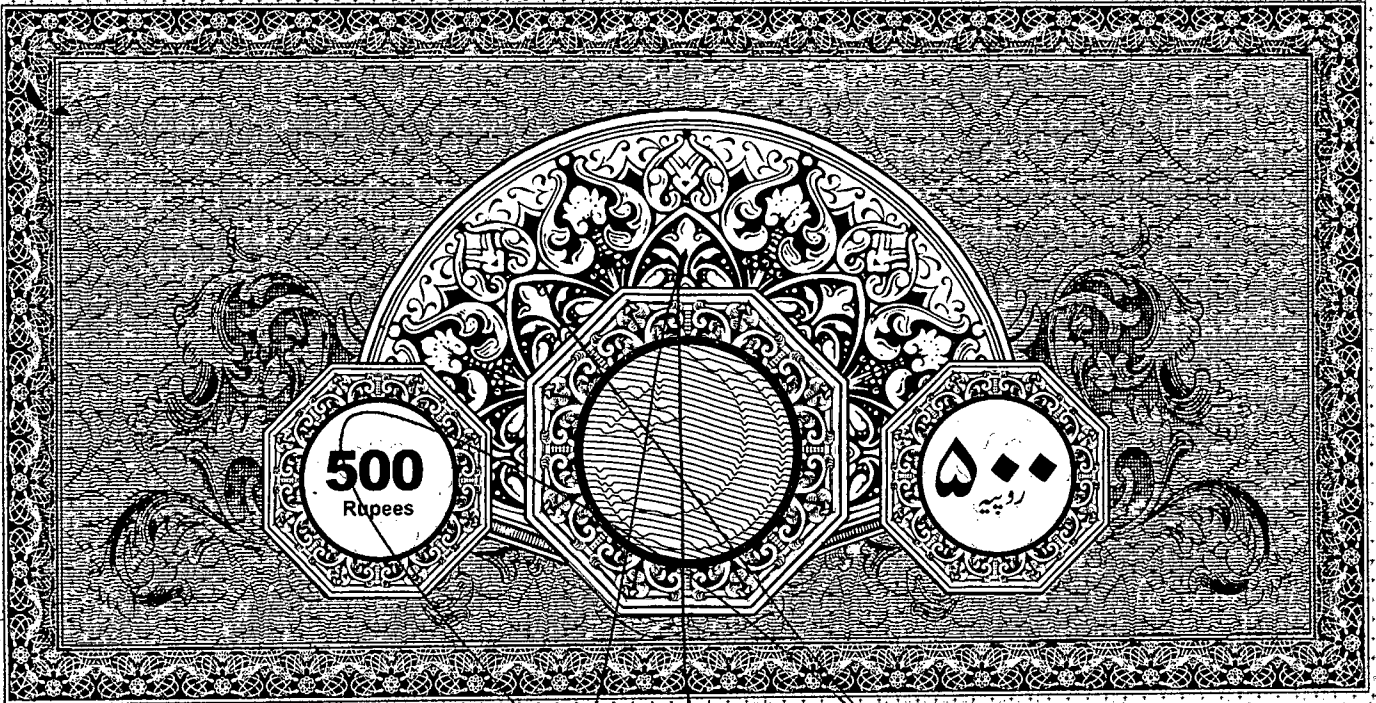
Please take notice that I am filing Writ Petition on behalf of petitioner before the Hon'ble Peshawar High Court, against the respondents to reinstate petitioner in service with all back benefits.

Dated: 23-02-2019



Saadullah Khan Marwat

Advocate



500 Rupees

PAKISTAN COURT FEE

In the *Peshawar High Court, Peshawar*  
W-P — 19.

*Noor Shah Ali*

vs CANCELLATION


Date: .....

*DJ 9 others.*

CANCELLATION

Date: .....

FILED TODAY  
Deputy Registrar  
26 FEB 2019

*Through*   
*Saad Ullah Khan*  
*Advocate*

# بعدالت جناب پشاور عالی کورٹ پٹور

کورٹ شاہ علیہ نام ڈسٹریکٹ جج و منسٹر

دعویٰ رجسٹریشن

باعث شکریہ ایسکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کیشا پور کے لئے سعد اللہ شاہان مروت ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق اور اس پر دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التواء مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

المرقوم 19-02-25

العبد العبد العبد

محمد انور پٹور

سعد اللہ شاہان مروت  
ایڈووکیٹ

FILED TODAY  
Deputy Registrar  
26 FEB 2019

ایڈووکیٹ

مس روینہ تارو  
ایڈووکیٹ



**District & Sessions Judge,  
Charsadda.**

**Email: [dsjcharsadda@yahoo.com](mailto:dsjcharsadda@yahoo.com)**

**Web: [Districtjudiciarycharsadda.gov.pk](http://Districtjudiciarycharsadda.gov.pk)**



Phone No. 091-9220444

Fax No. 091-9220438

No. 1171 DJ- 01 Dated Charsadda the 23 / 5 / 2019.

**AUTHORITY LETTER.**

Mehboob Ali, Senior Clerk of this Sessions Division is hereby authorized to sign the affidavit on my behalf in the following writ petition detail is as under:

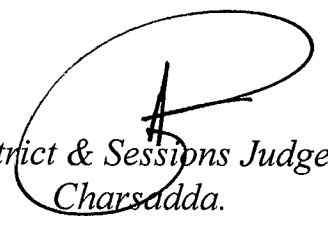
*Writ Petition*      No. 1658/2019.

*Title:*

*Noor Shah Ali, Son of Jamrooz Khan,  
R/O Sokhta Shabqadar,  
Ex, Junior Clerk/Muharrir, Court of  
Civil Judge/Judicial Magistrate, Shabqadar . . . Petitioner.*

**VERSUS**

1. *District & Sessions Judge, Charsadda.*
2. *Registrar, Peshawar High Court, Peshawar.*
3. *Civil Judge/Judicial Magistrate, Shabqadar,  
District Charsadda . . . . . Respondents.*

  
*District & Sessions Judge,  
Charsadda.*

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

Noor Shah Ali, Son of Jamrooz Khan,  
R/O Sokhta Shabqadar,  
Ex, Junior Clerk/Muharrir , Court of  
Civil Judge/Judicial Magistrate, Shabqadar . . . . . Petitioner.

VERSUS

1. District & Sessions Judge, Charsadda
2. Registrar, Peshawar High Court, Peshawar.
3. Civil Judge/Judicial Magistrate, Shabqadar  
District Charsadda. . . . . Respondents.

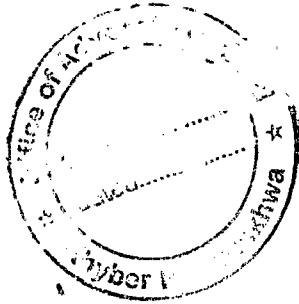
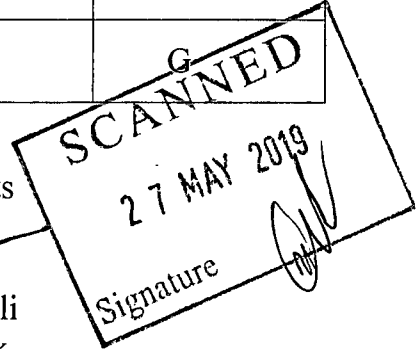
**INDEX**

<i>S.no</i>	<i>Description of documents</i>	<i>Page</i>	<i>Annexure</i>
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4.	Charge Sheet	6	B
5.	Show cause/personal hearing	7	C
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9.	Judgment of Supreme Court of Pakistan.	34 to 37	G

Respondents

Mehboob Ali  
Senior Clerk,

Sessions Court, Charsadda  
(Authority letter holder)



725-5-18



1

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

Noor Shah Ali, Son of Jamrooz Khan,  
R/O Sokhta Shabqadar,  
Ex, Junior Clerk/Muharrir, Court of  
Civil Judge/Judicial Magistrate, Shabqadar ..... Petitioner.

VERSUS

1. District & Sessions Judge, Charsadda.  
2. Registrar, Peshawar High Court, Peshawar.  
3. Civil Judge/Judicial Magistrate, Shabqadar,  
District Charsadda ..... Respondents.

**WRIT PETITION UNDER ARTILE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISTAN, 1973.**

*Respectfully Sheweth,*

Reply on Behalf of Respondent (District & Sessions Judge, Charsadda.) is submitted as under:

**Preliminary objections:**

1. That the petitioner did not approach this Hon'ble court with clean hands
2. That the petitioner has got no cause of action.
3. The petitioner is estopped to sue by his own conduct.
4. The petitioner has been convicted and sentenced under section 409, 161, 436 PPC read with section 5 (2) of the Prevention of Corruption Act-1947 for 5 years RI with fine of Rs. 25000/- , 2 years RI with fine of Rs. 75,000/- , 5 years RI with fine of Rs. 20,000/- and 3 years RI with fine of Rs. 10,000/- by learned Senior Special Judge Anti-corruption NWFP, Peshawar vide judgment dated 21.08.2006 in case No. 40 of 2005. However, vide judgment dated 17.10.2006 in CR. No. 569 of 2006, the august Peshawar High Court, Peshawar while maintaining the conviction reduced the sentences to the one already undergone by him. The august Supreme Court of Pakistan vide judgment dated 14.09.2009 in criminal appeal No. 279 of 2008 maintained the convection of the petitioner. Thus on the score of conviction alone, the petitioner is not entitled to reinstatement as well as to any other relief.

**FILED TODAY**  
Deputy Registrar  
**25 MAY 2019**

Parawise reply:

1. Para No. 1 to Para 4 are correct hence need no reply.
2. Para No. 5 is incorrect. Learned AD&SJ-I, Charsadda had served the petitioner with "Statement of Allegations" and "Charge Sheet" in the capacity of authorized Inquiry Officer duly appointed by the Competent Authority. Both the documents are hereby annexed as annexure A and B.
3. Para No. 6 and 7 are correct hence need no reply.
4. Para No 8 is correct to the extent that Mujeeb-ur-Rehman, is still performing his duty as Bailiff in the court of Senior Civil Judge, Charsadda and the rest of para is incorrect hence denied. Actually Mujeeb-ur-Rehman was not implicated in the FIR regarding burning of court's record, therefore, only his statement was recorded in the inquiry proceedings for the purpose of investigation.
5. Para No. 9 is incorrect hence denied. All the legal and codal formalities were complied with by the learned authorize inquiry officer as well as the competent authority before imposing the major penalty upon the accused official. Petitioner was given an opportunity of personal hearing by the competent authority as reflected in the office order bearing Endst: No. 7763-68/DJ-15/Chd dated 23.12.2006. Copies of Show Cause Notice and Office Order are annexure C and D.
6. Para No. 10 is incorrect hence denied. Show Cause Notice (annexure C) was issued to the accused official and the Petitioner was dismissed from service after recording of conviction and sentence by the Special Court Anti-corruption, Peshawar under section 409/161/436-PPC and under section 5(2) of the Prevention of Corruption Act-1947 and held the accused liable for offences against the public office/trust. Copy of the judgment is Annexure E. Detail reply has been given in preliminary objection No. 4 copies of judgment of August Peshawar High Court and Supreme Court of Pakistan are Annexure F and G.
7. Para No. 11 and 12 are correct hence need no reply.

**FILED TODAY**  
Deputy Registrar  
**25 MAY 2019**

**GROUNDS.**

A. Para A is incorrect hence denied. Detailed reply is given in preliminary objection NO. 4 and reply to para No. 10.

B. Para B is incorrect hence denied. Inquiry under E&D Rules 1973 was conducted in accordance with the rules on the subject. The accused official was brought before the Inquiry Officer on each and every date of hearing from the Jail in police custody.

C. Pare C is incorrect hence denied. The appellant was dismissed from service after recording of conviction and sentence by competent court of jurisdiction which was maintained up to the apex courts. The concurrent conviction judgments up to the apex courts are irrefutable proofs of misconduct and corruption of the accused official. Mere conviction in criminal case is even a sufficient ground for imposition of major penalty under E&D Rules 1973.

D. Para D is correct.

E. The appellant has exhausted his remedy before the Khyber Pakhtunkhwa Service Tribunal, Peshawar and without waiting for their proper decision; the instant writ petition was filed.

F. Para F is incorrect hence denied.

G. Para G is incorrect hence denied.

In view of the above it is, therefore, requested that the writ petition being devoid of any merits may kindly be dismissed with cost.

Respondent

District & Sessions Judge,  
Charsadda.

FILED TODAY  
Deputy Registrar  
25 MAY 2019

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR,**

**WRIT PETITION NO. 1658/2019.**

Noor Shah Ali, Son of Jamrooz Khan,  
R/O Sokhta Shabqadar,  
Ex, Junior Clerk/Muharrir, Court of  
Civil Judge/Judicial Magistrate, Shabqadar ..... Petitioner.

VERSUS

1. District & Sessions Judge, Charsadda
2. Registrar, Peshawar High Court, Peshawar.
3. Civil Judge/Judicial Magistrate, Shabqadar  
District Charsadda. .... Respondents.

**IFFIDAVIT**

MEHBOOB ALI (S.C)

I, on behalf of the respondent in the subject writ petition do hereby solemnly affirm and declare that the contents of the reply are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this hon'ble court.

Respondents

Mehboob Ali  
Senior Clerk,

Sessions Court, Charsadda

(Authorized on behalf of the Respondents)

0301-9807897

29493

affirmed that I am a ...  
 affirmance here: ...  
 day of May 29 2019  
 sic Senior Clerk Mehboob Ali  
 who is ... Charsadda  
 who is present self

AMM  
 22/5/2019

FILED TODAY  
Deputy Registrar  
25 MAY 2019

STATEMENT OF ALLEGATION

Whereas you accused official Noor Shah Ali have been involved and charged in a criminal case vide FIR No. 343 dated 31/05/2005 u/s 452/476/436/342/506/148/149 PPC registered at P.S. Shabqadar for setting on fire and causing irreparable loss and damaged to the judicial record of the court of Civil Judge / Judicial Magistrate, Shabqadar.

And I being Authorized Officer direct you accused official to put in any written defense on 08/10/2005. You are also required to state whether you wished to be heard in person.

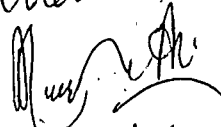
Dated: 01/10/2005

- sd -

(SHOAIB KHAN)

Add: District & Sessions Judge-I,  
Charsadda / Authorized Officer

e/c

Attested  
  
Superintendent  
Sessions Court  
Charsadda

CHARGE SHEET

14

I, Shoaib Khan Addl. Sessions Judge-I, Charsadda duly appointed as Authorized Officer vide order of competent authority / Honourable District & Sessions Judge, Charsadda dated 26/08/2005, do hereby charge you accused official Noor Shah Ali Civil Moharrir attached to the court of CJ / J.M Shabqadar as follows:

That you accused along with your co-accused Liaqat, as per confessional statement of accused Raham Sher recorded by a Competent Court on 24/08/2005 in case FIR No. 313 dated 31/05/2005 u/s 452/508/342/436/477/148/149 PPC at P.S Shabqadar have entered into a criminal conspiracy with the accused Raham Sher for setting on fire official / judicial record of the court of Civil Judge / Judicial Magistrate, Shabqadar in consideration of Rs.150,000/- which in addition to criminal offence as leveled in the FIR, is also mis-conduct within the meaning of section 2 (e) of the NWFP Govt. Servants (E & D) Rule 1973.

And I hereby informed and direct that you will be inquired and proceeded against on the above charge.

*(Signature)*

(SHOAIB KHAN)

Addl. District & Sessions Judge-I,  
Charsadda / Authorized Officer

RO & A.C  
22/10/2005

Q: Have you heard and understood the charge so framed against you?

A: Yes

Q: Do you admit the charge so framed against you as correct?

A: No. I am innocent I have committed no offence and never entered into any criminal conspiracy.

Q: Do you want to submit any written defense?

A: I rely on my answer, <sup>and statement of</sup> submitted in response to statement of allegation.

*(Signature)*  
22/10/05

  
Noor Shah Ali (Accused Official)

RO & A.C  
22/10/2005

*(Signature)*

Addl. District & Sessions Judge-I,  
Charsadda / Authorized Officer

Attested  
*(Signature)*  
Superintendent  
Sessions Court  
Charsadda



ANNEXURE "C"

7

Office Of the

DISTRICT & SESSIONS JUDGE, CHARSADDA

No: <sup>13</sup>772 /D&SJ, Charsadda

Dated: 21/12/200

**From:**

The District & Sessions Judge,  
Charsadda

**To:**

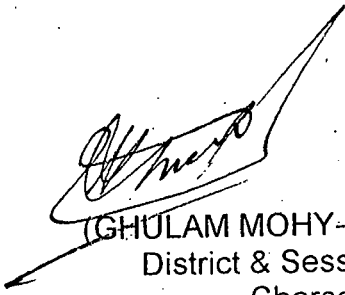
Mr. Noor Shah Ali  
Ex. Junior Clerk/Moharrir  
to the Court of CJ-I, Shabqadar

**Subject:**

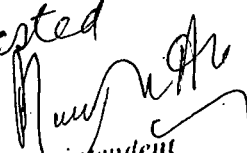
SHOW CAUSE.

Memo:

You are hereby directed to appear for personal hearing and explain your position regarding your enquiry/conviction on 23/12/06.

  
(GHULAM MOHY-UD-DIN MALIK)

District & Sessions Judge,  
Charsadda

Attested  
  
Superintendent  
Sessions Court  
Charsadda

2774  
22/12/06  
22/12/06

Office of the  
**DISTRICT & SESSIONS JUDGE, CHARSADDA**

OFFICE ORDER:

Whereas, Mr. Noor Shah Ali was appointed as a Junior Clerk/Moharrir in the establishment of undersigned, who was nominated by the co-accused for entering into conspiracy with his co-accused for setting on fire the Judicial record of the Court of Civil Judge-I, Shabqadar and receiving bribe in this connection.

Whereas, he has been tried by the Special Court Anti Corruption for the charges leveled against him U/S 409/161/436 PPC and Section 5(2) dated 21/08/2006 of the Prevention of Corruption Act and convicted. The said order of conviction was also upheld by the Hon'ble, Peshawar High Court, Peshawar vide judgment dated 17/10/2006. In this respect an inquiry was conducted under (Efficiency & Disciplinary) Rule-1973, which was completed on 18/12/2006 and he was served with a notice of show cause by the undersigned for personal hearing. Today he appeared and failed to prove himself not guilty.

Therefore, he is dismissed from service w.e.f. 21/08/2006.

(GHULAM MOHY-UD-DIN MALIK)  
District & Sessions Judge,  
Charsadda

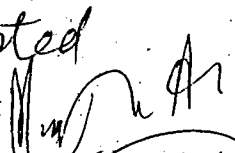
OFFICE OF THE DISTRICT & SESSIONS JUDGE, CHARSADDA

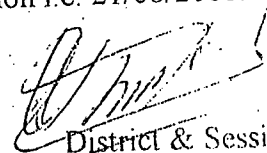
Endst: No 7763-68 /DJ-15/CHD Dated 23/12/2006

Copy forwarded to:

1. The Worthy Registrar, Peshawar High Court, Peshawar
2. The Senior Civil Judge/JM, Charsadda
3. The Civil Judge/JM-I, Shabqadar
4. The District Account Office, Charsadda
5. The Accountant of this Court is directed to make necessary entry in the service record of the official in accordance with law and ensure the recovery of salary, if paid to the said official after the date of conviction i.e. 21/08/2006.
6. The official concerned.

attested

  
Superintendent  
Sessions Court  
Charsadda



District & Sessions Judge  
Charsadda

ANNEXURE "E" - J -

9

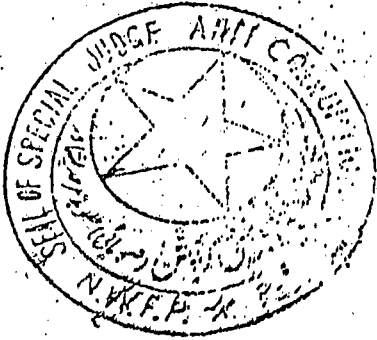
34

24

In the Court of Senior Special Judge, Anti-Corruption NWFP,  
Peshawar.

Case No.40 of 2005.

Date of Decision. 21-8-2006



State Versus:-

- ✓ 1. Liaqat Ali S/O Shakhkhel,  
R/O Mirzai, Ex-Moharrir,  
Court of Judicial Magistrate,  
Shabqadar.
- ✓ 2. Noor Shah Ali S/O Jamroz,  
R/O Sokhtar, Ex-Moharrir,  
Court of Judicial Magistrate,  
Shabqadar.
3. Raham Sher S/O Sher Muhammad,  
R/O Hajizai, now at Akbar Filling  
Station,  
Saro Kalay.
4. Sheharyar S/O Shah Jehan,  
R/O Kotak Tarnao, Chowkidar,  
Court of Judicial Magistrate,  
Shabqadar.
5. Sajjad (alias) Manay,  
S/O Purdil, R/O Haleemzai,  
District Charsadda.

ATTESTED

EX-MEMBER  
Court of Special Judge  
Anti-Corruption  
NWFP, Peshawar.  
23/8/06

Case FIR No.343 Dated 31.5.2005 U/S 409/436/161/165-  
A/182/PPC read with section 5(2)PC Act of P.S. Shabqadar,  
Charsadda.

Judgment:-

Present case pertains to the court of Civil Judge, Shabqadar,  
District Charsadda. According to the initial information recorded on  
31.5.2005, when Shaukat Ahmed Khan Civil Judge, Shabqadar  
reached the court in the morning, Rahim Dad peon informed him

EX-MEMBER  
Court of Special Judge  
Anti-Corruption  
NWFP, Peshawar.  
21-8-06

attested  
Superintendent  
Sessions Court  
Charsadda

that the court record had been burnt that night. The presiding officer summoned Sheharyar chowkidar and recorded his statement Ex.PW1/1. He stated that in the night of occurrence, while on duty, at about 1.30 AM he noticed a noise from corner of the court premises and when he approached he was over-powered by some 4/5 persons who muffled him and put him in a car present outside and took him away to an un-known place and after some time another person informed these persons that they had got the work done. He was then taken to some-where else and left him handcuffed and muffled. That in the morning some passer-by kids released him and when he reached to court he found door of moharrir office broken open and record of the court burnt. According to this <sup>statement</sup> Sheharyar went to the police station and informed the local police.

The Presiding officer forwarded this statement of Sheharyar chowkidar under his covering letter Ex.FW1/2, to the police station for registration of case. This report was taken as first information and case was registered as FIR No.343 Ex.PA u/s 452/505/342/436/477/148/149/PPC relying upon the information provided by Sheharyar.

Sheharyar chowkidar was arrested as suspected offender. On the following day i.e. 1.6.2005, Sheharyar disclosed that the narrations that he made to the Presiding Officer and incorporated in the FIR were concocted and actually he was not present on duty during the eventful night. His statement u/s 161 Cr.PC was taken after three days in custody.

In course of investigation, police got a clue that one local proclaimed offender Ashfaq was behind the incident, and that he and his brother Adnan were on friendly terms with Raham Sher, chowkidar of a filling station in village Sarokalay. In course of enquiry as directed by the Sessions Judge, Charsadda, while recording statement of court officials, name of Raham Sher came forth. At this, Liaqat Ali Moharrir of the court allegedly asked, Mujeebur Rehman bailiff of the same court to inform the said, Raham Sher regarding the fact. Mujeebur Rehman approached Raham Sher in his petrol pump where he was chowkidar at "sarokalay" and give him the message of the moharrir. This is what

Attested  
 Superintendent  
 Sessions Court  
 Charsadda

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was subsequently disclosed by Mujeebūr Rehman bailiff in statement Ex.PW3/1 recorded on 26.8.2005 u/s 164 Cr.PC.

On 23.8.2005 Raham Sher was arrested and on 24.8.2005 he was produced before the magistrate vide application Ex.PW8/1 and he recorded his confessional statement Ex.PW1/4 u/s 164 Cr.PC. In his confessional statement Raham Sher disclosed that he had developed friendly relations with co-accused Noor Shah Ali and Liaqat Ali both moharrirs of court of civil judge, Shabqadar, in course of his civil suit titled "Sarwar vs-Raham Sher" and that Ashfaq co-accused wanted to police in so many criminal cases was raided for which Ashfaq suspected Raham Sher as police informer and asked him (Raham Sher) to end up the court cases pending against him any way. According to this statement the accused Noor Shah Ali and Liaqat Ali were approached and a bargain against Rs.1,50,000/- was struck which amount was paid to Noor Shah Ali and after one day the record was burnt.

After recording this confessional statement of Raham Sher on 24.8.2005, the accused Noor Shah Ali and Liaqat Ali moharrirs were also arrested and sections of law were converted to 161/162/409/436/477/PPC read with section 5(2)PC Act.

On 25.8.2005, vide application Ex.PW8/2 they both were produced before the magistrate and after obtaining six days police custody vide application Ex.PW8/2 & Ex.PW8/3 they were admitted to judicial lock up vide Ex.PW8/4.

It is pertinent to mention that in the confessional statement of Raham Sher there is mention that accused Noor Shah Ali and Liaqat Ali were approached for bargain, Raham Sher was accompanied by Adnan co-accused brother of co-accused Ashfaq and third person of unknown identity. In course of investigation the accused Sajjad was arrested as that "third person".

The investigation was conducted under the supervision of a special team and after completion of investigation challan was submitted for trial.

Charge was framed against accused Liaqa Ali, Noor Shah Ali, Raham Sher in custody and Sheharyar and Sajjad Alias Manay who were released by them on bail. The other co-accused Ashfaq and Adnan were placed u/s 512 Cr.PC and all of the accused pleaded innocence./

ATTESTED

EX. P.W. 1/4  
Court of Special Judge  
Anti-Corruption  
M.S.P. Peshawar  
23/8/05

SPECIAL JUDGE  
Anti-Corruption N.W.F.P.  
Peshawar  
21-8-05

Attested  
Superintendent  
Sessions Court  
Charsadda

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The following persons were examined as Prosecution witnesses :-

- 1) Shaukat Ahmed khat, Judicial Magistrate, Shabqadar as PW-1.
  - 2) Ikramullah khan, ASI, P.S. Shabqadar as PW-2.
  - 3) Mujeebur Rehman, Ballif of the court of Judicial Magistrate/Civil Judge, Shabqadar as PW-3.
  - 4) Muzaffar khan S.I. P.S. Pabbi as PW-4.
  - 5) Badshah Gul, ASI, P.S. Kabli as PW-5.
  - 6) Mushtaq Ahmed, SHO P.S. Mattani as PW-6.
  - 7) Rahim Shah, SHO P.S. Charsadda as PW-7.
  - 8) Hamdullah S.I. Investigation P.S. Shabqadar as PW-8.
- one Qamar Zaman was abandoned by the prosecution.

Statement of Abdul Mabood DFC was also recorded as SW-1.

After conclusion of the prosecution evidence statement of accused u/s 342 Cr.PC recorded. Accused Raham Sher opted to be examined on oath and also wished to produce defence evidence. His statement was recorded on oath and one Hamdullah produced by him was examined as DW-1. It was at this juncture when the prosecution requested for summoning of Moharrir of the court of Civil Judge, Shabqadar alongwith record pertaining to civil suit No.287/1 titled Sarwar Vs-Raham Sher and the request was allowed.

Riazur Rehman Moharrir was examined as CW-1 who produced copies of the relevant record Ex.CW1/1 to Ex.CW1/6.

After conclusion of the statement of CW-1, additional statement of the accused Raham Sher, Liaqat Ali, Noor Shah Ali were recorded. It was this point when the co-accused Ashfaq also surrendered by then partial arguments in the case has already been heard. It was deemed proper that he be tried separately and was ordered accordingly.

I have heard arguments advanced by the learned defence counsel and P.P. for state and gone through the record with their valuable assistance.

Shaukat Ahrned khan PW-1 was CIVIL Judge/Judicial Magistrate Shabqadar and the incident pertains to his court. As PW-1 he gave account of the officials attached to his court and the

ATTESTED

M  
EXAMINER  
Court of Special Judge  
Anti-Corruption  
21-8-06

SPECIAL JUDGE  
Anti-Corruption  
21-8-06

Attested

Superintendent  
Sessions Court  
Charsadda

21/13/28

lot includes Llaqat Ali, Noor Shah Ali, Moharrirs, Sheharyar chowkdar accused and Mujeebur Rehman Bailiff. The witness has narrated the primary circumstances leading to registration of the case. He confirmed recording of statement of Sheharyar chowkdar Ex.PW1/1 and its transmission to the police station under his covering letter Ex.PW1/2 for registration of case. According to him he forwarded a copy of covering letter to the Registrar, Peshawar High Court and second copy to his Sessions Judge for information. He is the witness who recorded confessional statement of Raham Sher on 24.8.2005 Ex.PW1/4 and has confirmed his signature and seal of the court on Ex.PW1/4, on memo Ex.PW1/3 and certificate Ex.PW1/5. The witness was subjected to lengthy cross examination.

In course of cross examination this PW ~~which~~ <sup>is</sup> pointed out that he had recorded 164 Cr.PC statement of Mujeebur Rehman PW-3 also. The witness denied that he had supervised the investigation rather stressed that he recorded the statements as Illaqa Magistrate. In his cross examination he rebutted the suggestion that seal of the court was affixed on the confessional statement Ex.PW1/4 before recording the text and obtaining thumb impression of the accused. He gave detail account of the events while recording this confessional statement according to which the accused was produced on 8.30 AM and that after an hour time given for relaxation. Statement was recorded at 9.30 AM which lasted till 9.45 AM. He rebutted the suggestion that the accused had told him that he was in police custody since 21.8.2005 and that he was innocent. The witness admitted that he did not refer the accused for medical check up before and after recording confessional statement. About the 164 Cr.PC statement of Mujeebur Rehman Bailiff the witness rebutted the suggestion that the statement Ex.PW3/1 was provided to him and he adopted the same or that he obtained signature of Mujeebur Rehman on a blank paper.

ATTESSED

20/8/06  
20/8/06

SPECIAL JUDGE  
Anti-Corruption  
Peshawar  
21-8-06

PW-2 Ikramullah ASI is a marginal witness to the recovery memo Ex.PW2/1 vide which he as I.O. collected material mentioned in the memo, from the spot. He is also marginal witness of the recovery memo Ex.PW2/2 vide which motor cycle No.PRR-1617 Ex.P-5 was taken into possession.

Attested  
Superintendent  
Sessions Court  
Charsadda

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PW-3 Mujeebur Rehman is the bailiff of the court of civil judge, Shabqadar. In his examination-in-chief recorded on oath he has reproduced the narrations recorded in his statement Ex.PW3/1 and confirmed his signature on his statement Ex.PW3/1 recorded on 26.8.2005. In his cross examination he stated he was tortured, kept under observation till 26.8.2005 and then the statement was recorded which was a result of tortured and he was forced to make the statement against the accused. according to this witness he was produced before the magistrate in hand cuffs and was forced to give false statement.

PW-4 Muzafar Khan ASI was incharge investigation of P.S. Shabqadar during the relevant days. He prepared site plan Ex.PW4/1, on the pointation of Sheharyar chowkidar. He prepared the recovery memo Ex.PW2/1 and took into possession ash Ex.P-1, semi burnt files P-2, semi burnt chairs P-3 and a broken 7-up bottle P-4 from the spot. He recorded statements of marginal witnesses of the recovery memo. He arrested Sheharyar and obtained his police custody. He photo graphed the scene of occurrence and recorded statements of the locals living around.

PW-5 Badshahi Gul ASI is scribe of the FIR Ex.PA which was registered on the basis of written report Ex.PW1/2.

PW-6 Mushtaq Ahmed SHO submitted complete challan in the case. In his cross examination he pointed out that the special investigation team headed by S.P. investigation was constituted after the remarks of the honourable High Court while hearing the bail petition of the accused and a note to this effect has been recorded in this regard by Hamdullah PW-8. The witness emphasized that the investigation was carried out by a team of senior police officers like DIG Mardan, DPO Charsadda, SP investigation Charsadda, DSP Shabqadar and SDPO investigation and has rebutted the suggestion that only Hamdullah S.I. has conducted the investigation and it was supervised by him (the witness) alone.

PW-7 Rahim Shah SHO remained associated with the investigation after when section 5(2)PC Act was added. The witness relied upon the investigation already carried out and which was almost complete.

**ATTESTED**

EX-AM  
Special Judge  
Anti-Corruption  
23/8/06

*[Signature]*  
SPECIAL JUDGE  
Anti-Corruption H.W.D. Charsadda  
PUSHTAWAR  
21-8-06

Attested  
*[Signature]*  
Superintendent  
Sessions Court  
Charsadda



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40 (30)

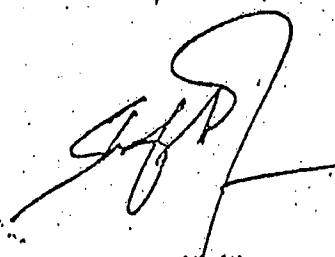
PW-8 Hamdullah S.I. investigation Shabqadar got investigation in hand on 25.6.2005. He arrested the accused Sajjad, obtained his custody and on spy information arrested Raham Sher on 23.8.2005, who disclosed the names of the co-accused Liaqat Ali, Noor Shah Ali, Adnan and Ashfaq. He produced Raham Sher on 24.8.2005 vide application Ex.PW8/1 before the magistrate and got recorded his confessional statement. He arrested Liaqat Ali and Noor Shah Ali on 24.8.2005 and got their police custody on 25.8.2005 from the magistrate on applications Ex.PW8/2, PW8/3 & PW8/4 and admitted both the accused to judicial lock up without a confessional statement. This PW took into possession Motor Cycle PRR-1617 produced by Imroze brother of the accused Noor Shah Ali vide recovery memo Ex.PW2/2. He also got recorded statement of PW-3 Mujeebur Rehman Ex.PW3/1 u/s 164 Cr.PC and got issued 204 Cr.PC warrants in respect of accused Ashfaq and Adnan. After addition of section 5(2)PC Act, he handed over investigation to Inspector Rahim Shah.

In cross examination the witness admitted that the accused Raham Sher was not medically examined but for the reason that he was produced for confessional statement within the permissive period of detention. He rebutted the suggestion that the accused Raham Sher was arrested on 21.8.2005. The witness stated that Raham Sher was brought to the court for confessional statement at 8.10 AM and was produced before the court at 9.AM. He stressed that the investigation was conducted under the supervision of investigation team. The witness disclosed that out of 13 cases pending against the accused Adnan, Ashfaq, their father and brother in law, five files were burnt.

In their statement recorded u/s 342 Cr.PC the accused Liaqat Ali and Noor Shah Ali admitted their position as Moharrir in the court but they denied any link with the co-accused Raham Sher and stated that they knew him in course of the present case only. They denied taking of the conspiracy amount of Rs.1,50,000/- and destruction of the record. They termed 164 Cr.PC statement of Mujeebur Rehman Ex.PW3/1 and confessional statement of Raham Sher Ex.PW1/4 the result of coercion, torture and pleaded themselves all out innocent.

ATTESTED

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Official Seal  
20/8/06



SPECIAL JUDGE  
Anti-Corruption N.W.F.P.  
Peshawar  
21-8-06

attested  
Superintendent  
Sessions Court  
Charsadda

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In his statement u/s 342 Cr.PC Sheharyar accused admitted his position as chowkidar and he admitted his absence from the duty on the eventful night but denied to be a part of the conspiracy. He termed his statement Ex.PW1/1 as fabricated one and stated the affixation of his thumb impression on this statement <sup>as</sup> a result of command of the controlling officer.

Accused Sajjad also denied any connection with the co-accused Raham Sher, Liaqat Ali and Noor Shah Ali and also with Adnan and Ashfaq any link for the commission of offence.

In his statement made u/s 342 Cr.PC and further on oath u/s 340(II) Cr.PC the accused Raham Sher denied any familiarity or link with the accused Noor Shah Ali and Liaqat Ali or payment of any amount to the Moharrirs. He alleges his confessional statement Ex.PW1/4 to be a result of coercion and police torture. He emphatically denied that he is a party to any civil suit pending before the civil court and specifically denied to be a defendant in civil suit titled "Sarwar Vs-Raham Sher". He, however admits that he has got no enmity or ill will with the magistrate or police.

DW-1 Hamdullah has stated that Raham Sher is a trust worthy person of humble background having no property or any civil suit and that he works with them as chowkidar in the filling station since long. He insists that Raham Sher was arrested on 21.8.2005 from the filling station.

CW-1 Riazur Rehman has produced the court record of suit No.287/1 titled "Sarwar Vs- Raham Sher", a brief account of which has already been given above in the relevant para of the statement of accused Raham Sher.

Prosecution story in shortest terms is that accused Adnan and Ashfaq involved in so many cases pending before the court some how persuaded the accused Raham Sher (who was in good terms with the co-accused Liaqat Ali and Noor Shah Ali Moharrirs of the court) to manage an "end up" to the cases. They both (Moharrirs) struck bargain with him (Raham Sher) and receiving an amount of Rs.1,50,000/- from him, they, during the night of 30 & 31.5.2005 set the case files and court record ablaze. This lot of the burnt record included five case files of the accused Adnan and Ashfaq. Further that the accused Sheharyar chowkidar of the court who was actually absent from duty on the eventful night reported a false

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SPECIAL JUDGE  
Anti-Corruption Wing  
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story to the presiding officer on the basis of which false report in the shape of FIR 343 of P.S. Shabqadar was registered.

From the produced evidence it is proved that the accused Liaqat Ali and Noor Shah Ali were moharrir of the court, custodian of the record and they were the persons knowing well about the record. The accused Sheharyar chowkidar was supposed to be on duty and he was supposed to report the real position of the occurrence to the presiding officer even if he was absent from duty. But instead of doing so the report made by him to the Presiding Officer and incorporated in the FIR Ex.PA subsequently proved false and he (Sheharyar) himself admitted it to be false.. There remains no room to doubt that the accused Sheharyar made a false report about the occurrence in order to cover up his absence from duty and to save his service career. Being so he deserves to be punished for that. So far as his role in the occurrence is concerned, it however, begins with this and ends with this. He has no role in rest part of the episode.

So far as direct or ocular evidence is concerned there is non available in the case. There is however Inculpatory confessional statement Ex.PW1/4 on behalf of the accused Raham Sher, from which he has subsequently retreated.

PW-1 the magistrate who has recorded the statement and PW-8 the concerned i.O. have given an account of the relevant circumstances in which this statement was recorded. These two statements carry no fatal contradictions inter-se or within. The accused Raham Sher was, per record, arrested on 23.8.2005 and produced for recording statement on 24.8.2005. The allegations that he was arrested on 21.8.2005 and kept in illegal confinement for torture till 24.8.2005 finds no support from some solid evidence There was no complaint whatsoever during this period even on behalf of his masters in the filling station one of whom appeared as DW-1 as well. No doubt the accused was not medically examined during the process but this does not mean that he was definitely tortured. He was immediately committed to prison on 24.8.2005 and there is nothing recorded there about physical problem of the accused if at all he was tortured. The justification that he was produced before the magistrate within the permissive period after his arrest by police and for that reason he was not medically

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examined itself carries weight. In his statements the accused has categorically stated that he has got no enmity or ill will with the magistrate who had recorded the confessional statement or with the police who arrested him.

While examining the circumstances of this confessional statement a single contradiction between the statement of PW-1 & PW-8 was noted about the timing. PW-1 has stated that Raham Sher was produced at 8.30 AM while PW-8 has stated that he was presented to the court at 9AM. PW-8 has however, stated that the accused was brought to the court at 8.10 AM. Date is the same and the difference is that of minutes which create no fatal doubt in mind rather reflect fairness of both the PWs while giving statement on Oath. The circumstances leading to the arrest of Raham Sher have been made clear and PW-3 is relevant whose statement was recorded u/s 164 Cr.PC during investigation. PW-3 has fully confirmed the contents of his 164 Cr.PC statement Ex.PW3/1 in his examination in chief. Though in cross examination he has termed this statement a result of torture and coercion which is unbelievable in the given circumstances. It is unbelievable that a Presiding officer of the court would let police torture his own subordinate and would himself record his false statement on production by police. The witness was produced in his well familiar environment before his own Presiding officer and it appears that the statement recorded u/s 164 Cr.PC and confirmed in the examination in chief was natural and genuine while allegations put forth in the cross examination as PW are not true, may be a result of fear of local revenge. This statement of PW-3 explains the background and circumstances in which the police initially made access to the accused Raham Sher. It is a point that had the police being searched of some one to fill the blank, it had one Sheharyar and another Sajjad already arrested and in hands available for compelling them to confess but it was not the case which support the prosecution stand that Raham Sher was a genuine case for apprehension and he gave confessional statement voluntarily based on true account of facts.

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In course of trial it was also insisted upon by defence that the thumb impression of the accused Raham Sher was obtained on blank paper and text of the confessional statement Ex.PW1/4 was

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subsequently filled up . The original Ex.PW1/4 give no such visible clue from any angle rather it indicated otherwise, when the original sheet was anxiously examined with this view.

In statement u/s 342 & 340(II) Cr.PC Raham Sher has denied any familiarity with both these accused Liaqat Ali and Noor Shah Ali and same is the case of the accused Liaqat Ali and Noor Shah Ali as reflected in their statements u/s 342 Cr.PC. Confessional statement Ex.PW1/4 attribute origination of the friendly relation of the three to a court case civil suit titled "Sarwar Vs- Raham Sher" indicated in the confessional statement. In his court statements recorded during trial, Raham Sher has subsequently specifically and categorically denied existence of any such case indicated in the confessional statement. Not only Raham Sher but also his witness DW-1 Hamdullah has also denied pendency of the suit stating that Raham Sher has a humble background having no landed property.

Statement of CW-1, however leads us some where else. The *witness* has produced record of civil suit No.287/1 titled "Sarwar Vs- Raham Sher" instituted on 11.4.2002 by Sarwar khan and 21 others against Raham Sher S/o Sher Muhammad and 11 others. The record produced by this witness includes Register civil suit, Order sheets of civil suit No.287/1 "Sarwar ETC Vs-Raham Sher ETC", Plaint and written statement of this case, certificate of reconstruction of the file and special power of attorney of accused Raham Sher and his thumb impressed Vakalatnama in favour of Muhammad Fayaz advocate submitted on 09.6.2005. This record proves it more than sufficiently that civil suit "Sarwar Vs- Raham Sher" is pending since 11.4.2002, Raham Sher is party as one of the defendants in the case and he has been actively contesting it from the very beginning by submitting his written statement and has engaged counsel there in and that the case is still pending after reconstruction of the file burnt down in the accident. Question arises that if the confessional statement is not genuine then how this case was mentioned in his statement while it finds no mention on record of investigation before this statement? In the absence of something to the contrary, the only possible answer to this can be that it was the accused Raham Sher who knew about his case and he genuinely mentioned it in his confessional statement. If contents of the confessional statement

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that Raham Sher developed friendly relations with co-accused Noor Shah Ali and Liaqat Ali Moharrirs in course of this case/suit were incorrect then the question that what prompted Raham Sher to deny the fact of pendency of this suit against him is of even more importance. The only possible answer is that being mindful of the consequences of this fact he (Raham Sher) needed this denial to delink himself from the co-accused Liaqat Ali and Noor Shah Ali to falsify the confessional statement and he might had done it successfully had there not been statement of CW-1 and record of the case produced.

In addition to this, statement of PW-3 recorded u/s 164 Cr.PC and given on oath, as discussed above, irrespective of his unfounded allegations deposed in his cross examination indicate that Raham Sher was not only known to the accused Noor Shah Ali, Liaqat Ali rather he was dear to other staff of the court also as such Mujeebur Rehman bailiff PW-3, conveyed him the message of Liaqat Ali when he was sent to him, as confessed in the statement of PW-3.

The confessional statement of Raham Sher Ex.PW1/4 is corroborated by other facts and evidence as discussed and there remains no room to doubt that the inculpatory confessional statement of Raham Sher is voluntarily, genuine and natural giving true account of the facts. While assuming this inculpatory confessional statement valid and genuine it can be safely taken against all the three accused.

In the given circumstances, the prosecution has proved beyond doubt that the accused Raham Sher managed to pay illegal gratification to the accused Noor Shah Ali and Liaqat Ali for an illegal act to "end up" court cases of Ashfaq and Adnan and he committed an offence punishable u/s 165-A/PPC; That accused Liaqat Ali and Noor Shah Ali, both government servants as Moharrir of the court were custodian of the court record and had access to that, accepted the gratification as reward for "ending up" of cases and subsequently "accomplished the task" by putting the court record to fire. They therefore, committed an offence punishable u/s 409/161 and 436/PPC and being govt. servants guilty of misconduct, they are liable to be punished u/s 5(2)PC Act as well. That the accused Sheharyar gave false information of the incident

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EX: M. J. SHER  
Court of Special Judge  
Anti-Corruption  
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which report he believed to be false and therefore committed offence punishable u/s 182/PPC.

So far as accused Sajjad is concerned the prosecution has however proved nothing against him and he deserves to be acquitted honourably.

Consequently, the accused Liaqat Ali and Noor Shah Ali are convicted and sentenced as under:-

- 1) They both are convicted and sentenced U/S 409/PPC to imprisonment for Five Years (5) R.I. with a fine of Rs.25,000/- (Twenty Five Thousand each) or in default thereof shall suffer six (6) months S.I. each.
- 2) They are also convicted and sentenced U/S 161/PPC to Two Years (2) R.I. with a fine of Rs.75,000/- (Seventy Five Thousand) each or in default thereof shall suffer One year S.I. each.
- 3) They are convicted and sentenced U/S 436/PPC to Five Years (5) R.I. with a fine of Rs.20,000/- (Twenty Thousand) each or in default thereof shall suffer Four (4) months S.I. each.
- 4) They are further convicted U/S 5(2) of the Prevention of Corruption Act, 1947 and sentenced to Three (3) years R.I. each with a fine of Rs.10,000/- (Ten thousand) each or in default thereof shall suffer Three (3) months S.I. each.

The accused Raham Sher is convicted and sentenced U/S 165-A/PPC to imprisonment for Two (2) years R.I. with a fine of Rs.10,000/- (Ten thousand) or in default thereof shall suffer Three (3) months S.I.

The accused Sheharyar is convicted and sentenced U/S 182/PPC to imprisonment for Three (3) months R.I. with a fine of Rs.1,000/- (One thousand) or in default thereof shall undergo one month S.I. He is present before the court on bail, he be taken into custody and committed to jail for execution of sentence awarded to him. It is left open to the concerned department to take departmental action against him for absence from his duty on the night of occurrence.

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EX AMPLER  
 Court of Sessions Judge  
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The accused Sajjad is honourably acquitted from the charges levelled against him. He is on bail and his surety stand discharged of the liability.

All the substantive sentences of imprisonment shall run concurrently. The convict shall have the benefit of section 382-B Cr.PC. for the period spent by him as under trial prisoner in jail.

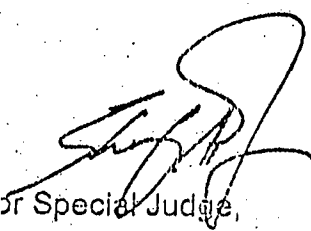
The absconding accused Ashfaq has already been arrested and supplementary challan submitted against him and separate trial is going on.

The other absconding accused Adnan is declared as proclaimed offender. Perpetual warrant of arrest be issued against him and the DPO concerned may be asked to enlist him in the register of proclaimed offenders.

The case property ash, files and bottle be kept intact till the expiry of the period of limitation prescribed for appeal/revision. So far as Motor Cycle Registration No.PRR-1617 is however, concerned it is found that it has nothing to do with the present case and it was taken by I.O. in custody from Imroz Khan brother of the accused Noor Shah Ali. It be returned to Imroze Khan S/o Jamroze Khan against proper bond to the effect that it shall be produced if ever required by any court.


File be consigned to the record room.

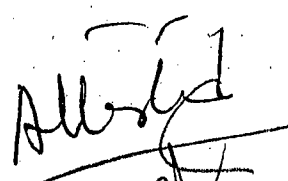

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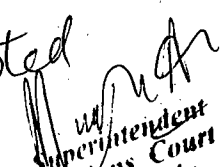
  
Senior Special Judge,  
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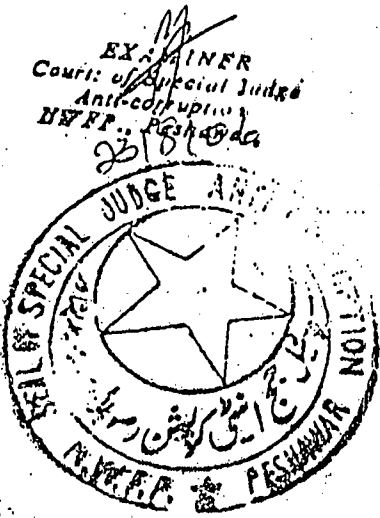
Certified that this judgement consists on Fourteen pages, each page has been corrected and signed by me wherever necessary.

  
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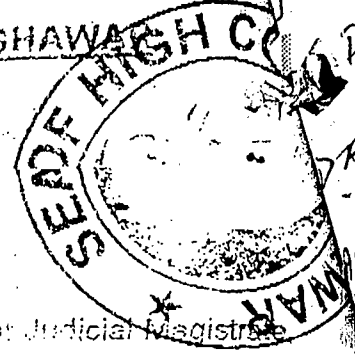
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BEFORE PESHAWAR HIGH COURT, PESHAWAR

Ct. Appeal No 569/2006



1. Liaqat Ali S/O Shahkhal R/O Mirzai, Ex-Moharrir, Court of Judicial Magistrate Shabqadar, Presently lodged in District Prison/ Jail, Charsadda
2. Noor Shah Ali S/O Jamroz R/O Sakhtar, Ex-Moharrir, Court of Judicial Magistrate, Shabqadar Presently lodged in District Prison/ Jail, Charsadda

(Appellants)

VERSUS

The State

(Respondent)

Appeal against judgement and order dated 21-08-2006 of learned Senior Special Judge Anti-Corruption, NWFP Peshawar, whereby while convicting appellants under Section 409/161/436 PPC and S (5) PC Act, they both are sentenced as:-

- (1) They both are convicted and sentenced under Section 409 PPC to imprisonment for two years (2) S.I with a fine of Rs 25,000/- (Twenty five thousand each) or in default thereof shall suffer six (6) months S.I each.
- (2) They are also convicted and sentenced under Section 161 PPC to two years (2) S.I with a fine of Rs 75,000/- (Seventy five thousand) each or in default thereof shall suffer one year S.I each.
- (3) They are convicted and sentenced under Section 436 PPC to Five years (5) R.I with a fine of Rs 20,000/- (Twenty thousand) each or in default thereof shall suffer four (4) months S.I each.
- (4) They are further convicted under Section 5 (2) of the Prevention of Corruption Act, 1947 and sentenced to Three (3) years R.I each with a fine of Rs 10,000/- (Ten thousand) each or in default thereof shall suffer Three (3) months S.I each.

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Sessions Court  
Charsadda

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT

## JUDGMENT

..... Cr. Appeal No. 569 of ..... 2006  
Date of hearing ..... 17-12-2006  
Petitioners/Appellants (Liaquat Ali etc.) By Mr. Pervez Sultan Khan  
Respondent (State) By Mr. Muhammad Afzal Khan

TALAAAT QAYYUM OURESHI, J. - Cr. Appeals, No. 569 and 607 of 2006 are directed against the judgment/order dated 21.8.2006 passed by the learned Senior Special Judge Anti-Corruption NWFP Peshawar, whereby each one of the appellants Liaquat Ali and Noor Shah Ali is convicted and sentenced as under:-

1. U/s 409 PPC to 5 years RI with a fine of Rs.25,000/- or in default to suffer further six months SI.
2. U/s 161 PPC to 2 years RI with a fine of 75,000/- or in default to suffer further one year SI.
3. U/s 436 PPC to 5 years R.I. plus fine of Rs.20,000/- or in default to suffer 4 months SI.
4. U/s 5 (2) of the P.C. Act, 1947 to 3 years RI with a fine of Rs.10,000/- or in default to suffer further 3 months SI.
5. Appellant Raham Sher is convicted and sentenced to 165-A/PPC to 2 years R.I. with a fine of Rs.10,000/- or in default to suffer further 3 months SI.

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2. Since both the appeals have arisen out of one and the same criminal transaction and the impugned judgment/order is committal therefore, I propose to dispose of both the appeals by this single judgment.
3. Briefly stated the prosecution case is that accused Adnan and Ashfaq involved in so many cases pending before the Court some how persuaded the appellant Raham Sher, who was in good terms with the convicted-appellants Liaqat Ali and Noor Shah Ali Moharrirs of the Court at Shabqadar, to manage an "end up" to the cases. Both the Moharrirs concluded bargain with Raham Sher appellant and receiving an amount of Rs.1,50,000/- from him, they during the night between 30<sup>th</sup> & 31<sup>st</sup> May, 2005 set the case files and court room ablaze. This lot of the burnt record included five case files of the accused Adnan and Ashfaq. Furthermore, the appellant Shehreyar Chowkidar of the Court who was actually absent from duty on the eventful night reported a false story to the Presiding Officer on the basis of which case no. 409/436/161/165-A/182 PPC read with Section 5 (2) of the Prevention Act, 1947 was registered at P.S. Shabqadar vide FIR No.343 dated 31.5.2005.
4. The investigation was conducted and after completion of investigation challan was submitted for trial.
5. During the course of investigation apart from the three appellants, Shehreyar Chowkidar of the Court Judicial Magistrate Shabqadar (not appellant before this Court) and Sajjad were put to trial.

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the latter one was acquitted and the appellants were convicted as stated above.

6. In order to establish its case the prosecution examined as many as 8 witnesses. They have stated about the performance made during the investigation. The statements of the appellants were recorded u/s 342 Cr.P.C. Out of them appellant Raham Sher opted to be examined on Oath and also wished to produce defence evidence. His statement on Oath was recorded and one Hamdullah was produced by him as D.W.1. On the request of the prosecution Moharrir of the Court of Civil Judge Shabqadar was examined who produced the record pertaining to Civil Suit No.287/1 titled "Sarwar Vs. Raham Sher"

7. In their statement recorded u/s 342 Cr.P.C. the appellants Liaqat Ali and Noor Shah Ali admitted themselves to be Moharrirs in the Court, but they denied any link with the appellant Raham Sher and stated that they knew him in course of the present case only. They denied taking of the amount of Rs.1,50,000/- and destruction of the record. They termed the statement of Mujeebur Rehman placed on record as Ex.P.W.3/1 and confessional statement of Raham Sher Ex.P.W.1/4 being the result of coercion, torture and all the appellants did not plead guilty to the charges and claimed trial.

8. Mr.Safirullah Khan, Advocate the learned counsel for the appellants in Cr.A. No.60//2000 argued that the confession was not voluntary and it was extorted. Shaukat Ahmad P.W.1 was complainant in the case, therefore, he should not have recorded the confessional statement of the accused. The thumb impression of Raham Sher

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appellant was obtained on plain paper. He was arrested on 21.8.2006 whereas he was shown to have been arrested on 23.8.2006.

9. It was also argued that the alleged confessional statement was produced by the police and copied by the Court. Complainant Shaukat Ahmad was complainant in the case, therefore, legally he could not have recorded the confessional statement.

10. It was also argued that the I.O. P.W. 8 admitted that accused was given back to police after recording his confessional statement for putting the accused to Judicial lock up. The accused was never sent to Doctor for examination before or after recording the confession, which could not have been done legally.

11. It was further argued that except the retracted judicial confession there is nothing on record to connect the appellant Raham Sher with the case. He added that the I.O. was SI and the requirement of Section 5-A of the P.C. Act is that the I.O. should be of the rank of Inspector.

12. Mr. Abdul Sattar Khan, Advocate the learned counsel for the appellants in Cr.A. No.569/2006 argued that except the retracted confession of appellant Raham Sher co-accused of other appellants, there is no corroborative piece of evidence available on record to connect the appellants with the commission of offence.

13. It was also argued that the confessional statement was over zealous, hence not worthy of credence. Reliance was placed on 1951 AIR Oudh 92.

14. He further argued that no departmental enquiry was conducted. He added that 28.5.2006 was the date of marriage of Noor

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Shah Ali and except Section 436 PPC no other Section of law is applicable to the present case.

15. Mr. Muhammad Ayaz Khan, the learned DAG appearing for the State has very frankly conceded that Shaukat Ahmad P.W.1 was the complainant in the case, therefore, he should not have recorded the confessional statement of the accused.

16. He further stated at the bar that there was no corroborative piece of evidence available on record to connect the appellants with the commission of the offence except the retracted confession of appellant Rahani Sher.

17. I have heard the learned counsel for the appellants and perused the available record.

18. The argument of the learned counsel for the appellant that the entire investigation was conducted by Sub-Inspector Hamdullah (P.W.8) who was not authorized under section 5-A of PC Act 1947 has a force in it. The contents of Section 5-A of the ibid Act are reproduced hereunder for convenience:-

“Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1998), no officer below the rank of (Inspector) shall investigate any offence punishable under any of the sections of the Pakistan Penal Code (Act XLV of 1860), mentioned in Section 3 or any offence punishable under Section 5 without an order of a Magistrate of the first class or make an arrest therefore without a warrant.”

19. The perusal of the record reveals that on registration of the case, Muzafar Khan, ASI was entrusted with the investigation of the case. He prepared site plan Ex.P.W.4/1, on the pointation of Sheharyar Chowkidar. He prepared the recovery memo Ex.PW.2/1 and took into possession as Ex.P-1, semi burnt files P-2, semi burnt chairs P-3 and a

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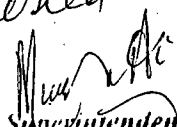
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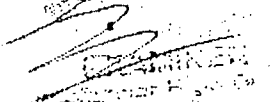
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broken 7-up bottle P-4 from the spot. He recorded statements of marginal witnesses of the recovery memo. He arrested Sheharyar and obtained his police custody. He photo graphed the scene of occurrence and recorded statements of the locals living around.

20. It was on 25.6.2005 that the investigation of the case was handed over to Hamdullah, Sub-Inspector (P.W.8). He arrested the accused Sajjad, obtained his custody and on spy information arrested Raham Sher on 23.8.2005, who disclosed the names of the co-accused Liaqat Ali, Noor Shah Ali, Adnan and Ashfaq. He produced Raham Sher on 24.8.2005 vide application Ex.PW.8/1 before the Magistrate and got recorded his confessional statement. He arrested Liaqat Ali and Noor shah Ali on 24.8.2005 and got their police custody on 25.8.2005 from the Magistrate on applications Ex.P.W.S/2, P.W.S/3 and P.W.S/4 and admitted both the accused to judicial lock up without recording their confessional statements. This P.W. took into possession Motor Cycle PRR-1617 produced by Imroz brother of the accused Noor Shah Ali vide recovery memo Ex.PW.2/2. He also got recorded statement of P.W.3 Mujeebur Rehman Ex.P.W.3/1 u/s 164 Cr.P.C. and got issued warrant is 204 Cr.P.C. against accused Ashfaq and Adnan. After addition of section 5(2) PC Act 194, he handed over investigation to Inspector Rahim Shah.

21. The above mentioned position would reveal that the entire investigation of the case had been completed by Muzafar Khan, ASI (P.W.4) and Hamdullah Sub-Inspector (P.W.8) and during this period none of the senior officials as directed by High Court were associated with the investigation.

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 Muzafar Khan  
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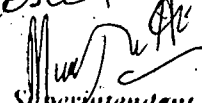
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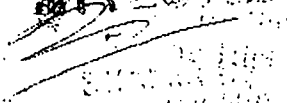
22. This Court while deciding the bail application of co-accused Shehreyar had in clear words directed:-

"It is statutory duty of police to promptly investigate cognizable cases/offences and lay hands on culprits. Crimes of this nature must be considered/viewed very seriously by it. For investigation of this case Team of Investigation experts was required to have been constituted but none has taken a little interest in the matter in this regard. Thus the police has failed in its duty by not performing its statutory obligations. This Court constrained to express serious displeasure over the role of investigation Agency in this case. Accordingly the DIG Provincial Head Quarters (Investigation) is directed to constitute a Team of highly expert Investigating Officers for the investigation of this case on proper lines and to trace out all the real culprits who shall be chased and arrested wherever they are. The Investigating Agency is given maximum time of one month to accomplish the task.

The learned Sessions Judge Charsadda shall supervise the progress of investigation by the Team of experts to be so constituted and shall discuss with the DPO/DIG concerned day to day progress in the case. Any omission or default on the part of the investigation Team or any other police officer would be seriously viewed and action against the delinquent officer shall be taken according to law by the Sessions Judge who shall also report the matter to the High Court promptly. Registrar of this Court shall also personally pursue the matter so that the Team of experts in investigation is sent to the District concerned within a week time. Any failure or deliberate omission or any in action on the part of all concerned would not be tolerated and this Court would take stern action against the defaulter. Needless to remark that in the course of fresh investigation if the Investigation Team reasonably require further custody of the petitioner for further interrogation, it may apply to the Illaqa Magistrate in this regard".

23. Neither the Investigating Agency nor the learned Sessions Judge Charsadda cared about the directions of this Court with regard to the conduct of the investigation. The entire investigation, as mentioned in detail above was, therefore, conducted by un-authorized persons in violation of Section 5-A of the Prevention Act, 1947.

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24. The occurrence in the case in hand was not witnessed by any person. It was Shehreyar Chowkidar of the Court, who informed Shaukat Ahmad Khan Civil Judge/Judicial Magistrate Shabqadar P.W. about the occurrence, who recorded the statement of Shehreyar Chowkidar Ex.P.W.1/1; transmitted the same to Police Station under his covering letter Ex.P.W.1/1 for registration of the case. A copy of the said letter was sent to the Registrar of this Court, whereas copy of the same was addressed to the Sessions Judge Chersadda for information.

25. The case of the prosecution revolves around the confessional statement made by Raham Sher accused. Mr. Saferullah Advocate the learned counsel representing him argued that he (Raham Sher) was arrested on 21.8.2005, but was shown arrested on 23.8.2005. He was tortured and coerced to make the confessional statement, hence he was produced on 24.8.2005 before the Judicial Magistrate, who was the complainant in the case. The question that arises is as to whether the confession which was retracted later on by him was volunteer or not. So far as the record of the case is concerned, there is not an iota of evidence except the statement of Hamidullah D.W.1 that he was arrested on 21.8.2005 rather the record supports this version that he was arrested on 23.8.2005. In his confessional statement Ex.P.W.1-4 Raham Sher appellant narrated as to how he came in contact with co-accused Noor Shah Ali and Liaqat Ali, Moharrirs of the Court. He also admitted having received Rs.1,50,000/- from accused Adnan and Ashfaq against whom so many cases were pending in the Court. Although in the statement recorded u/s 342 Cr.P.C. he retracted the said confession and even went to the extent that there was no case pending against him and

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that the two Muharrirs named above were not known to him, but this part of the statement was belied by the prosecution by producing Ziaur Rehman C.W.1, who produced the Court record with regard to suit No.287/1 titled "Sardar Vs. Raham Sher" and in order to show that there was liaison between Raham Sher and Muharrirs, the prosecution examined Mujeebur Rehman Bailiff of the Court as P.W.3 whose confessional statement was recorded as Ex.P.W.3/1 on 26.8.2005. In his confessional statement he stated that accused/appellant Liaqat Ali Muharrir had directed him to inform Raham Sher accused that his name had appeared as an accused in the case, on which he transmitted the said information to Raham Sher.

26 Except the confessional statements of Raham Sher accused and Mujeebur Rehman P.W. 3 there is no other corroborative piece of evidence to connect the accused appellants with the commission of the offence. It is worth mentioning that Muzaffar Khan ASI P.W.4, who initiated the investigation and prepared site plan Ex.P.W.4/1 did not take into possession the broken/burnt locks. However, a few semi burnt files P-2, burnt chairs P-13 and broken 7-up bottle P-4 was only recovered from the spot. Although the thumb impressions of all the staff members were sent to the expert, but the report of the said Examiner was in negative.

27. The confessional statements of accused Raham Sher and Mujeebur Rehman (P.W.3) Bailiff of the Court were examined by Shaukat Ahmad Khan (P.W.1) Civil Judge Judge Magistrate Shabqadar, who was admittedly complainant in the case. Being complainant he should not have recorded their confessional statements

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and should have referred them to some other Judicial Magistrate doing the needful, but he did not care that it was he, who was the complainant and was, therefore, an interested party in the case and recording of their confessional statements would weaken the prosecution case. The investigation of the case as mentioned above in detail was not done as per Section 5-A of the P.C. Act and in directions of this Court by a Team of investigators in the light of order dated 31.10.2005. All these factors led me to the irresistible conclusion that there are weaknesses in the prosecution case, but keeping in view the confessional statement of Raham Sher accused, the gravity of the offence committed by the accused, whereby not only 5 files of the cases of Adnan and Ashfaq, his brother, out of 11 cases of serious nature pending against them and one case file of suit No.287/1 "Sarwar Vs. Raham Sher" were burnt and all those files which were intended to be burnt were arranged in such a manner by the two Muharrirs so that if any fire is caused which could later be extinguished those files should be burnt first. I, therefore, while maintaining the conviction reduce the sentences of all the appellants to the one already undergone by them. They shall be set free if not required in any other case. The order of the learned trial Court with regard to the absconding accused shall remain intact and similarly separate challan submitted against the accused Ashfaq shall proceed further in accordance with law.

*Ed. Talib Qureshi*  
*(Signature)*

Announced:  
 Dated 14.11.2006.

*Alwat*  
*(Signature)*

Attested  
*(Signature)*  
 Superintendent  
 Sessions Court  
 Charsadda

**CERTIFIED TO BE TRUE COPY**

Peshawar District Peshawar  
 Authorised Under Section 75 Acts Order

14/11/06

# ANNEXURE "G" 34

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

(4)

PRESENT

MR. JUSTICE SARDAR MUHAMMAD RAZA KHAN  
MR. JUSTICE NASIR-UL-MULK

## CRIMINAL APPEAL NO. 279 OF 2008

(On appeal from the judgment of the Peshawar High Court, Peshawar, dated 14.11.2006 passed in Cr. A. No. 569 of 2006)

Liaquat Ali and another

Appellants

Versus

The State

Respondent

For the Appellants:

Mr. Noor Alam Khan, ASC

For the State:

Qari Abdul Rashid, ASC

Date of Hearing:

14.9.2009

## JUDGMENT

NASIR-UL-MULK, J.- The appellants, Liaquat Ali and Noor Shah Ali, serving as Moharrirs in the Court of Magistrate/Civil Judge, Shabqadar, at the relevant time, were convicted by the Senior Special Judge, Anti-Corruption, NWFP, Peshawar, under Sections 409/436/161/165-A/182 PPC and Section 5(2) of the Prevention Act, 1947 and sentenced to various terms of imprisonment with the maximum of five years and fine on each count. The sentences of imprisonment were ordered to run concurrently. Their co-accused, Raham Sher, was convicted under Section 165-A PPC and sentenced to imprisonment for two years with fine. The fourth accused, Shehreyar, Chowkidar in the same Court, was convicted under Section 182 PPC for making false statement and sentenced to 3 months R. I. The fifth accused, Sajjad, was acquitted for want of evidence against him. The appellants assailed their conviction and sentences before the Peshawar High Court, Peshawar. Vide judgment dated 14.11.2006, their conviction was upheld whereas their sentences of imprisonment were reduced to already

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Charsadda

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Supreme Court of Pakistan  
ISLAMABAD

undergone. Leave to appeal was granted to the appellants on 11.8.2008, essentially for perusal of the entire evidence.

2. On the night between 30<sup>th</sup> and 31<sup>st</sup> May, 2005, a fire broke out in the Court premises of Civil Judge/Magistrate, Shabqadar. On the morning of 31<sup>st</sup> May, 2005, Sheheryar (Chowkidar), who was supposed to be on night duty, made a report to the Magistrate, Shaukat Ahmed Khan, stating that during the previous night he heard a noise from the corner of the court premises and when he proceeded towards it, he was over-powered by some persons, who had muffled their faces. They took him away to an unknown place. That when he returned in the morning, he found door of the office of the Moharrir open and record of the Court partially burned. On the basis of this statement recorded by the Magistrate, FIR was registered against unknown persons. During the investigation, it was found that one, Raham Sher, a Chowkidar of nearby Petrol Pump, acting as agent for two brothers, Ashfaq and Adnan, who had a number of cases pending in the said Court, had approached the two appellants so as to arrange the destruction by burning of the record of their cases. Raham Sher made a confessional statement and disclosed the above fact that the appellants were paid Rs.150,000/- for the deal. On this information the appellants were also arraigned as accused.

3. We heard Mr. Noor Alam Khan, ASC for the appellants and Qari Abdul Rashid, ASC for the State and perused the record.

4. The learned counsel appearing for the appellants contended that the only evidence against the appellants was the confessional statement of the co-accused, Raham Sher, which itself was insufficient to sustain the conviction of the appellants. That the said confessional statement also suffers from infirmity in that the Magistrate who recorded the confessional statement was also complainant in the case on whose complaint the FIR was registered. It was argued that in the absence of any other evidence, the prosecution case must fail for want of sufficient evidence.

5. The learned counsel for the State argued that the appellants were involved in a heinous crime of the burning court record of which they were the

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18/08/2008

custodians. That the appellants have already been dealt with leniently by the High Court by letting them off after serving the sentence already undergone.

6. Shehreyar, Chowkidar, of the Court premises who was to be on duty on the night when the record was burnt, had come out with an unbelievable story of being abducted by unknown persons and then let off after the said abductors were informed that the work has been done. This statement-itself indicates his complicity to some extent in the incident. The story of abduction was introduced in order to explain his absence from duty at the relevant time. The beams were in fact spilled by Raham Sher who acted as conduit between the appellants and Adnan and Ashfaq, two brothers, whose cases were pending before the Court and the Police. Raham Sher was Chowkidar in a Petrol Pump and according to him the appellants were paid Rs.150,000/- for arranging the files of the cases of Ashfaq and Adnan together in such a manner that they could be destroyed with ease. When the record was put on fire, five of the cases pertaining to the said two co-accused were the ones which were the first to burn.

7. The confessional statement of Raham Sher was voluntarily made and there is no reason to discard the same. It otherwise rings true. The argument on behalf of the appellants regarding the complainant being also the Magistrate, recording of confession has no merit. The Magistrate being Presiding Officer of the Court whose record was burnt was performing his administrative duty to inform the Police about the incident. He had not taken any part in the investigation of the case himself. He was not, on this ground debarred, legally or on account of propriety, to record the confessional statement of the accused in the case.

8. The confessional statement of Raham Sher gets support from PW3, Mujeeb-ur-Rehman, Bailiff of the Court, who was sent by the appellants to inform Raham Sher that he was being investigated in the cases. Further more, it was only the appellants who were in a position to put the files of the cases of the co-accused together and in such a manner that they would catch fire first. In the circumstances, we do not consider that the concurrent findings of the three Courts

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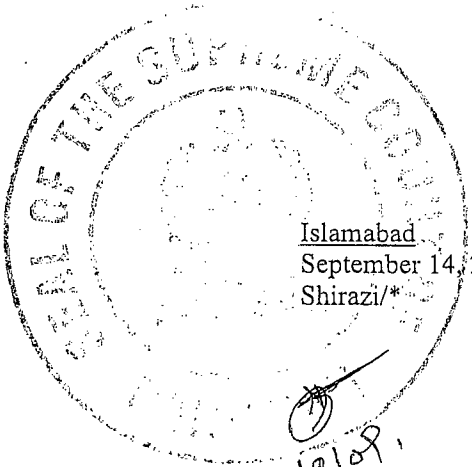
Superintendent  
Supreme Court of Pakistan  
Islamabad

warrant reversal. The appellants have already been dealt with leniently by reducing their sentences of imprisonment to already undergone, keeping in view the heinousness of the offence, the appeal is dismissed.

*Sd/- Justice Muhammad Raza Khan, J*  
*Sd/- Justice Nasir-Ul-Mulk, J*

Certified to be True Copy

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23/01/10  
Superintendent  
Supreme Court of Pakistan  
ISLAMABAD



Islamabad  
September 14, 2009  
Shirazi/\*

*[Signature]*  
29/9/09

"NOT APPROVED FOR REPORTING"

699/0

Original: .....  
 Date of Presentation: 23-1-10  
 No. of Warrants: 1200  
 No. of Folios: 12  
 Requisition Fee Rec: 5.00  
 Copy Fee in: 7.65  
 Court Fee stamps: 12.44  
 Date of Completion: 23/01/10  
 Copy: 23/01/10  
 Date of delivery of: 23-1-10  
 Copy: .....  
 Compared by: *[Signature]*  
 Received by: *[Signature]*

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Superintendent  
Sessions Court  
Charsadda

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W.P No. 1658-P/2019

Fixed for 29-10-2019

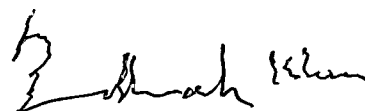
Noor Shah Ali                      versus                      District Judge & Others

**I N D E X**

<b>S.#</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Page</b>
1.	Memo of Rejoinder		1-2
2.	Affidavit		3
3.	Judgments of Supreme Court of Pakistan	"R"	4-12

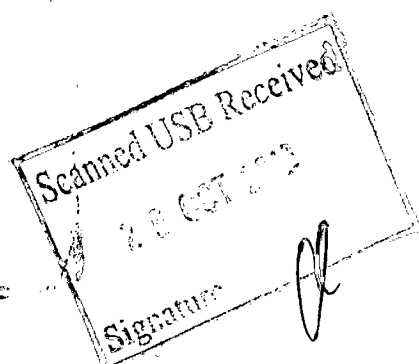
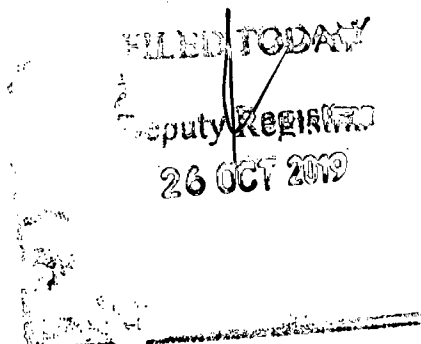
Petitioner

Through



Saadullah Khan Marwat  
Advocate,  
21-A Nasir Mension,  
Shoba Bazar, Peshawar  
Ph: 0300-5872676

Dated 26-10-2019





**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W.P No. 1658-P/2019 .

Fixed for 29-10-2019

Noor Shah Ali                      versus                      District Judge & Others

**REJOINDER**

**Respectfully Sheweth,**

**Preliminary Objections:**

1. Not correct. Petitioner approached the hon'ble court with clean hands.
2. Not correct. Petitioner has cause of action as he was removed from service for no legal reason.
3. Not correct. No estoppel ever exists.
4. In response to para No. 04 of the comments, it is submitted that by then petitioner has completed the sentence and after its completion he was released from the Jail.
5. Petitioner has locus standi and cause of action as his services were terminated for no legal reason. He never admitted the guilt.

**FILED TODAY**  
**Deputy Registrar**  
**26 OCT 2019**

**ON FACTS**

After going through the comments regarding facts, the same were not as per para wise reply to the paras of the Writ Petition. On perusal of the same one cannot know as to which para is replied by the respondents. The E & D, Rules, 1973 were not applicable to the case in hand.

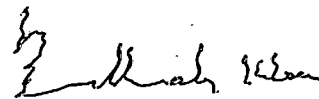
**G R O U N D S:**

The grounds of the comments are incorrect, while that of the petition are legal and correct which are again re-affirmed. The impugned order was given retrospective effect which is illegal as per the judgment of the apex court. Such order becomes null and void, illegal and ab-initio-void in the eyes of law.

It is, therefore, most humbly requested that the Writ Petition be accepted as prayed for.

Petitioner

Through



Saadullah Khan Marwat

Dated: 26-10-2019

Advocate

**FILED TODAY**  
**Deputy Registrar**  
**26 OCT 2019**

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W.P No. 1658-P/2019

Fixed for 29-10-2019

Noor Shah Ali

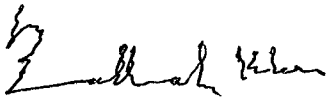
versus

District Judge &amp; Others


**AFFIDAVIT**

I, Noor Shah Ali S/O Jamrooz Khan R/O Sokhta Shabqadar, (petitioner) do hereby solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief.

Identified By:



**Saadullah Khan**  
Advocate,

  
 DEPONENT  
 CNIC #: 17101-5506876-9  
 Cell No. 0333-3157570

11756  
 Filed on solemnly,  
 26  
 Noor Shah Ali  
 Charsadda  
 Saadullah Khan  
 26/10/2019

**FILED TODAY**  
 Deputy Registrar  
 26 OCT 2019

R. 4

2012 P L C (C.S.) 701

[Supreme Court of Pakistan]

Present: Javed Iqbal, Raja Fayyaz Ahmed and Asif Saeed Khan Khosa, JJ

CHIEF SECRETARY, GOVERNMENT OF PUNJAB and others

Versus

Malik ASIF HAYAT

Civil Petition No. 1724-L of 2010, decided on 2nd March, 2011.

(On appeal from the judgment dated 1-7-2010 passed by Punjab Service Tribunal Lahore in Appeal No. 1059 of 2010).

(a) Punjab Service Tribunals Act (IX of 1974)---

---S. 4---Rules of Business (Punjab), 1974, Sched. VII, Part-A, Sr.No.20---General Clauses Act (X of 1897), Ss. 21 & 24---Constitution of Pakistan, Art 212(3)---Appeal---Assistant Sub-Inspector Police---Disinissal from service vide order dated 5-7-1994---Absence from duty, charge of---Rejection of appeal by Service Tribunal---Directive of Chief Minister issued after accepting mercy petition in June 2005 for reinstatement of appellant in service---Implementation of such directive by authority, completion of one year "D" Course by appellant and subsequent entering his name into list "B" and promotion to post of Sub-Inspector---Issuance of show-cause notice by authority after two years alleging appellant's reinstatement to be illegal---Withdrawal of such show-cause notice by authority during pendency of constitutional petition filed there against by appellant and his subsequent promotion to rank of Inspector---Dismissal of appellant from service w.e.f. 5-7-1997 vide order dated 2-1-2002 on same ground---Acceptance of appellant's appeal by Service Tribunal---Validity---Termination from service could not be with retrospective effect, unless competent authority was expressly empowered in such regard by some statute or rules made there under---Rectification of wrong could not be made at any time as such practice would be dangerous for service structure---Action should have been initiated against those responsible for such wrong, which could not be rectified after a long period during which appellant had not only performed his duties diligently, but had also earned few promotions and risen to rank of Inspector---Such directive of Chief Minister was not liable to be implemented, but none had shown moral courage to resist same at relevant time---Appellant had been reinstated in year 2005, while he had been dismissed finally on 2-1-2010 with retrospective effect i.e. on 5-7-1994---Authority had already exercised powers under S. 21 of General Clauses Act, 1897 by issuing show-cause notice, which had been withdrawn during proceedings pending in High Court---Such matter was closed once for all and could not be re-opened without any lawful justification---Order passed by a competent authority, if had taken effect and conferred a legal right, could not be rescinded subject to certain lawful exceptions---Supreme Court refused to grant leave to appeal, in circumstances.

Syed Sikandar Ali Shah v. Auditor-General of Pakistan 2002 SCMR 1124; Noor Muhammad v. Member Election Commission 1985 SCMR 1178; Noor Muhammad v. Muhammad Abdullah 1984 SCMR 1578; Dr. Muhammad Abdul Latif v. The Province of East Pakistan PLD 1964 Dacca 647

Asif

and Nawab Syed Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236 rel.

**(b) Civil service---**

--Service could not be terminated with retrospective effect, unless competent authority was expressly empowered in such regard by some statute or rules made thereunder.

Syed Sikandar Ali Shah v. Auditor-General of Pakistan 2002 SCMR 1124; Noor Muhammad v. Member Election Commission 1985 SCMR 1178; Noor Muhammad v. Muhammad Abdullah 1984 SCMR 1578; Dr. Muhammad Abdul Latif v. The Province of East Pakistan PLD 1964 Dacca 647 and Nawab Syed Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236 rel.

**(c) Locus poenitentiae, principle of---**

----Power of authorities to pass orders to retrace wrong steps taken by them---Scope.

There can hardly be any dispute with the rule that apart from the provisions of section 21 of the General Clauses Act, locus poenitentiae, i.e. the power of receding till a decisive step is taken, is available to the Government or the relevant authorities. In fact, the existence of such a power is necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights.

Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi PLD 1969 SC 407; Chairman, Selection Committee v. Wasif Zamir Ahmad 1997 SCMR 15; Miss Safia Hameed v. Chairman, Selection Committee Medical College, Quetta and 6 others PLD 1979 Quetta 12; Chief Secretary, Government of Sindh and another v. Sher Muhammad Makhdoom and 2 others PLD 1991 SC 973 and Government of Sindh v. Niaz Ahmed 1991 SCMR 2293 rel.

Ch. Khadim Hussain Qaiser, Additional A.-G. and Muddasir Khalid Abbasi, A.A.-G. for Petitioners.

Pervaiz Inayat Malik, Advocate Supreme Court for Respondent.

Date of hearing: 2nd March, 2011.

**JUDGMENT**

**JAVED IQBAL, J.**---This petition for leave to appeal is directed against judgment dated 1-7-2010 passed by learned Punjab Service Tribunal, Lahore, whereby appeal preferred on behalf of Malik Asif Hayat (respondent) has been accepted.

2. Precisely stated the facts of the case are that "the appellant joined Punjab Police as ASI on 24-1-2009 and while serving as such he proceeded on 90 days leave in 1994. The appellant was to report back to his department on 21-4-1994, however he did not report back and applied for extension in leave which was not further sanctioned and ultimately S.P. Headquarter taking ex parte decision dismissed the appellant vide order dated 5-7-1994. The appellant after exhausting departmental remedy preferred service appeal before this Tribunal which was rejected. However in

2005 he submitted Mercy Petition before the Chief Minister, Punjab who vide serial No.20 of Scheduled VII Part A Rules of Business 1974 issued a directive for reinstatement of the appellant into service which was duly implemented by the then Inspector-General of Police Punjab/respondent No.2 and the appellant was reinstated into service on 28-6-2005. Accordingly the appellant joined the department on 11-7-2005 and transferred to Investigation Wing where he completed one year "D" Course. He was made confirmed as ASI vide order dated 11-11-2005 w.e.f. 24-1-1990 and his name was entered into list "E" accordingly. He was further promoted to the post of Sub-Inspector on 2-1-2006 w.e.f. 30-9-1997. He was confirmed in the rank of Sub-Inspector w.e.f. 30-9-1997 vide order dated 11-6-2007. However, the department issued him a show cause notice on 24-7-2007 that 'he was wrongly reinstated into service by the Chief Minister and he has withdrawn his earlier directive hence why his order of reinstatement dated 28-6-2005 may not be withdrawn'. The said show-cause notice was challenged by the appellant through Writ Petition No.7352 of 2007 in Hon'ble Lahore High Court, Lahore and during the pendency of this writ petition department itself withdrew the show-cause notice by a speaking order dated 31-3-2009 and subsequently the name of the appellant was also entered into list "F" and even promoted to the rank of Inspector vide order dated 7-8-2009. The writ petition was disposed of vide Hon'ble High Court order dated 22-6-2009. Again respondent No.2 dismissed the appellant w.e.f. 5-7-1994 vide order dated 2-1-2010 on the same grounds. The appellant preferred departmental appeal which is still hanging fire. After availing the statutory period he filed the instant appeal before this Tribunal under section 4 of the Punjab Service Tribunal Act, 1974." As mentioned hereinabove, the appeal preferred on behalf of respondent has been accepted hence this petition.

3. Ch. Khadim Hussain Qaiser, learned Additional Advocate-General, Punjab entered appearance on behalf of Government of Punjab and contended that legal and factual aspects of the controversy have not been appreciated in its true perspective resulted in serious miscarriage of justice. In order to substantiate the said contention, it is urged with vehemence that the appellant approached after exhausting all the departmental remedies and preferred appeal before the learned Service Tribunal which was rejected after affording him proper opportunity of hearing against which no appeal was filed before the Supreme Court of Pakistan and accordingly the order so passed by the learned Punjab Service Tribunal had attained finality. It is next contended that though a mercy petition was filed yet the Chief Minister has no power to get the respondent reinstated as Schedule VII Part A, Rules of Business, 1974 does not empower the Chief Minister to pass such an order being a past and closed transaction. It is also contended that Inspector-General of Police has full authority to withdraw the orders dated 28-6-2005, 2-1-2006 and 7-8-2009 with retrospective effect i.e. 5-7-1994 which amounts to rectification of error irrespective of the fact whether it is intentional or inadvertent. It is also pointed out that the principle of locus poenitentiae would be applicable in this case and respondent could have been dismissed as no legal right whatsoever had accrued in his favour. It is further contended that the directive issued by the Chief Minister qua reinstatement of respondent in service and subsequent orders relating to the promotion of respondent would have no substantial effect on merits of the case as the Chief Minister had no authority to exercise such a jurisdiction which was never conferred upon him under any law and thus the order made by him was absolutely without any lawful sanctity. It is further argued that the provisions as enumerated in sections 13, 14, 20 and 21 of the General Clauses Act, 1897 have been misinterpreted and misconstrued by the learned Punjab Service Tribunal causing serious prejudice.

4. Mr. Pervaiz Inayat Malik, learned Advocate Supreme Court entered appearance on behalf of Malik Aarif Hayat (respondent) and supported the judgment impugned for the reasons enumerated therein with the further submission that no dismissal order could have been passed with retrospective effect by the Inspector-General of Police in view of the principle of locus poenitentiae as

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reinstatement order passed at the direction of Chief Minister was not only implemented but the respondent was promoted to the rank of Inspector which is indicative of his hard labour and professional skill. It is next contended that the principle of locus poenitentiae cannot be invoked as order once passed and implemented cannot be rescinded without any lawful justification which is absolutely lacking in this case. It is next argued that the show-cause notice was withdrawn hence no further proceedings could have been initiated on the same grounds which amounts to double jeopardy.

5. We have carefully examined the respective contentions as agitated on behalf of the petitioners and for respondent in the light of relevant provisions of law, record of the case and perused the judgment impugned carefully with the eminent assistance of learned counsel for the parties. It is an admitted feature of the case that the respondent joined Punjab Police as ASI on 24-1-2009 and on account of absence from duty, dismissed from service by means of order dated 5-7-1994. The respondent approached the learned Punjab Service Tribunal but his appeal was dismissed. In the year 2005, a mercy petition was filed and accepted by the Chief Minister Punjab pursuant whereof the respondent was reinstated in service on 28-6-2005 and re-joined the Department on 11-7-2005. The respondent was subsequently transferred to Investigation Wing and completed successfully his course namely "D" Course. The respondent was confirmed as Assistant Sub-Inspector by means of order dated 11-11-2005 and resultantly his name was also included in the list "E". The respondent was promoted on the post of Sub-Inspector on 2-1-2006 and subsequently confirmed as such by means of order dated 11-6-2007. The petitioner woke up from a deep slumber and issued a show-cause notice to respondent on 24-7-2007 which is indicative of the fact that his reinstatement was wrong as the Chief Minister has withdrawn his earlier directive dated 28-6-2005 pursuant whereof the respondent was reinstated. The respondent, for redressal of his grievances, approached the learned High Court by invocation of writ jurisdiction. The Police Department, however, withdrew the show-cause notice vide order dated 31-3-2009 and the matter was closed. The name of respondent was brought in the list "F" and promoted as Inspector on 7-8-2009. The writ petition preferred on behalf of respondent was subsequently disposed of by the learned High Court on 22-6-2009. Once again the same exercise was repeated by the Police Department and the respondent was dismissed again by the Inspector-General of Police Punjab vide order dated 2-1-2010 with retrospective effect i.e. 5-7-1994. The respondent approached the Service Tribunal as his departmental appeal could not be decided and ultimately succeeded. It is not understandable how the services of respondent could have been dismissed once the show cause notice was withdrawn pending adjudication before the High Court and subsequently he was also promoted to the rank of Inspector. The learned Additional Advocate-General was asked pointedly that how retrospective effect could be given to order dated 2-1-2010 and respondent could be removed w.e.f. 5-7-1994 and what legal authority was available to Inspector-General of Police but no satisfactory answer could be given. It is well settled by now that "termination of service could not be with retrospective effect unless Competent Authority was expressly empowered in this regard by some statute or rules made there under". In this regard we are fortified by the dictum laid down in the following cases:--

Syed Sikandar Ali Shah v. Auditor-General of Pakistan (2002 SCMR 1124), Noor Muhammad v. Member Election Commission (1985 SCMR 1178), Noor Muhammad v. Muhammad Abdullah (1984 SCMR 1578), Dr. Muhammad Abdul Latif v. The Province of East Pakistan (PLD 1964 Dacca 647), Nawab Syed Raunaq Ali v. Chief Settlement Commissioner (PLD 1973 SC 236)

6. We have not been persuaded to agree with the learned Additional Advocate-General that rectification of wrong can be made at any time as such practice would be dangerous for the service structure and in fact action should be initiated against those who are responsible for such wrong

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- which could not be rectified after a long period during which the respondent had not only performed his duties diligently but also earned few promotions and rose to the rank of Inspector as mentioned hereinabove.

7. Insofar as the principle of locus poenitentiae is concerned that has been relied upon by the learned counsel for the parties. Let me make it clear that it is not the first occasion when we are interpreting the principle of locus poenitentiae which has been examined time and again by the courts and judicial consensus seems to be as follows:--

"There can hardly be any dispute with the rule that apart from the provisions of section 21 of the General Clauses Act, locus poenitentiae, i.e. the power of receding till a decisive step is taken, is available to the Government or the relevant authorities. In fact, the existence of such a power is necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights."

Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407), Chairman, Selection Committee v. Wasif Zamir Ahmad (1997 SCMR 15), Miss Safia Hameed v. Chairman, Selection Committee Medical College, Quetta and 6 others (PLD 1979 Quetta 12), Chief Secretary, Government of Sindh and another v. Sher Muhammad Makhdoom and 2 others (PLD 1991 SC 973), Government of Sindh v. Niaz Ahmed (1991 SCMR 2293).

8. It is an admitted feature of the case that the respondent was reinstated at the directive of the Chief Minister which should have not been implemented by the Inspector-General of Police but no moral courage worth the name could be shown at opportune moments and the order was obeyed at a belated stage which could have been resisted conveniently. The petitioner cannot take refuge behind the provisions as enumerated in sections 13, 14 and 21 of the General Clauses Act, 1897. It is worth-mentioning that the respondent was reinstated into service in 2005 while he was dismissed finally on 2-1-2010 with retrospective effect i.e. on 5-7-1994. The learned Additional Advocate-General could not justify the action initiated at such a belated stage especially after the disposal of the writ petition by the learned High Court during the proceedings which were challenged by the respondent after issuance of show-cause notice which was withdrawn. It is not known why this drama of hide and seek continued for years together. A careful scrutiny of the entire record would reveal that it is also confirmed by the learned Additional Advocate-General that the respondent has unblemished service record and promoted from the rank of ASI to that of Inspector. It may not be out of place to mention here that the petitioner had already exercised his powers as conferred upon him under section 21 of the General Clauses Act by issuance of show-cause notice which was withdrawn during the proceedings remained pending in the High Court and thus in our view the matter was closed once for all which cannot be re-opened without any lawful justification which is absolutely lacking in this case. Where any order passed by the Competent Authority had taken effect and confer a legal right that cannot be rescinded subject to certain lawful exceptions which are not available in this case

9. The upshot of the above discussion is that the petition being merit less is dismissed and leave refused.

S.A.K./C-3/SC

Leave refused.



1985 S C M R 1178

Present: Muhammad Haleem. C. J., Muhammad Afzal Zullah and Nasim Hasan. Shah, JJ

NOOR MUHAMMAD--Petitioner

versus

THE MEMBER ELECTION COMMISSION, PUNJAB and others--Respondents

Civil Petition for Special Leave to Appeal No. 116 of 1985, decided on 23rd February, 1985.

(On appeal from the judgment, dated 29-1-1985 of the Lahore High Court in Writ Petition No. 367 of 1985).

(a) Houses of Parliament and Provincial Assemblies (Elections) Order (5 of 1977)--

---S. 10 (2) (b) (3)--Election to Provincial Assembly--Disqualification-Candidate removed from service with retrospective effect--Removal, held, patently unlawful and void in relevant regard--Such order could not be given effect to and Election Commission could therefore, refuse to accept and perpetuate such order. [p. 1180] B & C

Noor Muhammad v. Muhammad Abdullah and others 1984 SCMR 1578; Dr. Muhammad Abdul Latif v. The Province of East Pakistan and others P L D 1964 Dacca 647 and Nawab Syed Raunaq Ali etc. v. Chief Settlement Commissioner and others P L D 1973 S C 236 ref.

(b) Civil service--

--- Removal from service--Order of departmental authority, held, could not be made to operate retrospectively--No executive authority was vested with such powers unless expressly empowered in that behalf by Rules--Order of dismissal /removal could take effect only from date it was passed.

Noor Muhammad v. Muhammad Abdullah and others 1984 SCAIR 157,8; Dr. Muhammad Abdul Latif v. The Province of East Pakistan and others P L D 1964 Dacca 647 and Nawab Syed Raunaq Ali etc. v. Chief Settlement Commissioner and others P L D 1973 S C 236 ref.

(c) Civil service--

--- Removal from service--Order purporting to give retrospective effect to order of removal from service, held, patently unlawful and void in relevant regard--Such order could not be given effect to.

Noor Muhammad v. Muhammad Abdullah and others 1984 SCMR 1578; Dr. Muhammad Abdul Latif v. The Province of East Pakistan and others P L D 1964 Dacca 647 and Nawab Syed Raunaq Ali etc. v. Chief Settlement Commissioner and others P L D 1973 S C 236 ref.

Raja Azizuddin, Advocate Supreme Court instructed by Rana Maqbool Ahmad, Advocate-on-Record (absent) for Petitioner.

Mr. Tanvir Ahmad Khan, Assistant A.-G. Pb. and Mian Anamul Haq, Advocate Supreme Court for Respondents Nos. 1 and 2.

Nemo for Respondent No. 3.

Date of hearing: 23rd February, 1985.

**ORDER**

**NASIM HASAN SHAZZ, J.--** The petitioner's nomination papers for election to the Provincial Assembly PP-85 District Faisalabad were rejected, on appeal, by the learned Member Election Commission vide order, dated 27-1-1985. This order was challenged by a writ petition (W.P. No. 367 of 1985) which was dismissed in limine by the order, dated 29-1-1985, impugned before us.

The facts, which form the background, are that the petitioner was serving as a Zilledar in the Irrigation Department. He was dismissed from service by the order of the Superintending Engineer, dated 19-10-1983 but it was directed in the said order that it will take effect from 29-7-1981. On appeal, the said order was modified by the Chief Engineer vide order, dated 23-1-1984 to the extent that the order of dismissal from service was converted to that of removal from service. However, the direction contained in the order of the Superintending Engineer that the removal from service would take effect from 29-7-1981 was maintained. In these circumstances, the question has arisen whether the petitioner stands disqualified from being elected or chosen as a Member of the Provincial Assembly.

The provision governing the situation is section 10(2)(b)(3) of the House of Parliament and Provincial Assemblies (Elections) Order, 1977, which reads as under:-

"S.10(2)-- A person shall be disqualified from being elected or chosen as, and from being, a member, of Parliament.---

- (a) .....
- (b) if
- (1).....
- (2) .....

(3) he has been removed or compulsorily retired from service of Pakistan on the ground of misconduct, unless a period of three years has elapsed since his removal or compulsory retirement; or

- (4) .....
- (5) .....
- (6)....."

It may be mentioned that the petitioner had earlier on filed nomination papers for elections to the Local Council, which were held on 28-9-1983. Here too he was found to be disqualified and the order of the election authorities was maintained right up to the Supreme Court of Pakistan vide judgment reported in Noor Muhammad v. Muhammad Abdullah and others 1984 S C M R 1578. The relevant portion of the said judgment may be reproduced below:-

"Before us the main contention urged on petitioner's behalf was that since according to his service record the petitioner had been removed from service w.e.f. 29-7-1981 (i.e. from a date prior to the election-day) his disqualification therefore stood removed retrospectively and as such his

election was valid. This contention is wholly misconceived and overlooks the fact that on the day of election i.e. on 28-9-1983, no order of his dismissal or removal had yet been passed by the Government. Obviously, therefore, on that date he was in Government service. The result is that irrespective of the fact as to whether or not the Government was legally empowered to remove him from service with retrospective effect, he was disqualified from contesting election on the date when it is actually held. As such his election was rightly held by the Election Tribunal to be void. In this view of the matter we find no merit in the petition, which is consequently dismissed."

Both the learned Member of the Election Commission and the learned Judges of the High Court, have in the present case, relied upon the above judgment to hold the petitioner to be disqualified.

The learned counsel for the petitioner contended before us that in the aforesaid judgment no final opinion was expressed by this Court on the question whether the Government was empowered to remove him with retrospective effect and whether the order, dated 19-10-1983 which purported to take effect from 29-7-1981 was not a valid order.

Be that as it may, the law is quite clear that an order of a departmental authority cannot be made to operate retrospectively because no executive authority is vested with such powers unless expressly empowered in this behalf by the rules, which is not the case here. Hence the order of dismissal/ removal could take effect only from that date when it was passed. See Province of Punjab v. Khan Khaliq Day Khan P L D 1953 Lah. 295 and Dr. Muhammad Abdul Latif v. The Province of East Pakistan and others P L D 1964 Dacca 647. Consequently, the petitioner must be deemed to be in service until 19-10-1983 and simply because the order passed on that date stated that it would take effect from 29-7-1981 would not have the effect of making the order to take effect from the said date but it would be deemed to take effect from the date on which it was actually passed, namely, from 19-10-1983.

The learned counsel for the petitioner, however, submitted that the vires of the order, dated 19-10-1983 passed by the departmental authorities in a service matter could not be questioned in collateral proceedings like an appeal before the election authorities.

This contention too has no force. This Court in Nawab Syed Raunaq Ali etc. v. Chief Settlement Commissioner and others P L D 1973 S C 236 clearly observed:-

"It is now well-established that where an inferior tribunal or Court has acted wholly without jurisdiction or taken any action "beyond the sphere allotted to the tribunal by law and, therefore, outside the area within which the law recognises a privilege to err", then such action amounts to a "usurpation of power unwarranted by law" and such an act is a nullity; that is to say, "the result of a purported exercise of authority which has no legal effect whatsoever". In such a case, it is well-established that a superior Court is not bound to give effect to it, particularly where the appeal is to the latter's discretionary jurisdiction. The Courts would refuse to perpetuate, in such circumstances, something which would be patently unjust or unlawful."

The order of the Superintending Engineer, dated 19-10-1983 purporting to give retrospective effect to his order with effect from 29-7-1981 was patently unlawful and, in fact, void in the relevant regard. Hence it could not be given effect and the Election Commission could refuse to accept and perpetuate it.

There is, thus, no force in this petition which fails and is, accordingly, dismissed hereby.