

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 989/2019

Date of Institution ... 29.07.2019

Date of Decision ... 08.10.2021

Sadiq Anwar (Ex-Constable No. 12) S/O Gul Nazif Khan R/O Yark Khel, Beri
Khel, Tehsil and District Bannu. ... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and two
others. ... (Respondents)

Present.

Mr. Abdul Hameed, ... For appellant,
Advocate.

Mr. Kabirullah Khattak, ... For respondents.
Addl. Advocate General

MR AHMAD SULTAN TAREEN ... CHAIRMAN
MR. MIAN MUHAMMAD, ... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above invoked the jurisdiction of this Tribunal through the appeal at hand under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 21.01.2015, passed by respondent No. 3, whereby the appellant was awarded major penalty of dismissal from service and against the impugned order, his departmental appeal remained un-responded.

2. Brief facts of the case as averred in the memo of appeal are that the appellant joined service in the Police Department as constable on 15.07.2007. During service, he was involved in a criminal case u/s 302/324/34 PPC vide FIR No. 554 dated 08.09.2014 P.S Mandan, District Bannu. The appellant was served with charge sheet on the basis of criminal case described above and was placed under suspension. The appellant submitted reply to the charge sheet and clarified his position that he was falsely roped in the criminal case on account of his previous blood feud with his rival group. An enquiry was conducted at the time when the appellant was in judicial lockup. After completion of the enquiry, the appellant was served with a show cause notice but without providing copy of enquiry report. The appellant submitted reply to the show cause notice and took the same stance as enumerated in reply to the charge sheet. On the other hand, investigation was completed and challan was submitted before the competent court of law for the trial and ultimately, the Hon'ble Additional Sessions Judge-III Bannu vide judgment dated 28.09.2017 convicted the appellant and sentenced to life imprisonment besides other punishment. Feeling aggrieved, the appellant invoked the jurisdiction of Hon'ble Peshawar High Court Bannu Bench by filing Criminal Appeal No. 213-B/2017. The Hon'ble High Court vide judgment dated 02.04.2019 accepted the said appeal, conviction and sentence rendered by the learned Trial Court vide judgment dated 28.09.2017 was set aside and the appellant was ordered to be acquitted of the charges and released him forthwith. After release from jail, the appellant approached the office of respondent No. 3 on 10.04.2019 so as to know about the fate of departmental proceedings against him, where he was informed that the Competent Authority vide order dated 21.01.2015 awarded him major penalty of dismissal from service from the date of occurrence i.e

08.09.2014 and as such he was provided a copy of impugned order at his request. The appellant being dissatisfied with the same, filed departmental appeal on 16.04.2019 to the Regional Police Officer, Bannu Region Bannu (respondent No. 2) which elicited no response within the statutory period, hence the appeal at hand filed before this Tribunal on 29.07.2019.

3. The appeal was admitted for regular hearing on 17.09.2019 and notices were issued to the respondents. The respondents have furnished reply/comments on 19.12.2019, refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.

4. Arguments heard and record perused.

5. It is a matter of fact that the appellant was proceeded against under E&D Rules due to his involvement in a criminal case discussed above. The respondents in their reply to Para-4 of the Memorandum of appeal asserted that after commission of offence, the appellant due to his having been directly charged in the case was issued the proper charge sheet with statement of allegations with appointment of DSP HQ Bannu as enquiry officer. He conducted departmental enquiry and on its conclusion, recommended that the enquiry papers be kept (pending) till decision of the court. Later on, the enquiry officer issued continuation finding report dated 22.12.2014 and declared the appellant as guilty. Upon recommendations of the enquiry officer, the competent authority issued final show cause notice to the appellant but he i.e. the appellant failed to prove his innocence. Consequently, respondent No. 3 awarded major punishment of dismissal from service from the date of occurrence i.e. 08.04.2014. The copy of the charge sheet/statement of



allegations, first and second findings of the enquiry officer i.e. DSP Headquarters Bannu, final show cause notice and impugned order as annexed with the reply/comments have been perused. It is an admitted position on behalf of respondents in their reply as discussed before, that the enquiry officer recommended for keeping the enquiry papers (pending) till decision of the criminal case. However, for no obvious reason, he vide correspondence No. 944/HQ dated 22.12.2014 submitted additional findings against the appellant. The enquiry officer thereby submitted that he re-summoned enquiry officer ASI Mir Daraz of Police Station Mandan. He stated in his statement/cross-examination that according to the report of the complainant and after conducting the investigation of case vide FIR No. 554 dated 08.09.2014 under Section 302/334/34 PPC of P.S Mandan, the accused official Sadiq Anwar No. 12 is guilty. In the final show cause notice served upon the appellant in pursuance to the enquiry conducted by DSP HQ, Bannu, the competent authority described the misconduct as that he (appellant) had really committed criminal offence and as a result of which a proper case vide FIR No. 554 ibid was registered. So the competent authority tentatively decided to impose upon him one or more punishments including dismissal as specified in the rules. Thereafter, the impugned order was passed whereby the major punishment of dismissal from service was imposed upon the appellant. The proceedings as discussed before are tantamount to pre-judging of the guilt of the appellant before his judicial prosecution. The proceedings conducted against the appellant before conclusion of the trial are not in conformity with Rule 16.2 of Police Rules, 1934. The said rule only provided for suspension of a police officer charged in a criminal offence. Rule 16.2(2) of said rule because of its relevancy is reproduced below:-

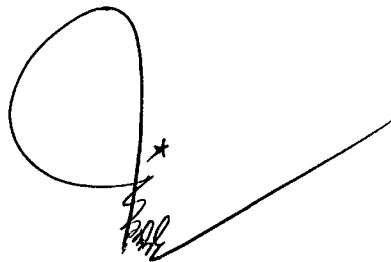
"An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal Court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure, fails to appear within the statutory period of thirty days, may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by Rule 16.1.



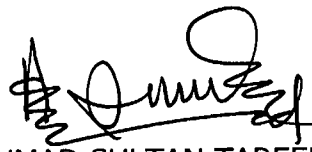
6. If taken in light of the above provision of Rule 16.2(2), the recommendations of the enquiry officer in the first enquiry report was consistent with this provision of the rules. However, the enquiry officer for the reason best known to him submitted additional findings which resulted into dismissal of the appellant from service. Rule 16.2(2) as copied above provides that the final departmental order shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Obviously, the said rule was not followed in case of the appellant and he was dismissed from service pending trial of the criminal case against him. It is an admitted fact that the appellant was convicted at the trial but the judgment of

the conviction was set aside by the Hon'ble Peshawar High Court Bannu Bench vide judgment dated 02.04.2019 passed in criminal appeal No. 213-B of 2017. Consequently, the appellant was ordered to be acquitted of the charges. With this position, the appellant is entitled for reinstatement into service when the charge of offence resulting into criminal trial is no more in field.

7. For what has gone above, the appeal at hand is accepted. Consequently, the impugned order is set aside and the appellant is reinstated into service from the date of his dismissal. As far as back benefits are concerned, the appellant was required to be treated in accordance with Rule 16.2(2) read with Rule 16.19 and 16.20 of the Police Rules, 1934. Therefore, the period during which he remained out of service from the date of his involvement in the criminal case till his conviction at the trial shall be treated as the period under suspension and he shall be entitled for grant of the arrears of subsistence allowance as per rules. The period of detention of the appellant in prison as convict and the subsequent period after his acquittal shall be treated as leave kind due. Parties are left to bear their own costs. File be consigned to the record room.



(MIAN MUHAMMAD)
Member(E)



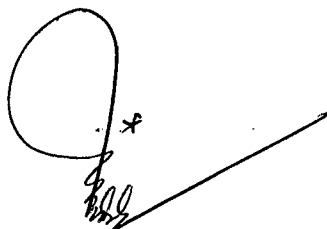
(AHMAD SULTAN TAREEN)
Chairman

ANNOUNCED
08.10.2021

SA 989/2019

08.10.2021 Mr. Abdul Hameed Abbasi Advocate for appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Vide our detailed judgment, the appeal at hand is accepted. Consequently, the impugned order is set aside and the appellant is reinstated into service from the date of his dismissal. As far as back benefits are concerned, the appellant was required to be treated in accordance with Rule 16.2(2) read with Rule 16.19 and 16.20 of the Police Rules, 1934. Therefore, the period during which he remained out of service from the date of his involvement in the criminal case till his conviction at the trial shall be treated as the period under suspension and he shall be entitled for grant of the arrears of subsistence allowance as per rules. The period of detention of the appellant in prison as convict and the subsequent period after his acquittal shall be treated as leave kind due. Parties are left to bear their own costs. File be consigned to the record room.



(MIAN MUHAMMAD)
Member(E)


(AHMAD SULTAN TAREEN)
Chairman

ANNOUNCED
08.10.2021

30.06.2021

Mr. Abdul Hameed, Advocate, for the appellant present.
Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Perusal of record particularly the impugned order would reveal that it has been made efficacious ex-post fictively and since the question with retrospectivity is pending adjudication before the Larger Bench of this Tribunal and the issue has not been resolved so far, therefore, till adjudication of the issue this appeal has to come up for further proceedings on 08.10.2021 before D.B.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

02.02.2021

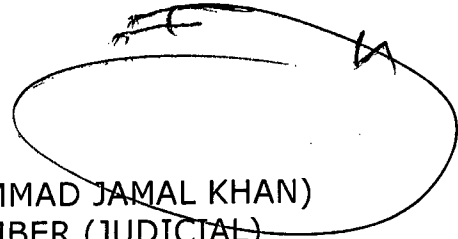
Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is also present.

Mr. Abdul Hameed, Advocate, submitted power of attorney in favour of appellant which is placed on file.

Perusal of record particularly the impugned order would reveal that it has been made efficacious ex-post fictively and since the question with retrospectivity is pending adjudication before the Larger Bench of this Tribunal and the issue has not been resolved so far, therefore, till adjudication of the issue this appeal has to come up for further proceedings on 02.04.2021 before D.B.



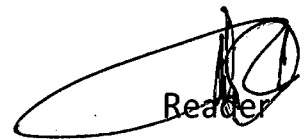
(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

02.04.2021

Due to non availability of the concerned D.B, the case is adjourned to ~~30.04~~ 30.04.2021 for the same.

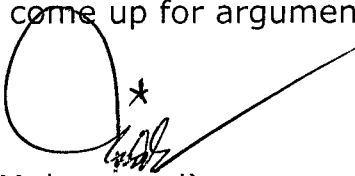


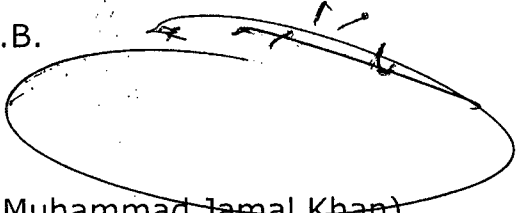
Reader

23.09.2020

Appellant is present in person. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents is also present.

Appellant submitted about the ailment of his respective counsel, learned Assistant Advocate General confirmed that the learned counsel for appellant has gone under the treatment due to some disease. He requested for adjournment. Adjourned to 14.12.2020 on which to come up for arguments before D.B.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

14.12.2020

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

Due to COVID-19 the case is adjourned for the same on 02.02.2021 before D.B.


READER

01.04.2020

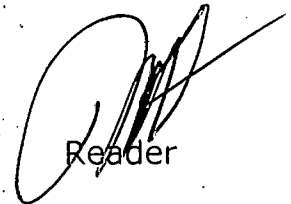
Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 25.06.2020 before D.B.



Reader

25.06.2020

Due to public holiday on account of COVID-19 the case is adjourned for the same on 23.09.2020 before D.B.



Reader

18.11.2019

Appellant in person and Addl. AG alongwith Asghar Ali, H.C for the respondents present.

Representative of the respondents requests for adjournment to furnish the reply/comments. Adjourned to 19.12.2019 on which date the requisite reply/comments shall positively be furnished.


Chairman

19.12.2019

Appellant in person and Addl. AG alongwith Asghar Ali, H.C for the respondents present.

Representative of respondents has furnished reply/comments of the respondents. Placed on record. The appeal is assigned to D.B for arguments on 27.02.2020. The appellant may furnish rejoinder, within one month, if so advised.


Chairman

27.02.2020

Appellant alongwith counsel present. Mr. Kabirullah Khattak learned Addl. AG for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourned. To come up for arguments on 01.04.2020 before D.B.


Member


Member

17.09.2019

Counsel for the appellant present.

Contends that the appellant was charged for offence under Section 302/324/34-PPC through FIR dated 08.09.2014 and was arrested on the same day. During his confinement in judicial lock up departmental proceedings were initiated which resulted in imposition of major punishment of dismissal from service of appellant on 21.01.2015 w.e.f. 08.09.2014. While still in custody, the trial of the appellant was concluded and he was convicted for life imprisonment on 28.09.2017. Upon appeal before the Honourable High Court the appellant was acquitted on 02.04.2019 and immediately thereafter he submitted departmental appeal against the dismissal order which was not responded to. Learned counsel further contends that while awarding the impugned punishment to the appellant his service record pertaining to past incidents was also kept in consideration and was regarded for recording of impugned punishment which was not allowable under the law. It is also argued that department enquiry, if any, was conducted at the back of the appellant, therefore, he was not provided any opportunity to defend his cause.

In view of arguments of learned counsel and available record, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 18.11.2019 before S.B.

Appellant Deposited
Security & Process Fee



17/9/19


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- _____ 989/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/07/2019	<p>The appeal of Mr. Saddiq Anwar presented today by Mr. Rizwanullah Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 29/7/19</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17-9-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

P-41

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 989 /2019

1. Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gula Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa and others.

RESPONDENTS

S.No	Particulars	Annexure	Pages #
1	Service Appeal	-	1-12
2	Affidavit	-	13
3	Copy of FIR No 554 dated 08-09-2014	A	14
4	Copy of reply	B	15
5	Copy of reply to the show cause notice	C	16
6	Copy of the Judgment of Hon'ble High Court Bannu Bench dated 02-04-2019	D	17-39
7	Copy of impugned order	E	40-41
8	Copy of departmental appeal and postal receipt	F&G	42-43
9	Wakalatnama	-	-

Saddiq Anwar
KHAN

Appellant

Through

Rizwanullah
Rizwanullah

Dated: 28/07/2019

Advocate High Court, Peshawar.

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 989 /2019

1. Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gula Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu.

APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1071

Dated 29/7/2019

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Bannu Region, Bannu
3. The District Police Officer, District Bannu.

RESPONDENTS

Filed to-day
@ Registrar
29/7/19

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 21-01-2015
PASSED BY THE DISTRICT
POLICE, OFFICER, BANNU
(RESPONDENT NO.3) WHEREBY THE
APPELLANT WAS AWARDED MAJOR
PENALTY OF DISMISSAL
FROM SERVICE WITH
RETROSPECTIVE EFFECT FROM
THE DATE OF OCCURRENCE i.e.
08-09-2014 AGAINST WHICH A
DEPARTMENTAL APPEAL WAS**

**FILED BUT THE SAME WAS NOT
RESPONDED.**

Prayer in Appeal

By accepting this appeal, the impugned order dated 21-01-2015 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant joined the services of police Department as constable on 15-07-2007. He was performing his duty with great zeal, zest and devotion but unfortunately, he was falsely involved in a criminal case for committing murder/attempted murder and as such FIR No 554 dated 08-09-2014 u/s 302/324/34PPC was registered against him at Police Station Mandan, District Bannu. Resultantly, he was arrested forthwith during the course of duty.

(Copy of FIR is appended as Annex-A).

2. That the appellant was served with a charge sheet wherein it was alleged that he had committed the following omission/commission which was also reproduced in the impugned order: -

i. **“That he had committed offence of murder/attempted murder and as a result of which, a proper case vide FIR No. 554 dated 08-09-2014 u/s 302/324/34 PPC was registered at PS Mandan against him. He was also placed under suspension vide this office OB No. 831 dated 11-09-2014”.**

3. That the appellant submitted reply denied the allegations and also termed it as fallacious, malicious and misconceived. He clarified that he was falsely roped in the above criminal case on account of his previous blood feud with his rival group. He prayed that the disciplinary proceedings may kindly be kept pending till the disposal of the case.

(Copy of reply is appended as Annex-B)

4. That the above reply was not deemed satisfactory and as such inquiry was conducted at the back of appellant as he was in judicial lockup at the relevant time. Thereafter, he was served with a show cause notice without providing any inquiry report. He submitted reply and took the same stance as enumerated in the reply to the charge sheet. But thereafter, no information whatsoever was given to him regarding the fate of his case.

(Copy of reply to show cause notice is appended as Annex- C).

5. That on the other hand, investigation was completed and challan was submitted before the competent Court of jurisdiction for the trial of the accused and ultimately, the Hon'ble Additional Sessions Judge-III Bannu vide judgment dated 28-09-2017 convicted him and sentenced to life imprisonment besides other punishment.
6. That the appellant felt aggrieved by the said order invoked the jurisdiction of Hon'ble Peshawar High Court, Bannu Bench by way of filing Criminal Appeal No. 213-B/2017 praying therein that the instant appeal may please be allowed and the impugned judgment may kindly be set-aside and the appellant may very graciously be acquitted of the charges levelled against him so as to meet the ends of justice.
7. That the Hon'ble High Court vide judgment dated 02-04-2019 accepted the appeal, conviction and sentence rendered by the learned trial Court vide judgment dated 28-09-2017 was set-aside and the appellant was ordered to be acquitted of the charges and released him forthwith.

**(Copy of judgment of
Hon'ble High Court,
Bannu Bench is
appended as Annex- D).**

8. That the appellant after his release from jail, approached the office of respondent No. 3 on 10-04-2019 so as to know about the fate of his service case. But he was informed that the Competent Authority vide order dated 21-01-2015 awarded him major penalty of dismissal from service with retrospective effect from the date of

occurrence i.e. 08-09-2014 and as such he was provided a copy of impugned order at his request.

(Copy of impugned order notice is appended as Annex- E).

9. That the appellant being dis-satisfied by the said order, filed Departmental appeal with the Regional Police officer, Bannu Region, Bannu (Respondent No. 2) on 16-04-2019. But he was directed to send the same through registered post. He then complied with the said order and sent it by registered post on 22-04-2019 vide postal receipt No. 541.

(Copy of Departmental appeal and postal receipt are appended as Annex- F & G).

10. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds:

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned order is not sustainable in the eye of law.

B. That the impugned order of dismissal from service of appellant was passed on 21-01-2015 and the same was made enforceable with retrospective effect from 08-09-2014 in utter violation of law as the executive/departmental authority was not competent to pass such order with “**retrospective effect**”. Reliance in this respect can be placed on the judgments of august Supreme Court of Pakistan reported in **1985-SCMR-1178 (citation-c)**, **1996-SCMR-201 (citation-c)** & **PLD-2007-SC-52 (citation-f)**. The relevant citations of the aforesaid judgments are reproduced herein for facility of reference:-

1985-SCMR-1178

(citation-c)

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.

1996-SCMR-201

(citation-c)

----Dismissal---Order of dismissal of employee purported to be retrospective in effect is not sustainable.---[Civil service].

PLD-2007-SC-52

(citation-f)

**----Executive---order---
Retrospective effect, Executive /departmental authority has no power to pass orders with retrospective effect.**

It is also axiomatic principle of law that when the basic order is illegal and void the entire superstructure built on it would fall on the ground automatically. Reliance can be placed on the dictum of august Supreme Court of Pakistan reported in **PLD-2008-SC-663 (citation-c)**. The relevant citation is as under:-

PLD-2008-SC-663
(citation-c)

----When the basic order is without lawful authority and void ab initio, then the entire superstructure raised thereon falls on the ground automatically.

The decision of august Supreme Court of Pakistan is binding on each and every organ of the state by virtue of **Article 189 & 190 of the Constitution of Islamic Republic of Pakistan, 1973**. Reliance can be placed on the judgment of apex court of the country reported in **1996-SCMR-284 (citation-c)**. The relevant citation is mentioned below.

1996-SCMR-284
(citation-c)

----Arts. 189 & 190---Decision of Supreme Court---Binding, effect of--Extent--Law declared by Supreme Court would bind all Courts, Tribunals and bureaucratic set-up in Pakistan.

The above dictum of august Supreme Court of Pakistan was followed by this Hon'ble Tribunal while deciding and accepting the following appeals filed by the employees of the Police Department:

S #	Service Appeal No.	Title	Date of Decision
1	463/2012	Muhammad Ismail VS DIG etc.	22-11-2017
2	164/2013	Nadeem Khan VS PPO etc.	22-11-2017
3	121/3/2015	Arif Khan VS PPO etc	18-12-2017

Therefore, the principle of consistency and parity both are attracted in the matter. But despite thereof, the respondent No. 2 has blatantly violated the above dictums of august Supreme Court of Pakistan by passing the impugned order with retrospective effect and maintained the same. Thus, the above order is liable to be reversed on this score alone.

C. That it is abundantly clear from the perusal of impugned order that Mr. Inayat Ali Amjid, Deputy Superintended of Police, Headquarters, Bannu was appointed as enquiry officer to conduct inquiry into the allegations levelled against the appellant. He conducted the inquiry and made the following recommendations: -

1. **“That the inquiry papers may be kept pending till the decision of the Court in the subject case”.**

But the Competent Authority, respondent No. 3 was not agreed with the said report and referred the same to Mr. Mir Faraz Khan, Inspector Legal for obtaining his opinion in this respect. This act of the Authority was against the spirit of administration of justice as a lower grade employee cannot sit on the findings given by his superiors. Besides, the respondent No. 3 was legally bound to have applied its own independent mind in the matter and itself decided the issue. But he acted under the adverse advice of lower grade employee (Inspector Legal) and remanded the file to the inquiry officer to proceed it in accordance with the opinion of Inspector Legal. This clearly shows that the respondent No. 3 was bent upon to award him punishment by any means.

- D.** That the departmental enquiry was not conducted in a manner prescribed by law as neither any witness was examined in the presence of appellant nor he was provided any opportunity of cross examination in order to impeach the credibility of the witnesses if any appeared against him. Similarly, he was also not provided any chance to produce his defence in support of his version. The above defect in enquiry proceeding is sufficient to declare entire process as sham and distrustful. Right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Thus, the impugned order is bad in law.

E. That the District Police Officer (respondent No.3) was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law and to see whether the enquiry was conducted in consonance with law and that the allegations thereof were proved against the appellant without any shadow of doubt or otherwise. But he has overlooked this important aspect of the case without any cogent and valid reasons and awarded him major penalty of dismissal from service despite the fact that there was no iota of evidence to connect the appellant with the commission of misconduct. Thus, the impugned order is not warranted under the law.

F. That the Appellate Authority (respondent No. 2) was under statutory obligation to have decided the departmental appeal filed by the appellant after application of mind with cogent reasons within reasonable time as per law laid down by august Supreme Court of Pakistan reported in 2011-SCMR-page-1. It would be advantageous to reproduce herein the relevant citation for facility of reference: -

2011-SCMR-page-1

Citation-b

**S. 24-A---Speaking order-
Public functionaries are
bound to decide cases of their
subordinates after application
of mind with cogent reasons
within reasonable time.**

But the Appellate Authority (respondent No. 2) has blatantly violated the above dictum of Apex Court of

country by not disposing of the departmental appeal within the statutory period of law. Therefore, the impugned order is liable to be set aside on this count alone.

- G.** That when the conviction of appellant was set-aside by the Hon'ble Peshawar High Court, Bench Bannu, thereafter, no ground exists to remain the punishment awarded to him by the respondent No. 3. It is well settled law that where the criminal charges were not proved against the accused Civil Servant before the Competent Court of jurisdiction and the civil servant was acquitted on these charges then the Departmental proceedings exactly based on the same charges, would be wholly irrelevant and unjustified. Reliance can be placed on judgment of august Supreme Court of Pakistan reported in 2001-PLC-(SC)-page-316-(citation-d). It would be advantageous to reproduce herein the relevant citation for facility of reference: -

2001-PLC-(SC)-page-316
(Citation-d)

Where the criminal charges were not established before a competent Court of law and the civil servant was acquitted on those specific charges, the departmental proceedings exactly on the same charges, would be wholly irrelevant and unjustified.

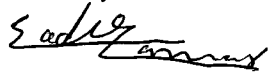
Thus, the impugned order is not sustainable in the eye of law.

- H.** That the impugned order is against law, facts of the case and norms of natural justice. Therefore, the same is not tenable under the law.

- I. That the respondent No. 3 have passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the same is not warranted under the law.
- J. That the impugned order is based on conjectures and surmises. Hence, the same is bad in law.
- K. That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order dated 21-01-2015 may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.


Appellant *EMAN*

Through


Rizwanullah

Dated: 28/07/2019

Advocate High Court, Peshawar.

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2019

1. Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gula Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu.

APPELLANT

VERSUS

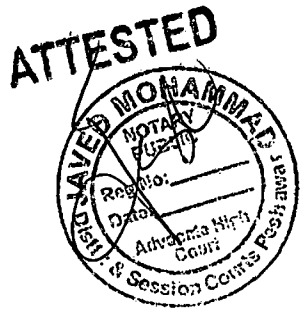
1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa and others.

RESPONDENTS

AFFIDAVIT

I, Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gula Nazif Khan R/O yark Khel, Beri Khel, Tehsil & District Bannu, do hereby solemnly affirm and declare that the contents of the accompanied service appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Saddiq Anwar
DEPONENT



29 JUL 2019

554

302/324/34 PPC جرم 08.09.2014 مورخہ 544 نمبر 544 مورخہ 08.09.2014

بجوالہ مشمولہ چارج شیٹ معروض ہوں۔ کہ من کنٹریبل پر بجوالہ مقدمہ عدلت نمبر 544 مورخہ 08.09.2014 کے سائل کو اس وقوعہ کا سرے سے علم ہی نہیں تھا۔ بدویں وجہ سائل
تھانہ منڈان میں دعویٰ جاری ہوئی۔ جس کے نتیجے سائل نے فوراً گرفتاری دی۔ یہ واضح کرتا ہوں۔ کہ سائل کو اس وقوعہ کا سرے سے علم ہی نہیں تھا۔ بدویں وجہ سائل
بے خوف اپنی ڈیوٹی انجام دے رہا تھا۔ کہ سائل کو گریڈیشن سے گرفتاری کیا۔ سائل کو عدالت میں اپنی بے گناہی ثابت کرنے کا پورا یقین ہے۔

لہذا استدعا ہے۔ کہ سائل کے خلاف جاری کردہ چارج شیٹ تا تصفیہ مقدمہ pending رکھا جانے کا حکم صادر فرمایا جائے۔

مورخہ۔ 24-09-2014

العارض

Attested

Adil
Khan
Appellant

کنٹریبل صادق انور نمبر 12
Adil
Khan

مجموعہ مشمولہ فائلز مشورہ ماڈرن لٹریچر / EC / 64-462 مورفہ 12-2-2015

دہلی آئی مورفہ 2015-1-1-1 محروم ہونے کی کنٹریبل پر بحوالہ

مذمت 554 مورفہ 2014-9-8 حرم PAE / 34-394-2-3

مندانہ نڈان میں دعویٰ داری ہوئی۔ جس کے نتیجے میں مورفہ "گرفتاری دی

پر داخل کرتا ہوں کہ مسائل کو اس وقوعہ کا سرے علم ہی نہیں تھا

بہرین وہ مسائل بے خوف اپنی ڈیوٹی انجام دے رہا تھا۔ نہ مسائل

کو ٹرڈ سیشن سے گرفتار کیا۔ مسائل کو عدالت میں اپنی جے نہا ہی

ثابت کرنے کا پورا پتین ہے۔ جاری کردہ مشورہ ماڈرن لٹریچر تصفیہ

مقدم Pending نہ کیا جائے گا حکم صادر فرمایا جاوے

العارض

مورفہ 2015-1-1-1

Attested

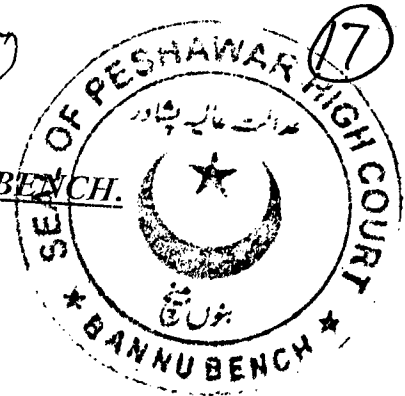
کنٹریبل جمادی الثوری 12

Radia ~~Appellant~~
Appellant KHAN

1 Annex-D (2)

BEFORE THE PESHAWAR HIGH COURT, BANNU BENCH.

Criminal Appeal No. 213-R /2017



Saddiq Anwar son of Gul Nazif Khan r/o Yarak Khel, Beri Khel,
Tehsil & District Bannu presently Central Prison Bannu

..... Appellant

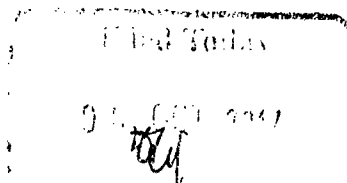
Versus

1. Aftab Khan s/o Muhammad Ayaz (complainant)
2. Nawab Khan s/o Khan Mast (injured) both resident of Bozi killa Beri
Khel, Bannu
3. The State

..... Respondents

Case FIR No. 554 Dated: 08/09/2014 u/s 302-324-337-D/34 PPC PS: Mandan

Subject: Appeal under section 410 Cr.P.C against impugned judgment of Learned Add: Sessions Judge-III Bannu Dated: 28/09/2017 vide which the appellant was convicted and sentenced to life imprisonment under section 302(b) P.P.C and shall also to pay compensation amounting 2 Lac rupees to the LRs of the deceased under section 544-A Cr.P.C and in default to under go six (06) months , the appellant is also convicted and sentenced to rigorous imprisonment of (10) years on three counts for effective attempt at the life of Nawab khan and ineffective attempt at the life of Aftab and Magsood ashiq whith fine of Rs. 50000/- in default of payment fine



ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

appellant will pass another three months imprisonment. The appellant is also convicted for the injuries of injured Nawab Khan u/s 337-D PPP read with section 337-N(ii) PPC and shall be compensation equivalent to 1/3rd of Diyat amount fixed for current financial year as Daman. The sentence be dealt u/s 337-X PPC. All the sentences are ordered to be ~~run~~ concurrently with the benefit of section 382-B PPC.

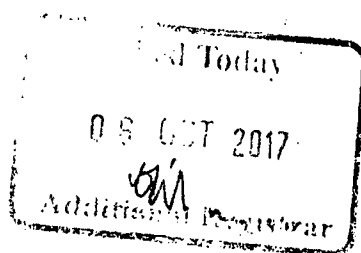
BRIEF FACTS:

1. That the appellant along with acquitted co-accused Gul Nazif and Sarhad ali were charged by the complainant in the captioned case. (Copy of F.I.R is enclosed herewith as annexure-A)
2. That after conclusion of trial statement of appellant under section 342 Cr.P.C was recorded and after hearing arguments of both the sides, the learned trial court vides impugned judgment convicted and sentenced the appellant as above. (Copy of Impugned judgement is enclosed herewith as annexure-B)

Now the appellant impugned the judgement of learned trial court on the following grounds inter-alia:

Grounds:

1. That the impugned judgement is against the law and facts on record, hence untenable in the eyes of law.
2. That, respectfully speaking, impugned judgment is nothing but jumble of confusion.



ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

3. That the learned trial judge throttling all the principles of appreciation of evidence and dispensation & administration of justice in criminal cases.
4. That from the initial report up to the recording their statement before the court the complainant and alleged eye witness charged the appellant and acquitted co-accused with active and effective general role but on the same set of evidence learned trial court recorded conviction against the appellant while acquitted the co-accused.
5. That the impugned judgment is the result of misreading, non reading, mis-appreciation and non appreciation of evidence, hence the same required re-appraisal by this Hon'ble court.
6. That the report was made after procurement of complainant and sufficient time was consumed in consultation and deliberation but the learned judge fail to appreciate the prosecution evidence in this regard.
7. That the alleged eye witnesses made dishonest improvement in their court statement and in this process they resile from initial report and supplementary statements which makes them un reliable witnesses but the learned trial court conveniently ignore all such improvement and dents in the prosecution case.
8. That ocular evidence is completely in contrast with the site plan position and medical evidence but the learned trial court falling to error while placing reliance on shaky, contradictory and un believable events of prosecution evidence.

Filed Today
05 OCT 2017
Additional Registrar

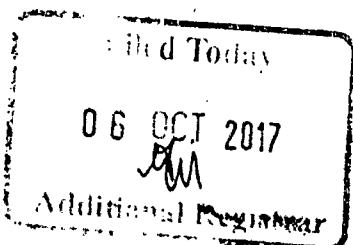
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EXAMINER
B. K. Jaiswal High Court

9. That the circumstantial evidence completely belies the prosecution evidence.
10. That the learned trial court give un due weight to the statement of injured Nawab khan who recorded his statement to the IO after considerable delay and failed to explain the delay in recording his statement in this respect the learned trial court ignored the principle led down by the apex courts of the country.
11. That the learned trial court did not discuss the statement of IO, who has been declared hostile by the prosecution, according to the principle led down by the apex court, rather the learned trial court give great importance to his statement and all doubts and dents occurred in his statement are consider in fover of prosecution and against the appellant.
12. That the learned trial court place reliance for conviction on the testimony of highly interested and inimical witnesses and the learned judge did not follow the principle laid down for appreciation of such like evidence.

It is, therefore, respectfully and humbly prayed that on the above and other grounds which could be agitated at the time of arguments, the instant criminal appeal may please be allow and the impugned judgment of the learned Add: Sessions Judge-III Bannu may very kindly be set aside and the appellant may very graciously be acquitted of the charge levelled against him to meet the ends of justice.

DATED: / / 2017

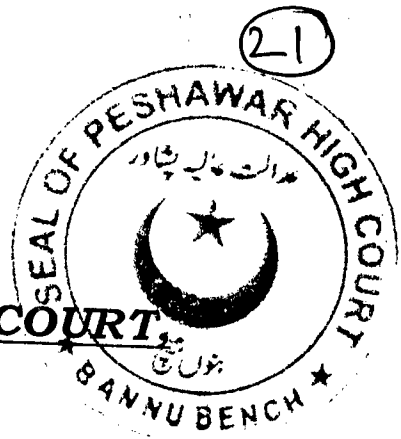


Through Counsel

Farooq Khan Sokari Advocate

ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench



JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
BANNU BENCH.

(Judicial Department)

Cr.A No.213 -B of 2017.

Saddiq Anwar

Vs

The State & Aftab Khan etc.

JUDGMENT

Date of hearing _____ 02.04.2019 _____

Appellant-Petitioner by Mr. Farooq Khan
Sorani Adv.

Respondent by Mr. M. Asghar Khan Sorani Adv.
State, by Mr. Shahid Hussain Sorani Adv.

ISHTIAQ IBRAHIM, J.--- This Criminal Appeal No.213 -

B/2017, has been filed by convict/ appellant Saddiq Anwar, connected Criminal Revision No. 48-B/2017 has been filed by the complainant Aftab Khan for enhancement of sentence of appellant Saddiq Anwar and criminal Appeal No.236-B/2017 also filed by the complainant against acquittal of accused/ respondents. Both the appeals and criminal revision petition arise from the judgment of learned Additional

Sessions Judge-III, Bannu dated 28.09.2017, whereby the

Azam Khan/P.S

(D.B) Mr. Justice Ishtiaq Ibrahim & Mr. Justice Shakeel Ahmad.

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

appellant Saddiq Anwar, convicted under section 302(b) P.P.C and sentenced to rigorous imprisonment for life, with compensation amounting to Rs.200000/- (two lac) to the LRs of deceased under section 544-A Cr.PC and in default thereof to further undergo for six months SI. He was convicted under section 324 PPC and sentenced to ten years on three counts with fine of Rs.50000/- or in default whereof to further suffer three months SI. He was also convicted under section 337-D r/w 337-N(ii) PPC and sentenced to pay compensation equivalent to 1/3rd of Diyat amount. All the sentences shall run concurrently. Benefit of section 382-B Cr.PC was extended in favour of convict/appellant. While accused/ respondents Sarhad Ali and Gul Nazif were acquitted.

2. Since both appeals and criminal revision are the outcome of one and the same F.I.R, and impugned judgment, therefore, these are being disposed of by way of this single judgment.

3. Brief facts of the case are that, complainant Aftab Khan alongwith dead-body of his brother Sabir Zafar

ATTESTED
 EXAMINER
 Peshawar High Court
 Bannu Bench

and injured Nawab Khan, Mst. Bus Noorzada Bibi, in emergency room of Civil Hospital, Bannu reported the matter to the local police at 18.40 hours, to the effect that on 08.09.2014, he alongwith his brother Sabir Nawaz, relative Nawaz Khan and Maqsood Aashiq, was present near the Masjid of Bari Khel Boza Khel, at about 1740 hours, accused Sadiq Anwar, Sarhad Ali Khan and Israr Khan, duly armed with Kalashnikovs and Gul Nazir Khan, duly armed with 30 bore pistol came there and started firing at them, as a result of which his brother Sabir Zaman, Relative Nawab Khan and Mst. Bas Noor Zada, who was attracted outside the home after hearing firing, was also hit and sustained injuries, while the complainant and Maqsood Aashiq were luckily escaped unhurt. Accused after commission of offence decamped from the spot. The injured Sabir Zaman succumbed to the injuries at the spot. Motive for the offence was alleged by the complainant to be previous blood feud between the parties. The report of complainant was reduced in shape of *murasila* Ex:PW 5/1, which later on culminated in to above mentioned F.I.R Ex:PW 4/1.

Azam Khan/P.S

(D.B) Mr. Justice Ishtiaq Ibrahim & Mr. Justice Shakcel Ahmad.

ATTESTED
EXAMINER
Fazlur Raza Khan
Bannu District

4. After completion of investigation challan was submitted. Accused were summoned, who appeared and after complying with provision under section 265-C Cr.PC, they were formally charge sheeted to which they did not plead guilty and claimed trial. The prosecution in order to prove guilt of accused produced and examined as many as twelve PWs. On conclusion of trial, the statement of accused was recorded under section 342 Cr.PC, wherein they professed innocence, however, they neither wished to produce defence evidence nor opted to be examined on oath as provided under section 342 (2) Cr.PC. Learned trial court after hearing arguments of both sides, vide impugned judgment dated 28.09.2017 convicted the accused/ appellant, while acquitted the accused/ respondents in connected appeal. The convict/ appellant filed instant Cr. A No. 213-B/2017, while the complainant filed Cr.R No. 48-B/2017 for enhancement of sentence, while a separate criminal appeal No. 236-B/2017 against acquittal of accused/ respondents. Both the appeals and criminal revision are going to be decided through this single judgment.

Azam Khan/P.S

(D.B) Mr. Justice Ishaq Ibrahim & Mr. Justice Shakeel Ahmad.

ATTESTED
JUDGE
COURT

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5. Arguments heard and record perused.

6. According to first information report on 08.09.2014, at 17.40 hours, when the complainant Aftab Khan, was present with his brother Sabir Zaman and his relative Nawab Khan, Maqsood Ashiq near *Masjid*, accused Sadiq Anwar, Sarhad Ali, Israr Khan armed with Kalashnikovs and Gul Nazeef Khan armed with .30 bore pistol, appeared and started indiscriminate firing at them, as a result of which brother of complainant Sabir Zaman, his relative Nawab Khan, and one Mst. Bas Noorzada, who has came out of her house on the report of fire shots, were hit and sustained injuries, while complainant and Maqsood Ali escaped unhurt, despite the fact that all the four accused were armed with sophisticated weapons like Kalashnikovs and pistols, which is not appealable to a prudent mind. Again as is evident from the F.I.R the motive was common for the deceased and complainant as well as eye witness being previous blood feud, but how and why the complainant was spared, this fact leads to the inference that, the complainant

ATTESTED
EXAMINER
Fashanah H. Q. Qadri
Darsa 2014

was not present at the spot, at the time of occurrence and was procured later on. In case of "Amin Khan Vs Janab Gul and others" (1984 SCMR 937) the Hon'ble Supreme Court while dealing with a similar aspect of the case held as under:

"It is Amin Khan appellant (complainant) against whom the accused-respondent sought the revenge for having beaten their father and if he had been present alongwith Gul Faraz (deceased) they would have fired at him rather than the deceased and would not have allowed him escaped unhurt. We also respectfully agree with the view taken by the High Court that the medical evidence contradicts the version given by the eye-witness. We feel that it is an unwitnessed occurrence and the accused-respondents were named merely on suspicion."

7. No doubt the site plan is not a substantive piece of evidence, but being the first reflection of the spot as indicated or pointed out by the eye-witnesses portrays the picture of place of the occurrence in order to scrutinize the evidence tendered at the trial by the prosecution witness and in this view of the matter if one goes through the site-plan (Ex:PW12/1) it is observed that firstly the complainant Aftab Khan, eye-witnesses Nawab Khan, Maqsood Ashiq and

Azam Khan/P.S

(D.B) Mr. Justice Ishtiaq Ibrahim & Mr. Justice Shakeel Ahmad

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EXAMINER
Peshawar High C
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deceased Sabir Nawaz, were standing near the Masjid, and accused Saddiq Anwar and Sarhad Ali have been shown at points No.6 and 7, which is situated outside the Southern wall of the Masjid, at a distance of 24 paces from the complainant party, whereas height of the said wall has been shown six feet, and from there firing across the wall and of the Masjid at the complainant party is not possible. No doubt, it is alleged that the accused were standing on the heap of mud/clay had made firing, but it has neither been specifically shown in the site plan nor in the photographs taken during the investigation. Perusal of post mortem report of deceased Sabir Nawaz and medico-legal report of Nawab Khan reveals that they have received firearm entry wounds from the back and from left side, meaning thereby that at the time of firing they have not seen the actual culprits. Moreover, in presence of six feet wall of the Masjid, the accused could easily hide their identity. Same is the case of accused Gul Nazeef Khan and Israr Khan, who have been shown at points No.8 and 9, as in presence of Western wall of the Masjid, they were not visible to the complainant party, except to the

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injured Mst. Bas Noor Zada, who has shown at point No.3. Medico-legal report placed on file proves the factum of her presence at the spot at the crucial time of occurrence and was an independent witness, with regard to identity of accused, mode and manner of occurrence, but she has not been examined by withholding the best evidence. Hence inference could be drawn under Article 179(g) of the Qanun-e-Shahadat Ordinance, that had the said evidence been produced, she would have not supported the case of prosecution. In view of the above discussion, it is held that the site plan Ex:PW12/1, does not support the prosecution version.

8. The complainant Aftab Khan appeared before the court as PW-6, he in cross-examination categorically admitted that:

"It is correct that besides the above mentioned case I am also charged in other cases by various people. I am a butcher by profession and my shop is situated at Bannu city."

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

Firstly, the occurrence took place at about 1740 hours and at that time the complainant was supposed to be present in shop at Bannu city. He can be well regarded as chance witness, because it is duty of the prosecution to establish presence of witness at the time of occurrence but no explanation, whatsoever, is available on record, it can be inferred that the complainant was in fact present in his own shop situated at Bannu City and was later on procured. Secondly, if it is assumed that he was present at the place of occurrence, then in presence of so many enmities of the complainant coupled with the fact that accused were hiding behind the walls, this fact cannot be ignored that some other enemies might have leveled the score have not been identified by them and the accused have been nominated for the charge on the basis of blood feud.

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[Signature]
EXAMINER
Peshawar High Court
Bannu Bench

9. It is admitted by the complainant that he has several enmities in the area. He further admitted that at the relevant time he alongwith his companions was present at the spot empty handed. In such like area in presence of several

enmities, roaming without any firearm and leaving themselves at the mercy of their enemies without taking proper care for their protection, is a begging question for which no explanation, whatsoever, is available on record.

10. No doubt F.I.R is not detailed document, rather is an information for the purpose to bring law into motion, but at least major and important points are required to be mentioned to show the genuineness of prosecution case from the very inception. If the evidence produced during trial contradicts the version of F.I.R or do not corroborate, the evidence would lose its evidentiary worth and value or the F.I.R lodged after preliminary investigation, the F.I.R loses its value. Reliance is placed on case titled "Zaab Din and another Vs the State (PLD 1986 Peshawar 188). In the instant case, the complainant in his first information report as well as in examination in chief of his statement recorded as PW-6, stated that:

"On the day of occurrence I alongwith Sabir Zaman, Nawab Khan and Munsaf Adhig were standing in front

31

of the village Masjid. At about 05.40 P.M accused Saddiq Anwar, Sarhad Ali and Israr Khan armed with Kalashnikov, while accused Gul Nazif armed with .30 bore pistol came there and started firing at us."

But in the site plan Ex:PW12/1, prepared at the instance of complainant, the accused Saddiq Anwar and Sarhad Ali have been shown at points No.6 and 7 respectively, which is outside the southern wall of the Masjid at about 17, 24, 32 paces from the complainant party i.e. points No.1, 2, 4 respectively. Whereas, the accused Gul Nazif and Israr Khan have been shown at points No.8 and 9, outside western side of the Masjid at a distance of 17, 10 and 13 paces from points No.1, 2 and 4, which fact is contrary to the assertion of complainant and eye witness. Apart from that the statement of complainant is smeared with improvements, with regard to establish their presence at the spot after offering Asar prayer that, *"I had stated to the scribe that I after performing Bajamat Nimaz was standing with deceased and PWs to see the cow of my chacha."* While in the same breath he again said that *"the PWs and deceased after performing their*

"Azam Khan/P.S"

(D.B) Mr. Justice Ishfaq Ibrahim & Mr. Justice Shakeel Ahmad.

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

prayer in the Masjid were coming out from the Masjid and at the same time the accused arrived to the spot and started firing at us. This fact was told to the scribe by me at the time of report" The above referred facts were not disclosed in the F.I.R and the same were introduced in order to meet medical evidence and site plan.

11. Nawab Khan PW-7, is the relative of complainant as well as deceased. No doubt he sustained injuries during the occurrence, but sustaining of injury by itself is not sufficient evidence to adjudge that the same were caused by the present accused. This PW admitted in his cross-examination that he gained senses after about 2/3 days of the occurrence, but Mir Daraz Khan SI, investigation Officer (PW-12) investigation officer recorded his statement on 17.09.2014 after nine days of the occurrence and six days after gaining senses. Nothing available on record, in shape of any certificate from the doctor, that he was not capable to make statement till 17.09.2014. Hence, such a long delay in recording statement of this PW manifest that he was not

ready to support false version of the complainant and during that interregnum, he was compelled by the complainant and his relatives to stick to the story already narrated by the complainant in shape of F.I.R. No doubt presence of injured witness cannot be controverted in the circumstances, but mere fact that the victim sustained injuries during the occurrence would never stamp him as a truthful witness, when the charge is exaggerated, mode and manner of occurrence seems to be false and fabricated, the testimony of injured witness would not be sufficient enough to adjudge the accused guilty for the offence charged with. Moreover, when the allegations are that the accused were equipped with automatic weapons like Kalashnikov and .30 bore pistols, whether this can be the doing of one person or four persons, for that matter strong independent corroborative piece of evidence was required, but it is not available in the present case. In this regard reliance is placed on case titled "Sohni Vs

(1) Bahaduri and 5 others and (2) The State" PLD 1965

Supreme Court 111), wherein it is held that:

"In this case the village where the occurrence took place was torn by faction and therefore, false implication of innocent persons cannot be altogether ruled out. Furthermore, according to Doctor Muhammad Yamin Khan out of the 9 injuries found one Maulo deceased 2 were contused wounds, 1 incised wound, 1 was abrasion and the rest were contusions. Death was due to the shock and compression of brain caused by blood clots due to fracture of skull which was caused by injuries Nos. 1 and 2 that were found on the deceased. Most of the remaining injuries were on the leg of the deceased. In view of the number and nature of injuries one may legitimately ask whether this could possibly have been the result of assault by 6 accused persons or that they could have been easily caused by two or three persons. Viewing all the circumstances we are satisfied that the High Court was right in insisting on some corroboration of the evidence of the eye-witnesses connecting the accused with the crime. As such corroboration was lacking, the High Court was justified in giving the benefit of doubt to the accused persons."

Reliance may also be placed on case titled, Mst. Sughra

Begum and another Vs 'Oaiser Pervez and others (2015

SCMR 1142), wherein it is held that:

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

"In law, corroboratory evidence means evidence of someone else other than the eye-witness whose evidence is needed to be corroborated therefore, this evidence of recovery cannot be held to be a corroboratory one because eye-witnesses cannot corroborate themselves but it must come from an independent source."

12. It is borne out from the record that the investigating officer, on 08.09.2014, during spot inspection collected crime empties from the spot, vide recovery memo Ex:PW6/3, which were received to the FSL on 16.09.2014, after delay of eight days, where the same were retained during the interregnum has not been explained. The investigation officer, in his statement did not utter a single word regarding sending the same to the FSL or through whom, nor the person/ official who took the crime empties to FSL has been produced, therefore, such FSL report has lost its efficacious value. Moreover, recovery of crime empties and positive FSL report are corroborative pieces of evidence and in absence of evidence of unimpeachable character the same would not be sufficient for recording conviction in a capital charge.

Azam Khan, P.S.

(D.P.) Mr. Justice Ishfaq ul-Haq & Mr. Justice Shaukat Ahmad.

ATTESTED
EXAMINER
Peshawar High Court
Basnu Bench

13. It is pertinent to mention that learned trial Court vide impugned judgment dated 28.09.2017, convicted the accused Sadiq Anwar and acquitted the accused Sarhad Ali and Gul Nazif, while the complainant Aftab Khan filed criminal appeal No. 236-B of 2017 against only Sarhad Ali, hence, at this stage, the impugned judgment to the extent of acquittal of accused Gul Nazif attained finality. All the accused having same role of firing, therefore, on the same analogy, they also deserve same treatment.

14. The learned trial court during recording its findings, acquitted some of the accused, while convicted the appellant, Sadqi Anwar, introducing the principal of sifting grains from the chaff, relying on the judgment cited in case titled "Sardar Khan and others Vs the State (1998 SCMR 183), by holding that the maxim *Falsus in uno falsus in omnibus*, has been don away. But we are of the view that the old principle *Falsus in uno falsus in omnibus* is integral part of the criminal jurisprudence in criminal cases, as in the recent judgment of the Hon'ble Supreme Court of Pakistan

cited in Criminal Miscellaneous application No.200 of 2019
in Criminal appeal No.238-L of 2013, decided on
04.03.2019, it is held and directed that:

"We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that

witness found by a court to have

ATTESTED
EXAMINER
Jeshwar High Court
Bannu Bench

resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."

15. The learned trial court erred in law by thrashing the evidence in light of verdict of superior courts and thereby arrived at wrong conclusion, as deviation of eye witnesses on martial aspects shattered the prosecution case, benefit of doubt not only goes to the acquitted accused but also to the convict/ appellant Sadiq Anwar.

16. It is settled law that for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession but as a matter of right. Reference is made to case "**Muhammad Akram v. State**" (2009 SCMR 230). All these serious issues created doubts in our mind regarding the guilt of the accused/appellant and acquitted accused and these material facts favouring the accused/appellant were not considered by the learned trial Court, while appraising the

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EXAMINER
Peshawar High Court
Fanoor Bench

evidence of the prosecution. The learned trial court has erred in law by not extending benefit of doubt in favour of accused/ appellants.

17. In view of what has been discussed above, this criminal Appeal No.213-B/2017 filed by accused/ appellant Sadiq Anwar is accepted, conviction and sentence recorded by the learned trial court vide judgment dated 28.09.2017 is set aside and the appellant Sadiq Anwar is ordered to be acquitted of the charges. He shall be released forthwith if not required in any other case. While connected Cr. A No.236-B/2017 and Cr. R No.48-B of 2017 filed by Aftab Khan etc, stand dismissed.

18. Above are the reasons of our short order of the even date.

Announced.
02.04.2019

CERTIFIED TO BE TRUE COPY

[Handwritten Signature]
18/4/19

Examiner

Pesh. High Court Bench
Authorized Under Article 87 of
the Constitution of Pakistan

[Handwritten Signature]

Azam Khan/P.S

(D.B) Mr. Justice Ishaq Ibrahim & Mr. Justice Shakeel Ahmad.

ORDER:

This order of the undersigned will dispose of the departmental proceedings, initiated against accused constable Sadiq Anwar No. 12, under general proceeding of police rule 1975 (Amended vide Khyber Pakhtunkhwa gazette Notification, 27th January, 1976) who while posted to police lines Bannu, had committed the following omissions/Commissions:-

1. That he had committed offence of murder / attempted murder and as a result of which, a proper case vide FIR No. 554 dated 08-09-2014 u/s 302/324/34 PPC was registered at PS Mandan against him. He was also placed under suspension vide this office OB No. 831 dated 11-09-2014.

A proper charge sheet based upon summary of allegations was served upon him, on dated 18-09-2014, through the local police of PS Township and the enquiry papers were entrusted to Mr. Inayat Ali Amjid, DSP/HQrs, Bannu. Who, after receiving the reply of accused, properly started the departmental proceedings by recording the statements of the following relevant persons:-

- Mr. Saad Ullah, SHO PS Mandan.
- Mr. Mir Daraz Khan, ASI/I.O PS Mandan, Bannu.
- Mr. Naimat Ullah, Moharar Police lines, Bannu.
- Mr. Shah Zar Ali constable No. 538, Bannu.

After recording the statements of the above persons, DSP/HQrs submitted his findings, wherein, he suggested that the enquiry papers may be kept pending till the decision of the court in the subject case. The enquiry file was entrusted to Mr. Mir Faraz Khan, Inspector legal for getting legal opinion. Who (Inspector legal) submitted his legal opinion which is reproduced as under:

(I have gone through the finding report of DSP/HQ and report of inquiry clerk, the accused official is only charged in the murder case vide FIR No. 554 dated 08-09-2014 u/s 302,324,34 PPC PS Mandan. Inquiry Officer i.e DSP/HQ has not put up question over the I.O regarding the involvement or innocence of accused official nor shown any findings or clear view regarding the misconduct committed by the accused official. SHO PS Mandan/I.O has not declared the accused official innocence and submitted charge sheet (challan) against accused to court. In view of the above, the misconduct committed by the accused official must be properly scrutinized in the light of investigation report by E.O and thereafter findings report may be submitted to competent authority for further legal action).

Attested

Sadiq Anwar
I.O/H.A.R.

Appellant

(41)

Hence, the enquiry file was returned back to the E.O on dated 25-11-2014 with the directions to proceed in accordance with the opinion of Inspector legal.

On dated 22-12-2014 vide letter No. 944/HQrs, the enquiry officer resubmitted his findings, wherein, the accused was declared as guilty. As a result of which, the accused was served with Final Show cause notice. His reply was also found implausible.

Service record of the accused was perused and it was found that he was recruited on dated 15-07-2007 and remained absent for a period of 27 days from duty on 17 different occasions. He was already dismissed from service on the charge of involvement in the offence of murder/attempted murder vide FIR No. 169 dated 09-06-2010 u/s 302/324/34PPC PS Mandan. But in the light of verdict of the apex court of Supreme Court of Pakistan dated 23-09-2014, he was reinstated into service vide this office OB No. 1258 dated 05-11-2014.

Keeping in the above I, ABDUR RASHID, DISTRICT POLICE OFFICER, BANNU in exercise of the power vested in me under police rule 1975 (Amended vide Khyber Pakhtunkhwa gazette Notification, 27 the August 2014), hereby impose upon the accused a major punishment of dismissal from service from the date of occurrence i.e 08-09-2014.

Abdur Rashid
(ABDUR RASHID)PSP
District Police Officer,
Bannu.

OB No. 52
Dated: 19-01-2015
No. 933-35 dated Bannu, the

21-01-2015

- Copies for n/a to :
- 1. DSP/HQrs
 - 2. Pay Officer.
 - 3. The SRC, DPO Office, Bannu.
 - ✓ The OASI, DPO Office, Bannu.

Attested
Sadiq Ahmad
KIHAN
Appellant

بخدمت جناب ریجنل پولیس آفیسر صاحب بنوں ریجن بنوں

Annex - F

عنوان: رحم درخواست دربارہ بحالی ملازمت بوجوہات ذیل۔

جناب عالی!

معروض خدمت ہوں کہ سائل کو جناب DPO صاحب بنوں نے بحوالہ آرڈر بک نمبر 52 مورخہ 19-01-2015 ملازمت سے برخاست کیا ہے۔ آرڈر کاپی ہمراہ لف ہذا کی جاتی ہے۔ اندریں سلسلہ ذیل عرض درشت دربارہ بحالی ملازمت پیش خدمت ہے۔

۱۔ یہ کہ سائل مورخہ 15-07-2007 کا بھرتی شدہ ہے۔ سائل نے دوران ملازمت اپنے فرائض خوش سلوبی سے سرانجام دیئے ہیں۔
۲۔ یہ کہ سائل کی خاندانی دشمنی ہے۔ اس لئے فریق مخالف کی کوشش ہوتی ہے۔ کہ وہ سائل کو پولیس کی ملازمت کی وجہ کیسی مقدمہ میں ملوث کر سکے۔ جس کا قوی اور مضبوط ثبوت یہ ہے کہ فریق مخالف نے سائل کو مقدمہ علت نمبر 554 مورخہ 08-09-2014 جرم PPC 302-324/34 تھانہ منڈان ایک جھوٹی دعویٰ جاری کر کے سائل کو مقدمہ میں پھنسایا۔ جس کے نتیجے میں محکمہ پولیس نے سائل کے خلاف انکوائری عمل میں لا کر ایک یکطرفہ انکوائری کے نتیجے میں محکمہ سے برخاست کیا۔

۳۔ یہ کہ سائل مقدمہ متذکرہ کی وجہ سے کافی ذہنی کوفت کا شکار تھا۔ اس لئے جیل سے سائل محکمہ کو معقول صفائی نہ دے سکا۔ البتہ محکمہ سے یہ استدعا ضرور کی تھی کہ سائل کی انکوائری کو تصفیہ عدالت مقدمہ پنڈنگ رکھا جائے تاکہ قانون، انصاف اور رولز کے تقاضے پورے ہوں۔ لیکن محکمہ کے مجاز افسران نے سائل کی استدعا کو یکسر مسترد کر کے سائل کو برخاست کیا۔

۴۔ یہ کہ مقدمہ متذکرہ بالا میں سائل عدالت مجاز میں اپنی بے گناہی ثابت کر کے سائل کو عدالت نے باعزت بری کیا۔ آرڈر کاپی ہمراہ لف ہے۔
۵۔ یہ کہ مقدمہ متذکرہ سائل کے خلاف بد ذہنی کی بنا پر اور سائل کی ملازمت کو نقصان پہنچانے کی خاطر مخالف فریق نے قائم کیا تھا۔ نتیجتاً فریق مخالف سائل کی ملازمت کو نقصان پہنچانے میں کامیاب ہوئے باوجود اس کے کہ فریق مخالف عدالت مجاز میں اپنا مقدمہ اور سائل کے خلاف جرم ثابت کرنے میں مکمل ناکام رہے۔

۶۔ یہ کہ رولز اور فطری انصاف کا تقاضہ تھا کہ محکمہ سائل کے خلاف قائم کردہ مقدمہ کے عدالت مجاز سے تصفیہ کرنے تک انتظار کرتا تاکہ سائل رہائی کے بعد محکمہ اور انکوائری آفیسر کو ٹھوس صفائی دینے کے قابل ہوتا۔ لیکن بد قسمتی سے محکمہ کے مجاز افسران نے انتہائی عجلت میں سائل کو یکطرفہ طور پر ملازمت سے برخاست کر کے سائل کے ساتھ انتہائی زیادتی کی۔

لہذا بذریعہ رحم درخواست استدعا کی جاتی ہے کہ بالا وجوہات کو مدنظر رکھتے ہوئے سائل کو محکمہ پولیس میں بحال فرمانے کا حکم صادر فرمائیں۔

تاریخ دُعا گور ہونگا۔

مورخہ 16-4-019

العارض
۱۸/۶/۸۸

صادق النور خان (سابقہ کانسٹیبل)

بیلٹ نمبر 12

Attested
Appellant

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.989/2019

Saddiq Anwar (Ex-Constable belt No.12) s/o Gula Nazif Khan r/o Yark Khel, Beri Khel,
Tehsil & District Bannu. Appellant

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar,
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu

..... Respondents

INDEX

S/No	Description of Documents	Annexure	Page
1	Comments/Reply		1-3
2	Affidavit		4
3	Authority Letter		5
4	Copy of Charge Sheet	"A"	6
5	Copy of Statement of allegations	"B"	7
6	Copy of Letter of DSP H/Qrs	"C"	8-9
7	Copy of Departmental inquiry	"D"	10
8	Copy of Final Show cause notice	"E"	11
9	Copy of Order	"F"	12-13

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

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3. The District Police Officer, Bannu

..... Respondents

PARA WISE COMMENTS/REPLY ON BEHALF OF RESPONDENTS NO.1,2 & 3.

Preliminary Objections

1. That the appeal of the appellant is badly time-barred.
2. That the appeal is not maintainable in its present form.
3. That the appellant has concealed the actual facts from this Honorable Tribunal.
4. That the appeal is bad in law due to mis-joinder and non-joinder of necessary parties.
5. That the appellant has approached the Honourable Tribunal with unclean hands.
6. That the appellant has got no cause of action and locus-standi to file the instant appeal.
7. That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS:

Respectfully Sheweth

1. Correct to the extent that the appellant was appointed as constable in District Police Bannu on 15.07.2007 but his performance was not satisfactory. The appellant committed the offense of murder and was directly charged vide case FIR No.554 dated 08.09.2014 u/s 302/324 PPC PS Mandan by the complainant Aftab Khan s/o Muhammad Ayaz Khan r/o Beri Khel Mandan. He was arrested by the local police of PS Mandan and was sent to Jail.
2. Correct. Hence, needs no comments.
3. Pertains to record. Hence, needs no comments.
4. Incorrect. After commission of offense, the appellant while directly charged in the above mentioned case, proper charge sheet with statement of allegations were issued to the appellant (Copy enclosed as **annexure-A & B**). DSP HQrs Bannu was appointed as inquiry officer, who conducted departmental inquiry and concluded the inquiry, recommended that the inquiry paper be kept pending till decision of the court. (Copy enclosed as **annexure-C**). Later on, the

Inquiry officer issued continuation finding report vide letter No.944/HQ dated 22.12.2014 and declared the appellant as guilty (Copy enclosed as **annexure-D**). Upon the recommendation of inquiry officer, the competent authority issued final show cause notice to the appellant (Copy enclosed as **annexure-E**). But he badly failed to rebut himself innocent. Respondent No.3 awarded major punishment from dismissal from service from the date of occurrence i.e. 08.09.2014.

5. Pertains to record. Hence, needs no comments.
6. Pertains to record. Hence, needs no comments.
7. Pertains to record. Hence, needs no comments.
8. Pertains to record. Hence, needs no comments.
9. Incorrect. The appellant neither preferred an appeal to Respondent No.2 nor he was directed to send the same through registered post.
10. The respondent department also submit their reply on the following grounds.

OBJECTIONS ON GROUNDS

- A. Incorrect. The appellant was treated according to law and rules. The Respondent department did not violate Article-4 of the constitution of Islamic Republic of Pakistan 1973.
- B. Incorrect. The impugned orders issued on 21.01.2015 is quite legal and according to law/rules (Copy enclosed as **annexure-F**). The appellant was charged in a criminal case vide FIR No. 554 dated 08.09.2014 u/s 302/324 PPC PS Mandan and was arrested by the local police of PS Mandan and sent to Jail. While rest of the para pertains to record. However, Respondent No.2 have no concerned with the issuance of the order as the penalty was awarded by Respondent No.3.
- C. Correct to the extent that DSP HQrs Bannu was appointed as inquiry officer who concluded the inquiry and recommended that the inquiry be kept pending till decision of the court. While rest of the para is incorrect. It is the administrative power of the authority to agree with the findings report of the inquiry officer or not. The case in hand was also sent to Inspector Legal being a legal expert not a low grade officer to scrutinize the case that whether it will be kept pending or not. There is no bar to conduct an inquiry parallel with the trial of the court.
- D. Incorrect. During the departmental proceedings, the appellant was provided all codal opportunities but he badly failed to substantiate himself innocent.
- E. Incorrect. The Respondent No.3 awarded the punishment of dismissal to the appellant is according to law/rules. The Respondent Department conducted departmental proceedings purely on merit.

- F. Incorrect. The appellant neither preferred an appeal to Respondent No.2 nor he was directed to send the same through registered post.
- G. Incorrect. The punishment awarded to the appellant by Respondent No.3 was on 21.01.2015 after conducting departmental proceedings and recommendations of I.O. While the Honourable Peshawar High Court Bannu set aside the conviction of the appellant on 02.04.2019. The impugned order issued by Respondent No.3 is consonance with law/rules.
- H. Incorrect. The impugned order issued by the respondent department is according to law/rules.
- I. Incorrect. The Respondent No.3 issued the impugned order is according to law/rules. the guilty of the accused is also proved by the court of facts/trial court awarded him punishment of rigorous imprisonment of life with compensation amount of two lacs. It is pertinent to mention here that Respondent No. III did not violate any kind of basic principles of administration of justice granted by the fundamental law.
- J. Incorrect. The impugned order is purely on merit and in accordance with law/rules.
- K. The Respondents department may kindly be allowed to advance any other grounds & material as evidence in the time of arguments.

PRAYER:

In view of the above replies, it is most humbly prayed that the appeal of the appellant may kindly be dismissed with cost please.

2-4
District Police Officer,
Bannu
(Respondent No.3)

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

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar
(Respondent No.1)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**PESHAWAR****Appeal No.989/2019**

Saddiq Anwar (Ex-Constable belt No.12) s/o Gula Nazif Khan r/o Yark Khel, Beri Khel,
Tehsil & District Bannu. Appellant

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar,
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu

..... Respondents

AFFIDAVIT

I, **Muhammad Farooq Khan**, Inspector Legal representative for Respondent Nos. 1,2 & 3 do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by me are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.



DEPONENT

11101-1483421-1

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**PESHAWAR****Appeal No.989/2019**

Saddiq Anwar (Ex-Constable belt No.12) s/o Gula Nazif Khan r/o Yark Khel, Beri Khel,
Tehsil & District Bannu. Appellant

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar,
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu

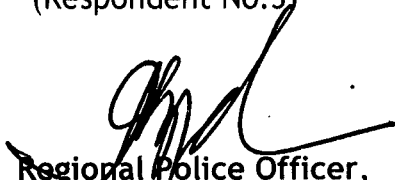
..... Respondents

AUTHORITY LETTER.

Mr. Muhammad Farooq Khan, Inspector Legal is hereby authorized to appear before The Service Tribunal Khyber Pakhtunkhwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the present appeal.


District Police Officer,
Bannu
(Respondent No.3)


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


Provincial Police Officer,
Pakhtunkhwa Peshawar
(Respondent No.1)

CHARGE SHEET:

A

6

3

I, ABDUR RASHID District Police Officer, Bannu, as competent authority, hereby charge you Constable Sadiq Anwar No.12 of Police Line as follows:-

- That you involved in case FIR No.554 dated 08-09-2014 u/s 302/324/34 PPC PS Mandan District Bannu.
- That you have ceased to become a good police officer.

2. By reason of the above you appear to be guilty of misconduct under the police Rules (Amended vide NWFP gazettee, 27 the January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the enquiry officer.

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

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

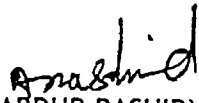
Abdur Rashid
(ABDUR RASHID)
District Police Officer,
Bannu.

STATEMENT OF ALLEGATIONS:

I, Abdur Rashid, District Police Officer, Bannu as competent authority, am of the opinion that Constable Sadiq Anwar No.12 of Police Line has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of police rules (amended vide NWFP gazette 27th January 1976).

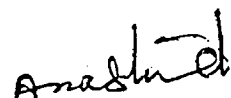
SUMMARY OF ALLEGATIONS:

- 1. That he involved in case FIR No.554 dated 08-09-2014 u/s 302/324/34 PPC PS Mandan District Bannu.
- That he has ceased to become a good police officer.
- 2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations DSP/ HQrs: Bannu in appointed as Enquiry Officer.
3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (17 days) after the receipt of this order.
4. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(ABDUR RASHID)
District Police Officer,
Bannu.

No. 462-64/SRC dt 11-9-2014
Copies to the:-

1. SRC.
2. Constable Sadiq Anwar No.12 of Police Line.


(ABDUR RASHID)
District Police Officer,
Bannu.

From :- The Dy: Superintendent of Police,
HQrs;Bannu.

To:- The District Police Officer,
Bannu.

No. 735/HQ / Dated Bannu the, 5 / 11 / 2014.

Subject :- FINDING OF DEPARTMENTAL ENQUIRY AGAINST CONSTABLE
SADIQ ANWAR NO.12.

Memo :-

Please refer to your 462-64/ SRC dated 11.09.014 on the
above subject.

Constable Sadiq Anwar No.12 was charge sheeted by the competent
authority of the following misconduct.

SUMMARY OF ALLEGATIONS.

That he involved in case FIR No.554 dated 08.09.014 u/s
302/324/34 PPC Police Station Mandan.

That he has ceased to become a good Police Officer.

The enquiry was marked to the undersigned to probe into the allegations. The
copy of the charge sheet was served upon him through SRC. He replied to the charge
sheet. The undersigned summoned Moharrer of Police Lines, Bannu, SHO Mandan Sadd
Ullah Khan, I.O. ASI Mir Daraz Khan, Constable Shah Zar Ali Khan No. 538 and recorded their
statements. Detail is as under:-

STATEMENT OF SHO MANDAN SADD ULLAH KHAN.

He stated in his statement that on 08.09.014 he received information to be
went to DHQ Hospital Bannu, on reaching where the dead body of Sabir Zaman, injured
Nawab Khan s/o Khan Mast Khan, Mst: Bas Noorzada w/o Qad Ayaz were lying present. The
complainant reported to the effect that he along with his brother Sabir Zaman and relatives
Nawab Khan, Maqsood Ashiq s/o Nawab Khan were present near the Mosque situated Bozi
Kalla Beri Khel that accused Sadiq Anwar, Sirhad Ali ss/o Gul Nazeef, Israr s/o Bashir armed
with Klashin Koves, Gul Nazeef s/o Sher Nawaz armed with 30 bore pistol came there and
started firing upon them. Resultantly Sabir Zaman, Nawab Khan and one Mst: Bas Noorzada
she was came out from the house on hearing the firing were injured while he(complainant)
and Maqsood Ashiq were saved luckily and could not to do so due to empty handed. All the
accused decamped after the commission of offence. The injured Sabir Zaman succumbed to
his injuries and expired on the spot. Motive for the offence was disclosed old blood feud
enmity. The occurrence was witnessed by one Maqsood Ashiq. He charged all the above
accused for the offence. A proper case vides FIR No.554 dated 08.09.014 u/s 302/324/34
was registered against the above accused at PS Mandan.


He further stated that he passed the above information to Control Room
regarding the accused Constables Sadiq Anwar & Israr. Accused Sadiq Anwar was arrested
on the day of occurrence. The case was investigated by the ASI Mir Daraz BBI staff PS
Mandan. After completion of investigation, complete challan has been sent to Court for
trial on 22.9.014.

He informed the accused official Sadiq Anwar on Mobile Phone regarding the funeral prayer; he came back and relinquished the duty to him at 1000 hours. After performing the funeral prayer, he assumed the duty from the accused official at 1600 hours. He was not known that after the duty whether the accused official had gone. After performing this duty, at 1800 hours he relinquished the duty i.e. after two hours to the said accused official. In the same hours he was not known that whether the said official had gone. Later he informed that the said accused has been charged in murder case. SHO Saddar Fida Ullah was also come there. At night Line officer along with Police party come there, the line Office left LHC Faqir Nawaz and Constable Anwar Khan on Grid Station Guard while accused Official Sadiq Anwar brought to Police Lines, Bannu.

CONCLUSION :-

After conducting the enquiry and perusal the record of Police station Mandan, statements of SHO Mandan Sadd Ullah as well as ASI Mir Daraz BBI staff PS Mandan, the undersigned reached to the conclusion that the said accused Constable charged in the above case has been arrested and complete challan has been submitted to Court for trial on 22.09.2014. If approved, the enquiry papers may be kept till the decision of the case.

Submitted please.


(SYED INAYAT ALI SHAH)
DSP HQrs; BANNU.

No. 944/HQ

Dated. 22 / 11 / 2014

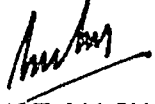
RE-FINDINGS.

DEPARTMENTAL ENQUIRY AGAINST CONSTABLE SADIQ ANWAR NO.12.

In continuation to this office No. 735-HQrs: dated 05.11.014 on the above subject.

It is submitted that the undersigned re-summoned the Investigation officer ASI Mir Daraz Police Station Mandan. He has stated in his statement/cross questions that according to the report of complainant and after conducting the investigation of case vide FIR No.554 dated 08.09.014 u/s 302/324/34 PPC PS Mandan, the accused official Sadiq Anwar No.12 is guilty.

Submitted please.


(SYED INAYAT ALI SHAH)
DSP HQrs BANNU.

(11) E

FINAL SHOW CAUSE NOTICE:

1. I, ABDUR RASHID District Police officer, Bannu, as competent authority, under Police Rules (amended vide NWFP gazette 27th January 1976) hereby serve upon you Constable Sadiq Anwar No.12 this final show cause notice.

2. That consequent upon the completion of enquiry conducted against you, by DSP/HQrs (Enquiry Officer) and you were given you opportunity of hearing. After going through the findings and recommendations of Enquiry Officer, the material on record and other connected papers; I am satisfied that you have committed gross misconduct by:-

That you have really committed criminal offence and as a result of which a proper case vide FIR No. 554 dated 08-09-2014 u/s 302/324/34 PPC PS Mandan.

3. As a result, I, as competent authority, have tentatively decided to impose upon you one or more punishments including dismissal as specified in the rules.

4. You are, therefore, required to show cause as to why the aforesaid penalty should not be impose upon you.

5. If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in and in that case an exparte action shall be taken against you.

Abdur Rashid
(ABDUR RASHID) PSP
District Police Officer,
Bannu.

No - 462-64/EC

Dt. 26-12-2014

action

1/6 "E" 12
ORDER:

This order of the undersigned will dispose of the departmental proceedings, initiated against accused constable Sadiq Anwar No. 12, under general proceeding of police rule 1975 (Amended vide Khyber Pakhtunkhwa gazette Notification, 27th January, 1976) who while posted to police lines Bannu, had committed the following omissions/Commissions:-

1. That he had committed offence of murder / attempted murder and as a result of which, a proper case vide FIR No. 554 dated 08-09-2014 u/s 302/324/34 PPC was registered at PS Mandan against him. He was also placed under suspension vide this office OB No. 831 dated 11-09-2014.

A proper charge sheet based upon summary of allegations was served upon him, on dated 18-09-2014, through the local police of PS Township and the enquiry papers were entrusted to Mr. Inayat Ali Amjid, DSP/HQrs, Bannu. Who, after receiving the reply of accused, properly started the departmental proceedings by recording the statements of the following relevant persons:-

- Mr. Saad Ullah, SHO PS Mandan.
- Mr. Mir Daraz Khan, ASI/I.O PS Mandan, Bannu.
- Mr. Naimat Ullah, Moharar Police lines, Bannu.
- Mr. Shah Zar Ali constable No. 538, Bannu.

After recording the statements of the above persons, DSP/HQrs submitted his findings, wherein, he suggested that the enquiry papers may be kept pending till the decision of the court in the subject case. The enquiry file was entrusted to Mr. Mir Faraz Khan, Inspector legal for getting legal opinion. Who (Inspector legal) submitted his legal opinion which is reproduced as under:

(I have gone through the finding report of DSP/HQ and report of inquiry clerk, the accused official is only charged in the murder case vide FIR No. 554 dated 08-09-2014 u/s 302,324,34 PPC PS Mandan. Inquiry Officer i.e DSP/HQ has not put up question over the I.O regarding the involvement or innocence of accused official nor shown any findings or clear view regarding the misconduct committed by the accused official. SHO PS Mandan/I.O has not declared the accused official innocence and submitted charge sheet (challan) against accused to court. In view of the above, the misconduct committed by the accused official must be properly scrutinized in the light of investigation report by E.O and thereafter findings report may be submitted to competent authority for further legal action).

2-10-F

13

Hence, the enquiry file was returned back to the E.O on dated 25-11-2014 with the directions to proceed in accordance with the opinion of Inspector legal.

On dated 22-12-2014 vide letter No. 944/HQrs, the enquiry officer resubmitted his findings, wherein, the accused was declared as guilty. As a result of which, the accused was served with Final Show cause notice. His reply was also found implausible.

Service record of the accused was perused and it was found that he was recruited on dated 15-07-2007 and remained absent for a period of 27 days from duty on 17 different occasions. He was already dismissed from service on the charge of involvement in the offence of murder/attempted murder vide FIR No. 169 dated 09-06-2010 u/s 302/324/34PPC PS Mandan. But in the light of verdict of the apex court of Supreme Court of Pakistan dated 23-09-2014, he was reinstated into service vide this office OB No. 1258 dated 05-11-2014.

Keeping in the above I, ABDUR RASHID, DISTRICT POLICE OFFICER, BANNU in exercise of the power vested in me under police rule 1975 (Amended vide Khyber Pakhtunkhwa gazette Notification, 27 the August 2014), hereby impose upon the accused a major punishment of dismissal from service from the date of occurrence i.e 08-09-2014.

Abdur Rashid
(ABDUR RASHID)PSP
District Police Officer,
Bannu.

OB No. 52
Dated: 19-01- /2015

No. 933-35 dated Bannu, the 21-01 /2015

Copies for info to :

- 1. DSP/HQrs
- 2. Pay Officer.
- 3. The SRC, DPO Office, Bannu.
- ✓ The OASI, DPO Office, Bannu.

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2019

1. Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gul Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, District Bannu.

RESPONDENTS

**REJOINDER ON BEHALF OF
APPELLANT IN THE ABOVE
CAPTIONED APPEAL**

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS

- 1-7. All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped by their own conduct to raise any objection.

ON FACTS

1. In response to Para-1 it is submitted that the appellant was inducted in the Police Department on 15-07-2007. His

performance was upto the mark and no complaint whatsoever was received against him to his superiors. But unfortunately, he was falsely and maliciously roped in a criminal case for the offence of murder vide FIR No. 554 dated 08-09-2014 u/s 302/324PPC PS Mandan, District Bannu, on account of his previous blood feud. Consequently, he was abruptly arrested during performance of duty. He endured the agonies of trial and was convicted and sentenced to life imprisonment besides other punishment vide judgment dated 28-09-2017 passed by the Hon'ble Additional Sessions Judge-III, Bannu. He felt aggrieved by the said order, invoked the jurisdiction of Hon'ble Peshawar High Court, Bannu Bench by way of filing criminal appeal No. 213-B/2017 praying therein that the instant appeal may please be allowed and the impugned judgment may kindly be set aside and the appellant may very graciously be acquitted of the charges levelled against him so as to meet the ends of justice. The above appeal was allowed and his conviction and sentence awarded by the learned trial court was set aside while, the appellant was also ordered to be acquitted of the charges and released forthwith.

2. That the respondents have candidly admitted Para-2 and as such no rejoinder is offered.

3. Para-3 is incorrect as the respondents were legally bound to have scanned the relevant record and confirmed the real position in respect of appellant. But they took no pain to do so. Hence, Para is deemed as admitted by them.
4. Para-4 is incorrect and that of appeal is correct.
5. Para-5 is incorrect, misconceived and hence, denied as it was incumbent upon the respondents to have scrutinized the relevant record and verified the actual position regarding the issue. But they did not bother for the same and bald response to a para that "it pertains to record" would never be the adequate rebuttal of the said Para rather explicit admission.
6. Same reply as offered in Para-3 and 5 above.
7. Incorrect and detail reply furnished in Para-3 and 5 above.
8. Same reply as offered in Para-3 and 5 above.
9. Para-9 is incorrect and that of appeal is correct.
10. Incorrect and such reply is termed as fallacious, malicious and misconceived. Besides, the same is also not based on sound reasons and correct appreciation of law.

ON GROUNDS

- A. Para-A is incorrect and that of appeal is correct.
- B. Para-B is also incorrect and that of appeal is correct.
- C. Para-C is incorrect and that of appeal is correct.
- D. Para-D is incorrect and that of appeal is correct.
- E. Para-E is incorrect, misconceived and hence, denied as the so-called inquiry was conducted in absence of the appellant and fair trial and due process of law both were denied to him. Hence, such findings are perverse and are not sustainable in the eye of law. Resultantly, the impugned order based on such findings is also against the spirit of administration of justice.
- F. Para-F is incorrect as the appellant duly sent departmental appeal to respondent No. 2 through registered post and both these documents were appended with the service appeal as annex-F and G respectively and further detail whereof was also given in its Para-9. But, these were deliberately overlooked so as to divert the attention of this Hon'ble Tribunal from the real and core issue.
- G. Incorrect as respondents were legally bound to submit reply as per the Para but they offered evasive and

irrelevant response thereof. Hence, Para is deemed as admitted.

- H. Incorrect as the impugned order was passed in utter disregard of law, Rules and Policy. Thus, the same is not warranted under the law.
- I. Para-I is incorrect and that of appeal is correct.
- J. Same reply as offered in Para-H above.
- K. Arguments are restricted to the positions taken in the pleadings.

It is, therefore, respectfully prayed that while considering the above rejoinder, the appeal may kindly be accepted with special costs.

Sudig
Appellant

Through

Rizwanullah

Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar.

Dated: 26-02-2020

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2019

1. Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gul Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu.

APPELLANT

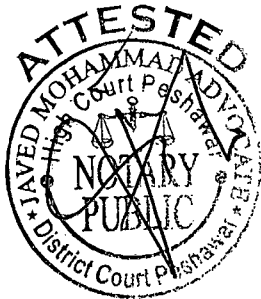
VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, District Bannu.

RESPONDENTS

AFFIDAVIT

I, Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gul Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu do hereby solemnly affirm and declare that the contents of the accompanied rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



Saddiq
DEPONENT
KHAN

27 FEB 2020

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2019

1. Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gul Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
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3. The District Police Officer, District Bannu.

RESPONDENTS

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RESPECTFULLY SHEWETH,

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5. Para-5 is incorrect, misconceived and hence, denied as it was incumbent upon the respondents to have scrutinized the relevant record and verified the actual position regarding the issue. But they did not bother for the same and bald response to a para that "it pertains to record" would never be the adequate rebuttal of the said Para rather explicit admission.
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ON GROUNDS

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- B. Para-B is also incorrect and that of appeal is correct.
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- D. Para-D is incorrect and that of appeal is correct.
- E. Para-E is incorrect, misconceived and hence, denied as the so-called inquiry was conducted in absence of the appellant and fair trial and due process of law both were denied to him. Hence, such findings are perverse and are not sustainable in the eye of law. Resultantly, the impugned order based on such findings is also against the spirit of administration of justice.
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- I. Para-I is incorrect and that of appeal is correct.
- J. Same reply as offered in Para-H above.
- K. Arguments are restricted to the positions taken in the pleadings.

It is, therefore, respectfully prayed that while considering the above rejoinder, the appeal may kindly be accepted with special costs.

E. A. Iqbal
Appellant

Through

Rizwanullah

Dated: 26-02-2020

Rizwanullah
M.A. LL.B
Advocate High Court, Peshawar.

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2019

1. Saddiq Anwar (Ex-Constable Belt No. 12) s/o Gul Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu.

APPELLANT

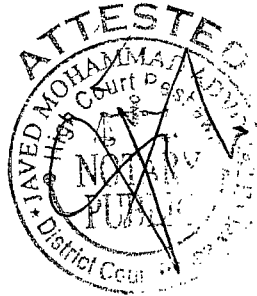
VERSUS

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2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, District Bannu.


RESPONDENTS

AFFIDAVIT

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Saddiq
DEPONENT
KHAN

قیمت 50 روپے	68371			
ایڈوکیٹ: عبدالحمید ایڈووکیٹ کورٹ آف پاکستان		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر BC-10-7605		رابطہ نمبر: 0343-9025029		

بعدالت جناب: خیبر پختونخواہ سروس ٹریڈیوٹ لیاور

مخانب: ایڈووکیٹ	دعویٰ: سروس ایمل
مذاقی الور بنام پروٹیکشن لیس (IGP)	علت نمبر: 989/2019
خیبر پختونخواہ	مورخہ
(Ex. Constable Bell No 12)	جرم:
	تھانہ

بابت تحریر آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ کمرہ آن مقام پشاور کیلئے عبدالحمید ایڈووکیٹ کورٹ آف پاکستان مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 14-12-2020

العبد الواد شہد العبد

مقام پشاور کے لیے منظور ہے۔

Attested & accepted

Advocate Supreme Court of Pakistan

CHC No 17301-1537861-5

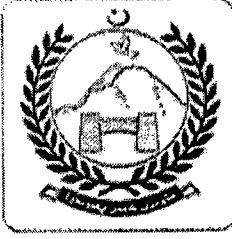
BC-10-7605

Mobi 0343-9025029

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

03339747679

Seal
KHAJAN



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 363 /ST

Dated: 11/02 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Bannu.

Subject: JUDGMENT IN APPEAL NO. 989/2019 MR. SADDIQ ANWAR.

I am directed to forward herewith a certified copy of Judgement dated 08.10.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

↓
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

Have the Honble Chairman KPK Service Tribunal Peshawar

بعدالت

Service Appeal

(Appellant) بنام

Saddiq Anwar

موزخہ
مقدمہ
دعوی
جزم

vs
Provincial Police Officer etc

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
Peshawar کے مقام

آن مقام پر مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ملے گا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Saddiq Anwar
(Appellant)

المرقوم 29 جولاہی

Attested & accepted
In the presence of
Peshawar only. مقام