

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7269/2021

Date of institution 16.07.2021

Mubarak Ali, Ex-Constable No. 5951, Capital City Police, Peshawar.

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.

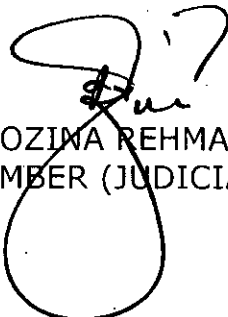
O R D E R
30.06.2022

Appellant namely Mubarak Ali in person present. Mr. Ahmad Jan, S.I (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant stated at the bar that as he has been reinstated in service vide order dated 02.06.2022 passed by Additional Inspector General of Police, HQrs: Khyber Pakhtunkhwa, Peshawar, therefore, he wants to withdraw the instant service appeal. In this respect, he submitted an application, which is placed on file.

In view of the above, the appeal in hand stands dismissed as withdrawn. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.06.2022


(ROZINA REHMAN)
MEMBER (JUDICIAL)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Before KP Service Tribunal, Peshawar

Service Appeal 7269/2021

Mubarik A.D. vs Police Deptt

Application for withdrawal

Resubmits:-

It is submitted that the above mentioned service Appeal is pending before this Hon'ble Tribunal which is fixed today for arguments. That the appellant filed service Appeal against her dismissal order but during pendency of Appeal the appellant is reinstated by I/C, Peshawar. Now the Service Appeal of appellant become infructuous. It is therefore requested that the appeal of appellant may withdraw.

Appellant

Mubarik A.D.

30-6-2022



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-FC Mubarak Ali No. 5951. The petitioner was dismissed from service by Superintendent of Police, HQrs: Peshawar vide OB No. 3540, dated 29.12.2020 on the allegations that he while posted at City Patrol Unit Peshawar was involved in criminal case vide FIR No. 1591, dated 23.11.2020 u/s 15/17-AA Police Station Banamari Peshawar. His appeal was rejected by Capital City Police Officer, Peshawar vide order Endst: No. 290-94/PA, dated 02.02.2021.

Meeting of Appellate Board was held on 19.05.2022 wherein petitioner was heard in person. Petitioner contended that he was acquitted by the court of Judicial Magistrate-I, Peshawar vide judgment dated 27.07.2021.

Perusal of judgment revealed that the pistol in question were purchased from an authorized dealer vide invoice No. 1960 dated 23.11.2020, Zafar & Sons Armory dealer. That the co-accused Abdul Wahab has also produced the said invoice to the local police which shows that the accused facing trial is dealing business in the armory in the name of Pak Star Arms Dealer. Moreover, as per judgment the section of law leveled against the accusing facing trial is not applicable.

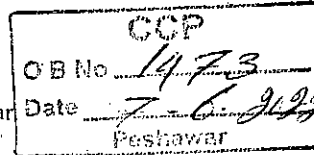
In view of the judgment passed by the Judicial Magistrate-I, Peshawar, the Board decided that the petitioner is hereby re-instated in service and the period of absence as well as intervening period to be treated as leave of kind due, if any on his credit.

Sd/-
SABIR AHMED, PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

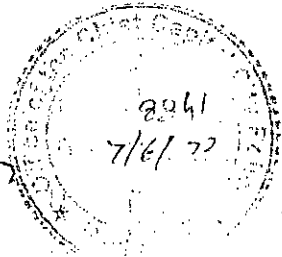
No. S/19.33-39/22, dated Peshawar, the 2/16 /2022.

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar. One Service Roll, one Fauji Missal and one enquiry file of the above named FC received vide your office Memo: No. 2970/CRC, dated 03.11.2021 is returned herewith for your office record.
2. Superintendent of Police, HQrs. Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.



(Signature)
(DR. ZAID ULLAH) PSP
AIC/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.



- ✓ CPO
- ✓ SPM/Coord
- ✓ SSP/O
- ✓ SSP/Inv
- ✓ SPC/Off
- ✓ SPC/City
- ✓ SP/Inv
- ✓ SP/Sec
- ✓ SP/Asst
- ✓ SP/OS
- ✓ SPC
- ✓ SPC/II

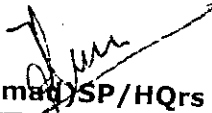
CO
P/5951
9-6-22

OFFICE OF THE CAPITAL CITY POLICE OFFICER, PESHAWAR

No. 57074 /CRC, the Peshawar dated 09/6 /2022.

Copy of above is sent for information and necessary action to the:-

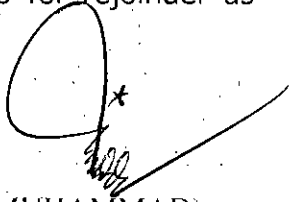
1. DSP/HQrs Peshawar
2. Pay Officer
- ~~3. OASI~~
4. FMC & I/C Computer Cell


(Zafar Ahmad) SP/HQrs
FOR CAPITAL CITY POLICE OFFICER,
PESHAWAR

25.04.2022

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl: AG alongwith Mr. M. Raziq, HC for respondents present.


Written reply/comments on behalf of respondents submitted
which is placed on file. A copy of the same is handed over to the
learned counsel for the appellant. To come up for rejoinder as
well as arguments on 26.05.2022 before D.B.



(MIAN MUHAMMAD)
MEMBER(E)

26th May, 2022

Counsel for the appellant present. Mr. Noor Zaman,
District Attorney for respondents present.

Learned counsel for the appellant seeks time to further
prepare the brief. Adjourned. To come up for arguments on
30.06.2022 before D:B.


(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman

16.12.2021 Appellant in person present. Mr. Kabirullah Khattak, Addl: AG for official respondents present.

Written reply/comments not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 07.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

07.02.2022 Due to retirement of the Hon'able Chairman, the case is adjourned to 08.04.2022 before S.B for the same


Reader

08.04.2022 Learned counsel for the appellant present Mr. Kabirullah Khattak, Addl: AG alongwith Mr Muhammad Raziq, HC for respondents present.

Written reply/comments not submitted. Representative of the respondents seeks time to submit the same on the next date. Adjourned. To come up for written reply/comments on 25.04.2022 before S.B


(MIAN MUHAMMAD)
MEMBER(E)

Mubarak Ali 7269/2021

01.10.2021

Learned counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant while opening his arguments contended that the appellant was nominated in FIR No. 1591 dated 23.11.2020 PS Banamari District Peshawar. The appellant was released on bail in the said criminal case by the competent court of law vide order dated 25.11.2020. However, the department passed the impugned order on 29.12.2020 awarding him the major penalty of dismissal from service. The appellant preferred departmental appeal which was also rejected/filed on 02.02.2021. The appellant also submitted Revision Petition on 08.02.2021 but the same was also rejected on 30.06.2021, hence, the instant service appeal filed in the Service Tribunal on 16.07.2021. It was further contended that the appellant, in terms of CSR-194, was required to have been placed under suspension till culmination of proceedings in criminal case against him. Moreover, the appellant has been condemned unheard as no charge sheet/statement of allegations or show cause notice issued. He has never been associated in the enquiry proceedings, if so conducted by the respondents. The impugned orders are therefore liable to be set aside and the appellant reinstated in service with all back and consequential benefits.

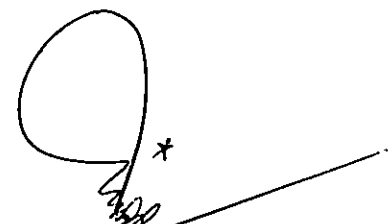
Points raised need consideration. The appeal is provisionally admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days.

Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively.

If the written reply/comments are not submitted within the stipulated time or extension of time is not sought, the office shall submit the file with a report of non-compliance. File to come up for arguments on 16.12.2022 before the D.B.

Appellant Deposited
Security & Process Fee

01-10-21





(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7269 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/08/2021	<p>The appeal of Mr. Mubarak Ali resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/10/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2021

Mubarak Ali

V/S

Police Deptt:

INDEX

S. No.	Documents	Annexure	P. No.
01.	Memo of appeal	-----	01-04
02.	Affidavit	-----	05
03.	Copy of FIR and bail order dated 25.11.2020	A&B	06-07
04.	Copy of order dated 29.12.2020	C	08
05.	Copies of rejection order dated 02.02.2021, revision and rejection of revision order dated 30.06.2021	D,E&F	09-11
06.	Vakalat Nama	-----	12

APPELLANT

THROUGH:



(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

Room No. FR 8, 4th Flour,
Bilour plaza, Peshawar cantt:
Cell# 0333-9390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 7269 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7340

Dated 16/7/2021

Mubarak Ali, Ex-Constable, 5951,
Capital City Police, Peshawar.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Superintendent of Police, Headquarters, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 29.12.2020, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE, AGAINST THE ORDER DATED 02.02.2021, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS AND AGAINST THE ORDER DATED 30.06.2021, WHEREBY THE REVISION OF THE APPELLANT HAS ALSO BEEN REJECTED FOR NO GOOD GROUNDS.

Filed to day
16/7/21
Registrar

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 29.12.2020, 02.02.2021 AND 30.06.2021 MAY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY FURTHER BE DIRECTED TO REINSTATE THE APPELLANT INTO HIS SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to-day
and filed.

Registrar
11/8/21

RESPECTFULLY SHEWTH:

FACTS:

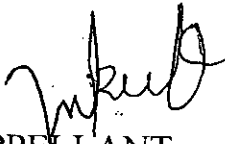
1. That the appellant joined the department in the year 2009 and since his appointment, the appellant has performed his duty with great devotion and honesty, whatsoever assigned to him and no complaint has been filed against him regarding his performance.
2. That the appellant was falsely implicated in criminal case vide FIR No.1591, dated 23.11.2020 u/s 15/17-AA PS Banamari, Peshawar and was arrested on spot. The appellant applied for bail which was granted by the learned Judicial Magistrate-IV Peshawar on 25.11.2020. **(Copies of FIR and bail order dated 25.11.2020 are attached as Annexure-A&B)**
3. That after granting bail by the competent court of law, the appellant joined his duty and regularly performing his duty when respondent No.3 passed an order dated 29.12.2020, whereby the appellant was dismissed from service without communicating charge sheet along with statements of allegations to the appellant, without conducting inquiry against the appellant and without issuing show cause notice to the appellant. **(Copy of order dated 29.12.2020 is attached as Annexure- C)**
4. That against the dismissal order dated 29.12.2020, the appellant filed departmental appeal, which was rejected for no good ground on 02.02.2021, however, the appellant did not keep the copy of departmental appeal, which may be requisite from the department. The appellant then filed revision under 11-A of Police Rules-1975 (amended in 2014) on 08.02.2021, which was also rejected on 30.06.2021 for no good grounds. **(Copies of rejection order dated 02.02.2021, revision and rejection of revision order dated 30.06.2021 are attached as Annexure-D,E&F)**
5. That the appellant has no other remedy except to file the instant service appeal in this Honourable Tribunal on the following grounds amongst others.

GROUND:

- A. That the impugned orders dated 29.12.2020, 02.02.2021, and 30.06.2021 are against the law, facts, rules, norms of justice and material on record, therefore, not tenable and liable to be set aside.

- B. That the appellant was never associated with the inquiry proceeding, if so conducted against the appellant, which is against the law, rules and inquiry proceeding and as such the impugned orders are liable to set aside on this ground alone.
- C. That no opportunity of defence was provided to the appellant during inquiry proceeding, if so conducted against the appellant, which is violation of Article-10A of the Constitution of Pakistan.
- D. That charge sheet and statement of allegations were not communicated to the appellant, which is violation of law and rules.
- E. That show cause was not served to the appellant before passing the impugned order of dismissal from service, which is against the norms of justice and fair play.
- F. That even the inquiry report, if so conducted against the appellant, was not provided to the appellant, which is not permissible under the law.
- G. That the appellant was falsely implicated in criminal case and as per Civil Service Regulations, 194-A, the appellant should be suspended till the conclusion of criminal case pending against him, but the appellant was dismissed from service without waiting to conclusion of criminal case pending against him, which is violation of CSR, 194-A.
- H. That as per superior court judgment that mere allegation of commission of an offence and registration of FIR against a person would not ipso facto made him guilty rather he would be presumed to be innocent until convicted by a competent court, but the appellant was dismissed from service merely on the basis of FIR in which he was also acquitted.
- I. That the appellant has been condemned unheard and has not been treated according to law and rules.
- J. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

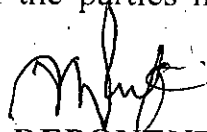

APPELLANT
Mubarak Ali

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

CERTIFICATE:

It is certified that no other similar service appeal between the parties has been filed earlier.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2021

Mubarak Ali

V/S

Police Deptt:

.....

AFFIDAVIT

I, Mubarak Ali Ex-Constable, 5951, Capital City Police, Peshawar, (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this august Court.



Mubarak Ali

DEPONENT

Mubarak Ali
(APPELLANT)

6

قلم نمبر ۲۳-۱۵ (۱)

ابتدائی اطلاعی رپورٹ

MC - 1

P - 96

S - 1713

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع کور

کھانہ ماری

تاریخ ۲۳ مئی وقت ۱۶:۱۰

1591

۲۳ مئی وقت ۱۶:۴۰ بجے جاگدگی سرچ ۱۷:۰۰

سعود خان ASI انچارج PAF

0335 9183186

مدہ مستغیث

برآمدگی (۵) ضرب لیٹول 15/17AA

فہم حال اگر کچھ لیا گیا ہو۔

نزد اور جھڈ پل کوھاٹ روڈ

سے اور سمت

وادر صاحبان الازہرین سنگھ محمد صہرا خیل چارسدہ ٹاؤن مبارک علی

ق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو

بہر سردگی تحریری حراسہ پر حصرہ درجہ ڈھڑا جانا ہے

آد وقت

بہ سبیل حعام

ابتدائی اطلاع نیچے درج کرو۔ جو وقت حصرہ کے ایک تحریری حراسہ منجانب

مستغیث خانہ نمبر ۲ سے بدست نیشنل حبیب 1289 حوصلہ میوکر بہ سفون زمین کے محدث مناب آخیر ایچ آر ۲ کھانہ کھانہ ماری میں وہ کنیڈا ان ایس ۱48 ی حبیب 1289 بندہ گنیت عقام جائے وقوعہ ۷۶ پر جو در کھانہ ایک مشتبہ شخص حصرہ میوکر در یافت پر انہا نام مبارک علی وادر صاحبان الازہرین سنگھ محمد صہرا خیل چارسدہ ٹاؤن تھلایا حصرہ کر رہے یا تو میں نیک رنگ کا سٹارٹ بیگ تھا سٹارٹ بیگ چھپ کر رہے پر (۴) ضرب لیٹول 9mm غرات ① A8768 ② A8762 ③ ZSA-19482 ④ ZSA 8763 A 8763 ⑤ ضرب لیٹول 30 بور نمبری 132 جبکہ ایک ضرب لیٹول 30 بور لیٹول رائفل نمبری ZSA 13874 ⑥ ضرب لیٹول برآورد میوکر جسے بابت کسی قسم کا لائسنس ہائے یا اجازت نامہ وغیرہ سینڈ نہ کر سکا بروئے فرد متفقہ پولیس میں ایک حصرہ بالا کو حصرہ ۷ میں حسب ضابطہ گ ومار کے حراسہ بدست نیشنل حبیب 1289 ارسال کھانہ کے پرچم دیا جا کر الزسٹیشن سٹاف کو ماورائیس لیا جا رہے دستاورد انڈیئر سعود خان Asi حصرہ ۲۳ مئی کھانہ ماری کاروائی کھانہ آئندہ تحریری حراسہ صرف بہ صرف درجہ ۷۶ میوکر پرچم حصرہ ۷ چاک کیا جا کر لیٹول پرچم حصرہ اتھارٹی لائسنس حوالہ الازہرین خان Asi الزسٹیشن لائسنس کیا جانا ہے پرچم زائرس ہے۔

ATTESTED

عاشور

MASI PS BM 12.11.2020

21/12
 3584
 2/18 2/7
 25/12

2
 3584
 2/18 2/7

30/12
 3584
 2/18 2/7

30/12
 3584
 2/18 2/7

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۳ مجموعہ ضابطہ فوجداری

تھانہ	بھانہ ماڑی	ضلع پشاور
علت	1591	تاریخ 23.11.20 وقت 16:10 بجے
1	تاریخ وقت رپورٹ -	23.11.20 وقت 16:40 بجے چاکیدگی پرچہ وقت 17:00 بجے
2	نام سکونت اطلاع دہندہ مستغیث -	مدعو خان ASI انچارج PAF
3	مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو	15/17AA برآمدگی 6 ضرب پستول
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	نزد اور بھید پل کو ہاٹ روڈ
5	نام و سکونت ملزم	مبارک علی ولد مصباح الدین سکنہ محلہ میراخیل چارسدہ ٹاؤن
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	برسیدگی تحریری مراسلہ پر مقدمہ درج رجسٹر کیا جاتا ہے۔
7	تھانہ سے رواگئی کی تاریخ و وقت -	بسبب عام

ابتدائی اطلاع نیچے درج کرو:- بوقت صدر بجے ایک تحریری مراسلہ منجانب مستغیث خانہ

نمبر 2 سے بدست کنسٹیبل حبیب 1289 موصول ہو کر بہ مضمون ذیل ہے۔ بخدمت جناب آفیسر انچارج تھانہ بھانہ ماڑی میں معہ کنسٹیبلان الیاس 8145، حبیب 1289 بسلسلہ گشت بمقام جائے وقوعہ بالا پر موجود تھا کہ ایک مشتبہ شخص ملائی ہو کر دریافت پر اپنا نام مبارک علی ولد مصباح الدین سکنہ محلہ میراخیل چارسدہ ٹاؤن بتلایا مذکورہ کے ہاتھ میں نیلے رنگ کا شاپنگ بیگ تھا شاپنگ بیگ چیک کرنے پر 4 ضرب پستول 9MM، نمبرات (1) - A8768، (2) - A8762، (3) - ZSA-19482، (4) - A8763 ایک ضرب پستول 30 بور نمبر 132 جبکہ ایک ضرب پستول 30 بور بشکل رائفل نمبری ZSA 13874 کل چھ ضرب پستول برآمد ہو کر جسکے بابت کسی قسم کا لائسنس ہائے یا اجازت نامہ وغیرہ پیش نہ کر سکا بروئے فرد قبضہ پولیس میں کر کے ملزم بالا کو مرتکب جرم بالا میں حسب ضابطہ گرفتار کر کے مراسلہ بدست کنسٹیبل حبیب 1289 ارسال تھانہ ہے پرچہ دیا جا کر انوسٹی گیشن سٹاف کو مامو تفتیش کیا جاوے دستخط انگریزی مسعود خان ASI مورخہ 23.11.20 تھانہ بھانہ ماڑی کارروائی تھانہ آمدہ تحریری مراسلہ حرف بہ حرف درج بالا ہو کر پرچہ بجرم بالا چاک کیا جا کر نقول پرچہ حات بغرض تفتیش حوالہ انور زیب خان ASI انوسٹی گیشن سٹاف کیا جاتا ہے پرچہ گزارش ہے۔

Alleshted

(A) (B)
B (7)

IN THE COURT OF NOOR UL HAQ,
JUDICIAL MAGISTRATE-IV/MOD,
PESHAWAR.

FIR No. 1591 dated 23/11/2020 U/S 15/17AA OF Police
Station Bana Marhi, Peshawar

Order.
25/11/2020

Case file requisitioned and received being MOD. Be entered.

APP Arbab Ahtisham for the State present. Accused/petitioner present through counsel. Record is available before the court.

Accused/petitioner **Mubarak Ali s/o Misbah Ul Din** through instant application seeking their post arrest bail in above referred FIR.

The accused/petitioner in the present case has been charged for the recovery of pistols briefly mentioned in the FIR as well as Murasala.

Arguments heard and file perused.

From the perusal of record it is evident that no independent witness has been attributed to support the version of police. The offences with which the accused/petitioner is charged does not fall within the prohibitory clause of section 497-Cr.PC. Grant of bail in cases not falling within the prohibitory clause is a rule and its refusal an exception. As no exceptional circumstances exist which may warrant refusal of bail, hence, accused/petitioner is entitled to be enlarged on bail. Reliance in this respect be placed on PLD 2017 SC 733.

In view of the above, present application is accepted. Accused/petitioner be released from custody subject to furnishing bail bonds to the tune of **Rs. 01 Lac/-** with two sureties each in the like amount to the satisfaction of this court/MOD. Requisitioned record be returned to the quarters concerned while file of this court be consigned to record room after completion.

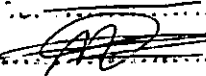
Announced.
25/11/2020

ATTESTED

CERTIFIED TO BE TRUE COPY

Copying Agency District Court
Peshawar.

Noor Ul Haq
Judicial Magistrate-IV,
Peshawar
(MOD)

No.....	30507
Dated of Appointment.....	12-7-21
Name of Word / Title.....	Secretary P.O.
Fee.....	
Signatures of Applicant & Date.....	
Dated of Preparation.....	12-07-2021
Dated of Delivery.....	12-07-2021

ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Mubarak Ali No.5051 of Capital City Police Peshawar on the allegations that he while posted at City Patrol Unit, Peshawar involved in criminal case vide FIR No.1591 dated 23.11.2020 u/s 15/17-AA PS Bhana Mari.

In this regard, he was placed under suspension & issued charge sheet & summary of allegation. SDPO Suburb was appointed as E.O. He conducted the enquiry & submitted his report/findings that the alleged official could not present any record which can prove him innocent and found guilty. The E.O further recommended major punishment for defaulter official vide Enquiry Report No.62/E/PA dated 30.12.2020.

In the light of recommendations of E.O & other material available on record, the undersigned came to conclusion that the alleged official found guilty being involved in criminal case. He is therefore dismissed from service under Police & Disciplinary Rules-1975 with immediate effect.

**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 3540 / Dated 29/12/2020

No. 6389-95/PA/SP/dated Peshawar the 29/12/2020

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ DSP Complaint/Enquiry
- ✓ Pay Office, OASI,
- ✓ CRC & FMC along-with complete departmental file.

ATTESTED



**OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR**

Phone No. 091-9210989

Fax No. 091-9212597

DD

ORDER

This order will dispose of departmental appeal preferred by **Ex-Constable Mubarak Ali No. 5951** who was awarded the major punishment of "**Dismissal from service**" under PR-1975 by SP/HQrs Peshawar vide OB No.3540, dated 29-12-2020.

2- The allegations leveled against him were that he while at City Patrol Unit Peshawar involved in criminal case vide FIR No.1591, dated 23-11-2020 u/s 15/17-AA PS Banamari Peshawar.

3- He was placed under suspension and proceeded against departmentally by issuing him proper Charge Sheet and Summary of Allegations. SDPO Suburb conducted enquiry who in his findings held him guilty. The competent authority in light of the recommendation of the enquiry officer awarded him the above major punishment.

4- He was heard in person in O.R. The relevant record along with his explanation perused. He was given ample opportunity to defend himself but he could not produce any plausible explanation. Therefore his appeal for setting aside the punishment awarded to him by SP/HQrs Peshawar vide OB No 3540, dated 29-12-2020 is **hereby rejected/ filed.**

Abbas Ahsan

(ABBAS AHSAN) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 390-94 /PA dated Peshawar the 09-09 -2021

Copies for information and n/a to the:-

1. SP/HQRs Peshawar
2. OSI/CRC/FMC
- ✓ 3. Official concerned.

DD
ATTESTED

7166/SB

08.02.2021

10

بخدمت جناب انسپکٹر جنرل آف پولیس خیبر پختونخوا پشاور

رحم درخواست بمراد بجالی

جناب عالی!

گزارش ہیکہ سائل اپنا لائسنس دار پستول مرمت کرانے کے لئے ظفر آرمز فیکٹری کمال انڈسٹری سٹیٹ کوہاٹ روڈ پشاور لے کر گیا تھا جہاں پراس فیکٹری میں ہمارے گاؤں کے مزدور عبدالوہاب ولد نامعلوم ساکن چار سہہ بھی بطور مزدور کام کر رہا تھا۔ سائل نے عبدالوہاب سے کہا کہ میرا پستول خراب ہے اس کا مرمت کرنا ہے۔ عبدالوہاب نے بجواب کہا کہ سامنے پاکستان آرمز فیکٹری کو کچھ سامان دیکر آؤ میں آپ کا پستول ٹھیک کرتا ہوں۔ سائل عبدالوہاب سے شاپر برنگ سیاہ لے کر جس میں کچھ سامان لپٹا ہوا تھا جس کا سائل کو کوئی علم نہیں تھا۔ جیسے ہی سائل ظفر آرمز فیکٹری سے نکل کر پاکستان آرمز فیکٹری کی طرف روانہ ہوا تو راستے میں پولیس نے سائل کو چیک کیا اور سائل کے ہاتھ میں سیاہ شاپر سے 4/5 ضرب پستول برآمد کر کے سائل کے خلاف FIR درج کی۔

جناب عالی!

سائل ایک غریب گھرانے سے تعلق رکھتا ہے اور اپنے گھرانے کا واحد ذریعہ معاش ہے۔ سائل نے FIR میں بھی ذکر کیا ہے کہ مذکورہ بالا 4/5 ضرب پستول سائل کی ملکیت نہیں ہے بلکہ عبدالوہاب کی ہے اور عبدالوہاب نے بھی اس بات کو تسلیم کیا ہے۔ ملزم عبدالوہاب عدالت سے ضمانت پر ہے جبکہ سائل کو نوکری سے برخاست کیا گیا۔ اس سلسلے میں جناب CCPO صاحب کو بھی اپیل کی لیکن CCPO صاحب نے سائل کے اپیل کو خارج کیا۔ لہذا اب ذریعہ تحریری درخواست آپ صاحبان سے استدعا ہے کہ مہربانی کر کے سائل کو دوبارہ نوکری پر بحال کرنے کا حکم صادر فرما کر مشکور فرمائیں۔ سائل تاحیات دُعا گورہے گا۔
نوٹ:- (سابقہ اپیل CCPO صاحب ہمراہ درخواست لف ہیں)

عین نوازش ہوگی۔

المرقوم:- 08.02.2021

العارض

تابع دار کا نشیبل مبارک علی نمبر 595 کیپٹل سٹی پولیس پشاور۔

موبائل نمبر:- 0313-9467463

ATTESTED



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 2848 /21, dated Peshawar the 30/06/2021.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-FC Mubarak Ali No. 5951. The petitioner was dismissed from service by Supdt: of Police, HQrs: Peshawar vide OB No. 3540, dated 29.12.2020 on the allegations that he while posted at City Patrol Unit Peshawar was involved in criminal case vide FIR No. 1591, dated 23.11.2020 u/s 15/17-AA Police Station Banamari Peshawar. His appeal was rejected by Capital City Police Officer, Peshawar vide order Endst: No. 290-94/PA, dated 02.02.2021.

Meeting of Appellate Board was held on 03.06.2021 wherein petitioner was heard in person. Petitioner contended that he was gone for repairing of his pistol to Zafar arms factory Kohat Road Peshawar wherein Abdul Wahab has given him some luggage to handover it to Pakistan arms factory. He was arrested by the Police and recovered 4/5 pistols from him. He also contended that Abdul Wahab has admitted in the court that pistols belongs to him.

During hearing, petitioner failed to advance any plausible explanation in rebuttal of the charges. Therefore, the Board decided that his petition is hereby rejected.

Sd/-

KASHIF ALAM, PSP

Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.




No. S/ 2849-58 /21,

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar. One Service Roll and one enquiry file of the above named Ex-FC received vide your office Memo: No. 4771/CRC, dated 08.03.2021 is returned herewith for your office record.
2. Superintendent of Police, HQrs: Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

(IRFAN ULLAH KHAN) PSP
AIG Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

ATTESTED

تیسٹ 50 روپے	39474			
ایڈویٹ: دستخطیہ عدالت		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل / ایسوسی ایشن نمبر:				
رابطہ نمبر:				

بعدالت جناب:

منجانب: سہارن علی	دعویٰ: اپیل
	علت نمبر: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____
باعث تحریر آنکہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام گنیشا جی کے دستخطیہ عدالت میں جین ایل وکیلوں کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز ذمیل صاحب کو راضی نامہ کہہنے و تقریر ثالث و فیصلہ بر حلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از جرم کی تصدیق زیریں پر دستخط کرانے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل گمرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ مالا مال سے لے کر اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا سائنچہ پر دائر شدہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب اتوائے 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 سندر ہے

Accepted



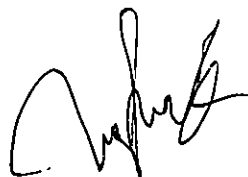


المرقوم:

کے لیے منظور ہے۔

مقام

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



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.7269/2021.

Mubarak Ali Ex-Constable CCP, Peshawar.....Appellant

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police HQrs: Peshawar.....Respondents.

Reply on behalf of Respondents No. 1, 2, &3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action to file the instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Hon'ble Tribunal.
7. That this Hon'ble tribunal has no jurisdiction to entertain the appeal.

REPLY ON FACTS:-

- 1- First part of the para No.1 pertains to record, while rest of the para is incorrect and denied on the ground that the appellant had a blemished service record.
- 2- Incorrect. In fact the appellant was issued charge sheet with statement of allegations and departmental proceedings under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) on the charge of involvement in a criminal case vide FIR No.1591 dated 23.11.2020 u/s 15/17 AA PS Banamari, Peshawar. The appellant was arrested by the police after the commission of the offence which he personally admitted in this para.
- 3- Incorrect. The appellant involved himself in a criminal case and in this regard he was issued Charge sheet with statement of allegations. SDPO Suburb was appointed as enquiry officer who after conducting enquiry concluded that the appellant failed to produce any record which can prove his innocence hence found him guilty of the charge. After observing all codal formalities, he was awarded Major punishment of dismissal from service by the competent authority. (Copy of charge sheet, statement of allegations and enquiry report, are annexure as A,B,C,).
- 4- Incorrect. The appellant filed departmental appeal which was properly processed and an ample opportunity of hearing was provided to appellant by the appellate authority but appellant failed to defend himself with plausible/justifiable grounds, hence his appeal was

rejected/failed. The appellant then filed review petition before the Competent Authority which was also filed/rejected having no substance in it.


- 5- That appeal of the appellant being devoid of merit and limitation may be dismissed on the following grounds.

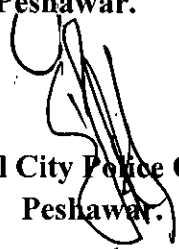
REPLY ON GROUNDS:-

- A. Incorrect. The appellant being a member of a disciplined force, committed gross misconduct by smuggling sufficient number of unlicensed pistols hence the penalty is just legal and passed in accordance with law/rules and liable to be upheld.
- B. Incorrect. The appellant was associated in the enquiry proceedings and proper opportunity of defense was provided to appellant. He failed to defend the charge leveled against him and the Enquiry Officer concluded that the charge is proved.
- C. Incorrect. The appellant was treated as per law/rules and no violation of the Constitution of Pakistan 1973 has been done by the respondent department. The penalty awarded is commensurate with the gross misconduct committed by the appellant.
- D. Para is totally incorrect and based on misleading Facts. Proper charge sheet with statement of allegations was issued to appellant, hence after fulfilling all codal formalities, he was awarded the major punishment of dismissal from service under the rules *ibid*.
- E. Incorrect. After fulfilling of all codal formalities he was awarded major punishment of dismissal from service as per law/rules.
- F. Incorrect. The appellant was treated as per law/rules and no discrimination whatsoever was done against him.
- G. Incorrect. Court proceedings and departmental proceedings are two different entities and can run side by side. His act of smuggling of Arms brought a bad name for the entire force, hence he was awarded major punishment.
- H. Incorrect. The appellant being a member of a disciplined force committed gross misconduct while dealing in unlicensed Arms, charges leveled against him are proved, and awarded him major punishment. Furthermore, acquittal in a criminal case would not lead to an exoneration of a civil servant in departmental proceedings.
- I. Incorrect. The appellant was provided full opportunity of defense, but the appellant failed to defend himself. After fulfilling all the codal formalities he was awarded the major punishment.
- J. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed with costs please.


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs, Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.7269/2021.

Mubarak Ali Ex-Constable CCP, Peshawar.....Appellant

VERSUS.

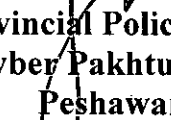
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....Respondents.

AFFIDAVIT

We respondents No. 1, 2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

ATTESTED




Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs, Peshawar.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.7269/2021.

Mubarak Ali Ex-Constable CCP, Peshawar.....Appellant

VERSUS.

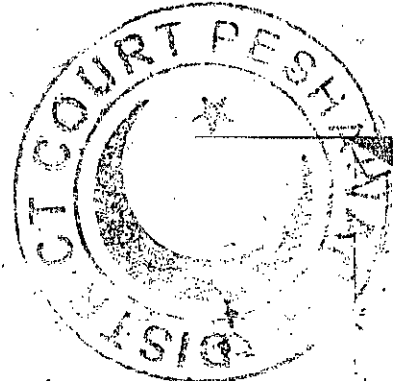
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....Respondents.

AUTHORITY.

I, **Capital City Police Officer, Peshawar**, hereby authorize **Mr.Ahmad Jan** SI legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.

**Capital City Police Officer,
Peshawar.**

انڈیکس



بعدالت جناب محمد فاروق احمد، JMIC-1، پشاور۔

مقدمہ نمبر 20/AA رجوع: 28/6/24 فیصلہ 27/7/24
سرکار بنام صہارکے علی قطعات 1 ک

بیٹہ الف		
انڈیکس، آرڈر شیٹ ہائے، تختہ / جارح / بیان نامہ	28/1/28	
بیانہ صہارکے علی / جودیش / 1	22/29/24	
بیٹہ ب		
	1	25/5/24

کل 1 ک قطعات داخل دفتر شد

JMIC-1, Peshawar.

مہر عدالت

ATTESTED
02 AUG 2024

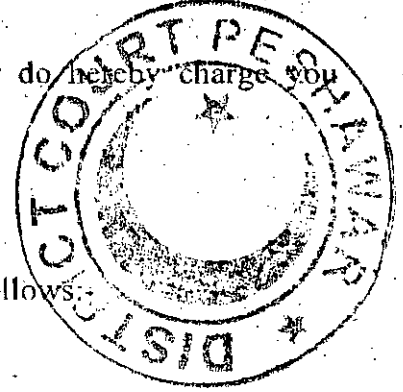
(Examined)
District Court Peshawar

MUHAMMAD FAROOQ AHMAD
JUDICIAL MAGISTRATE-I, PESHAWAR
(FORMAL CHARGE)

STATE.....VS..... MUBARAK ALI ETC.

I, Muhammad Farooq Ahmad, JMIC-I, Peshawar do hereby charge you
accused namely:

1. Mubarak Ali s/o Misbah ud Din r/o Charsadda
2. Abdul Wahab s/o Banat Gul r/o Charsadda, as follows:-



That on 23/11/2020 at near to Kohat Pul, the local police recovered a blue shopping bag from the possession of you accused, Mubarak Ali, and recovered 06 unlicensed pistols therefrom and in respect of which you accused disclosed the name of co-accused Abdul Wahab and thus, you both the accused thereby committed an offence punishable under section 15AA/17-AA within the cognizance of this court.

And I hereby direct that you above named accused be tried by this court on the said charge.

R.O & A.C.
13/07/2021

Muhammad Farooq Ahmad
Judicial Magistrate-I,
Peshawar

- Q.1 Has you heard and understood the charge?
Ans: Yes.
Q.2 Do you plead guilty?
Ans: No. We claimed trial

Muhammad Farooq Ahmad
JMIC-I, Peshawar

ATTESTED

R.O & A.C.
13/07/2021

Accused

3. Mubarak Ali s/o Misbah ud Din
4. Abdul Wahab s/o Banat Gul

13/07/2021

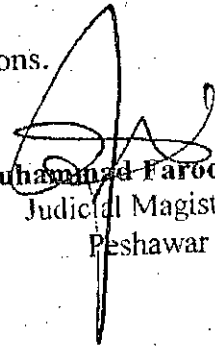
(Examiner)
District Court Peshawar

Muhammad Farooq Ahmad
Judicial Magistrate-I,
Peshawar

Muhammad Farooq Ahmad
JMIC-I, Peshawar

CERTIFICATE

Certified that the charge has been framed in open court, read over and fully explained to the accused and the same was fully understood by the accused, who put their signatures / thumb impressions.


Muhammad Farooq Ahmad
Judicial Magistrate-I,
Peshawar

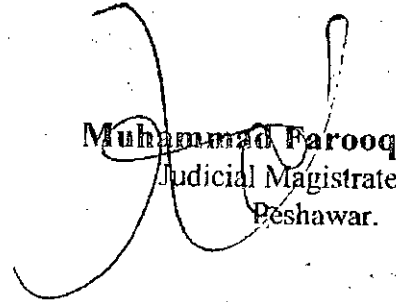
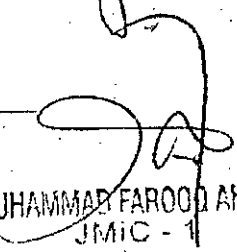
ATTESTED

02 AUG 2021

(Examiner)
District Court Peshawar

Order Sheet

IN THE COURT OF MUHAMMAD FAROOQ AHMAD JUDICIAL MAGISTRATE - I PESHAWAR

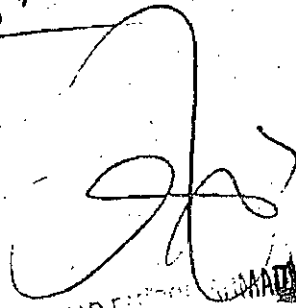
S.No. of order	Date of	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
<p>Order-1</p> <p>0-9 6/7/2021</p>	<p>29/06/2021</p>	<p align="center">StateVs.... Mubarak Ali etc,</p> <p>Complete challan submitted by the prosecution. Be entered.</p> <p>As per record, accused Mubark Ali is behind the bar, while co-accused Abdul Wahab is on bail. Therefore, accused Mubarak Ali be produced from Jail through Zamima-Bay, while accused on bail be summoned through SHO concerned for <u>06/7/2021</u>.</p> <p align="right">  Muhammad Farooq Ahmad Judicial Magistrate-I, Peshawar. </p> <p> APP present per jail report accused Mubarak Ali has ARRESTED released on bail by 02 AUG 2021 (Examiner) District Court Peshawar JMJC-1 Peshawar dated 26/11/2020, in bail bond is fraud and accused not present. Be summoned through SHO as <u>04/7/2021</u> </p> <p align="right">  MUHAMMAD FAROOQ AHMAD JMJC - 1 Peshawar </p>

Postscript -

13/7/2021

Accused mubarak Ali appeared
Court on promise of
MHA CDR Complied
Subject accused be summoned

to 13/7/2021



MUHAMMAD FAROOQ AHMAD
JMJC - I
Peshawar

ATTESTED

Order

- 13/7/2021

MPP present

Accused mubarak Ali

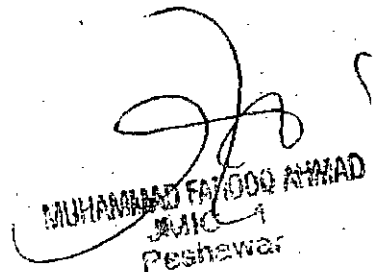
Abdul Wahab present previous
of MHA & CDR waived off

Charge framed today, accused
refused pleaded innocent &
denied trial. All PWS

be summoned to 13/7/2021

02 AUG 2021

(Examiner)
District Court Peshawar



MUHAMMAD FAROOQ AHMAD
JMJC - I
Peshawar

In The Court Of
MUHAMMAD FAROOQ AHMAD JUDICIAL MAGISTRATE-I,
Peshawar

State Vs Mubarak Ali etc,

Order...
17/07/2021

APP for the State present.

Accused on bail present. PW Masood Khan ASI,
Ashoor Gul Muharrir/ASI, Constable Ilyas, Constable
Habib, Anwarzeb Khan ASI, Zahid Hussain SI/SHO and
Ghulam Rasool Armour Expert are present before the
Court for recording their evidence. Their evidence
recorded as PW-1 to PW-7 respectively and placed on
file. Learned APP for the state closed the Prosecution
evidence. In this respect, statement of the learned APP
for the state recorded and placed on file.

File to come up for statement of the accused u/s

342 Cr.P.C. on

26/7/2021

ATTESTED

02 AUG 2021

(Examiner)

District Court Peshawar

Muhammad Farooq Ahmad
Judicial Magistrate-I,
Peshawar

3
copy
20/7/2021

top print
of new present statement
argument on 27/7/2021

Muhammad Farooq Ahmad
JMTC-I, Peshawar

In the Court of
MUHAMMAD FAROOQ AHMAD, JUDICIAL MAGISTRATE-I
Peshawar

Criminal Case No..... 25/AA
Date of Institution..... 29/06/2021
Date of decision..... 27/07/2021

State through Masood Khan ASI, Police Station Bhana
Mari, Peshawar.Complainant

VERSUS

1. Mubarak Ali s/o Misbah ud Din
2. Abdul Wahab s/o Bana; Gul, both residents of District,
Charsadda Accused facing trial

**FIR No.1591, dated 23/11/2020,
U/S 15-AA/17-AA, Registered at Police Station
Bhana Mari, Peshawar.**

Order...
27/07/2021

APP for the State present. Accused on bail with
counsel present.

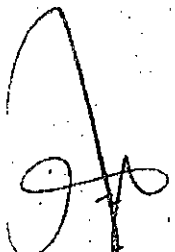
Arguments heard and record perused.

Vide my detailed judgment of even date
consist of eleven (11) pages, it is safely held that the
prosecution has failed to establish the charge
against the accused facing trial beyond reasonable
doubts. It is further held that the section of law
leveled against the accused facing trial is not
applicable. Resultantly, the accused facing trial
namely Mubarak Ali s/o Misbah ud Din and Abdul

ATTESTED

02 AUG 2021

(Examiner)
District Court Peshawar


27/07/2021
MUHAMMAD FAROOQ AHMAD
JUDICIAL MAGISTRATE-I
Peshawar


In the Court of
MUHAMMAD FAROOQ AHMAD, JUDICIAL MAGISTRATE-I
Peshawar

Wahab s/o Banat Gul residents of District Charsadda, are hereby acquitted from the charge leveled against them. Sureties of the accused are hereby discharged from the liabilities of bonds.

Interim custody in respect of the case property dated: 14/01/2021 is hereby confirmed and its sureties are absolved from liabilities of bail bond given to the SHO concerned.

Copy of this judgment be placed on police record, while file of the Court be consigned to record room after necessary completion and compilation.

Announced:
27/07/2021


Muhammad Farooq Ahmad
Judicial Magistrate-I,
MU Peshawar, Peshawar
JMIC - 1
Peshawar,

ATTESTED

02 AUG 2021
(Examiner)
District Court Peshawar

In the Court of
MUHAMMAD FAROOQ AHMAD, JUDICIAL MAGISTRATE-1
Peshawar

Criminal Case No..... 25/AA
Date of Institution..... 29/06/2021
Date of decision..... 27/07/2021

State through Masood Khan ASI, Police Station Bhana Mari,
Peshawar. Complainant

VERSUS


1. Mubarak Ali s/o Misbah ud Din
2. Abdul Wahab s/o Banat Gul, both residents of District,
Charsadda Accused facing trial

**FIR No.1591, dated 23/11/2020,
U/S 15-AA/17-AA, Registered at Police Station Bhana
Mari, Peshawar.**

Judgment
27/07/2021

ATTESTED

As per contents of the FIR, on 23/11/2020, the complainant was present alongwith constable No.5148 and Constable Habib No.1289 at Kohat Road, near to Kohat Road Pul, Peshawar, on routine Gushat. Meanwhile, one suspected person/accused appeared who was stopped being suspected and upon inquiry, the said suspected man/accused disclosed his name as Mubarak Ali s/o Misbah ud Din who was carrying a blue color shopping bag in his hand. Upon checking the said shopping bag, 06


27/07/2021
MUHAMMAD FAROOQ AHMAD
JM/C - 1
Peshawar

2 AUG 2021
(Examiner)
District Court Peshawar

unlicensed pistols were recovered therefrom among which four pistols were 30-bore, while the remaining two pistols were 9MM. The complainant took into possession the said unlicensed pistols and prepared the recovery memo in presence of marginal witnesses. The accused was arrested by the complainant and his Card of Arrest was issued. The complainant scribed the Marasella report in that respect and handed over the said Marasella report alongwith recovery memo and accused to the constable Habib for taking them to the PS for registration of FIR. Hence, the instant FIR was registered against the accused facing trial.

After completion of investigation, complete challan was submitted before the Court, and subsequently Formal Charge against the accused facing trial was framed to which accused pleaded not guilty and claimed to face the instant trial. Case was fixed for evidence of the prosecution.

On behalf of prosecution, **Masood Khan** ASI, Police Line, Peshawar appeared before the Court and recorded his evidence **PW-1**, wherein he recorded that on 23/11/2020, he was present alongwith constable Ilyas No.5148 and Constable Habib No.1289 at Kohat Road, near to Kohat Road Pul, Peshawar, on routine Gushat. Meanwhile, one suspected person/accused appeared who was stopped being

6
27/11/2021
MUHAMMAD FAROOQ AHMAD
JM/C - 1
Peshawar

ATTESTED

(Examiner)
District Court Peshawar

suspected and upon inquiry, the said suspected man/accused disclosed his name as Mubarak Ali s/o Misbah ud Din who was carrying a blue color shopping bag in his hand. Upon checking the said shopping bag, 06 unlicensed pistols were recovered therefrom. He took into possession the said unlicensed pistols and prepared the recovery memo in presence of marginal witnesses which is Ex.PW-1/1. He arrested the accused and issued his Card of Arrest which is Ex.PW-1/2. He scribed the Marasella report in that respect which is Ex.PW-1/3. He handed over the said Marasella report alongwith recovery memo and accused to the constable Habib for taking to the PS for the registration of FIR.

PW-2, Ashoor Gul Muharrir/ ASI, Police Line

appeared before the Court and recorded his evidence that on receiving the Marasella report, he incorporated its contents into the shape of FIR which is Ex.PA.

ATTESTED
02 AUG 2021
(Examiner)
District Court Peshawar

PW-3, Constable Iqbal Belt No.5148, Police Line,

Peshawar appeared before the Court and recorded his evidence that on 23/11/2020, he was present alongwith complainant at Kohat Road, near to Kohat Road Pul, Peshawar, on routine Gushat. Meanwhile, one suspected person/accused appeared who was stopped by the complainant being suspected and upon inquiry, the said

27/7/2021
MUHAMMAD FAROOQ AHMAD
JM/C - 1
Peshawar

suspected man/accused disclosed his name as Mubarak Ali s/o Misbah ud Din who was carrying a blue color shopping bag in his hand. Upon checking the said shopping bag, 06 unlicensed pistols were recovered therefrom. The complainant took into possession the said unlicensed pistols and prepared the recovery memo in my presence which is already Ex.PW-1/1, and he signed the same as marginal witness.

PW-4, Constable Habib Ullah Belt No.1289, appeared before the Court and recorded his evidence that on 23/11/2020, he was present alongwith complainant at Kohat Road, near to Kohat Road Pul, Peshawar, on routine Gushat. Meanwhile, one suspected person/accused appeared who was stopped by the complainant being suspected and upon inquiry, the said suspected man/accused disclosed his name as Mubarak Ali s/o Misbah ud Din who was carrying a blue color shopping bag in his hand. Upon checking the said shopping bag, 06 unlicensed pistols were recovered therefrom. The complainant took into possession the said unlicensed pistols and prepared the recovery memo in his presence which is already Ex.PW-1/1, and he signed the same as marginal witness

27/11/2020
MUHAMMAD FAROOQ AHMAD
JM/C - 1
Peshawar

ATTESTED

02 NOV 2021

(Examiner)

District Court Peshawar

8

PW-5, Anwar Zeb Khan ASI, Police Line, Peshawar appeared before the Court and recorded his evidence that after registration of FIR, the case file was

entrusted to him for the purpose of investigation. He visited to the spot and prepared the site plan on the pointation of complainant and eyewitness which is Ex.PB. He produced the accused before the JMIC for obtaining his 05-days police custody vide my application which is Ex.PW-5/1. The said application was turned. He recorded statement of the accused u/s 161 Cr.P.C and submitted the accused in judicial lockup. During investigation, he charged the co-accused namely Abdul Wahab s/o Banat Gul in the instant case on the strength of statement of the accused Mubarak Ali recorded u/s 161 Cr.P.C. however, the co-accused Abdul Wahab appeared to the PS and produced Pervana of BBA. He issued his Card of Arrest in the instant case which is Ex.PW-5/2, and record his statement u/s 161 Cr.P.C. He also obtained the opinion of Armour Expert vide my application which is Ex.PW-5/3. He recorded statement of the PWs. After completion of investigation, he submitted completed challan to the SHO concerned for onward transmission.

ATTESTED
07/06/2021
(Examiner)
District Court Peshawar

PW-6, Zahid Hussain SHO/ SI, Police Line, Peshawar appeared before the Court and recorded his evidence that after completion of investigation, he submitted complete challan before the Court which is Ex.PW-6/1.

JAB
22/7/2021
MUHAMMAD FAROOQ AHMAD
JMIC - 1
Peshawar

PW-7, Ghulam Rasool Armour Expert, appeared before the Court and recorded his evidence that the I.O had furnished 04 pistols of 9-MM bearing Nos. A-8768, A8762, ZSA-19482, A-8763 and 02 pistols 30-bore bearing Nos. 132 and ZSA-13874 and requested for my opinion in respect of the pistols. He technically examined the pistol in questions and found that the pistols were local made and were able for firing. He gave his opinion on the said application which is already Ex.PW5/3.

The learned APP for the State closed the Prosecution evidence in the instant case.

After conclusion of the prosecution evidence, statements of accused were recorded within the meaning of section 342 Cr.P.C. wherein the accused denied the allegations, however, accused neither produced evidence in their defense nor opted for recording their statements on oath, hence the case was fixed for arguments.

Learned APP contended that the accused facing trial was apprehended red handed and there is no delay whatsoever in lodging of FIR. Learned APP highlighted that the accused facing trial has directly been charged for commission of the offence and the pistols have also been taken into possession vide recovery memo from the direct possession of accused facing trial which was unlicensed.

JA
27/7/2021
MUHAMMAD FAROOQ AHMAD
JM/C - 1
Peshawar

10
ATTESTED
02 AUG 2021
(Examiner)
District Court Peshawar

That no malafide whatsoever has been highlighted on the face of the record on part of the prosecution. Learned APP further highlighted that all the PWs are consistent with each other on the material aspects of the case and no clue whatsoever in the cross examination by the defense side for which it can be concluded that the testimony of the said PWs were discredited and contradicted. Learned APP further contended that the material witnesses of the case i.e. complainant, investigating officer as well as the marginal witnesses of the recovery memo deposed against the accused facing trial in their statements and they have clarified all the events of the occurrence. Learned APP further contended that reasonable grounds do exist which connect the accused facing trial prima facie in the instant case. Learned APP further stated that the essential ingredients for constituting the offence within the meaning of Sections 15-AA & 17-AA have been proved against the accused facing trial beyond any reasonable doubt, therefore, requested from this Court to give exemplary punishment to the accused by sentencing the accused facing trial to the maximum.

27/7/2021
MUHAMMAD FAROOQ AHMAD
JM/C - 1
Peshawar

NOTESTE

02 AUG 2021

(Examiner)

District Court Peshawar

Conversely, learned counsel for the accused facing trial contended that the accused facing trial have falsely been charged in the instant case as the accused facing trial have produced the license of the pistols in question during

his arrest. That the pistol in question were purchased from an authorized dealer vide invoice No. 1960 dated 23/11/2020; Zafar & Sons Armory dealer. That the accused Abdul Wahab has also produced the said invoice to the local police which also shows that the accused facing trial is dealing business in the armory in the name of Pak Star Arms dealer, as mentioned the in the above said invoice. That despite legal documents in possession of the accused facing trial, the police authorities have charged the accused facing trial in the instant case with malafide intention. That the accused facing trial is license holder and has been permitted by the authority concerned for doing business in arms, hence stated that the Section of level is not applicable on accused facing trial. That the case of the prosecution is full of doubt and the prosecution has badly failed to prove its case against the accused facing trial beyond any reasonable shadow of doubts. Resultantly, counsel for the accused contended that the accused facing trial are entitled to be acquitted from the charge honorably.

87/2/2021
 MUHAMMAD FAROOQ AHMAD
 JMFC - 1
 Peshawar

12


ATTESTED

02 AUG 2021

Examiner
 District Court Peshawar

Perusal of record transpires that as per Marasella report the accused facing trial namely Mubarak Ali was apprehended red handed while he was carrying the alleged pistols in a blue shopping bag, however no private eyewitness has been associated with the alleged

occurrence. Nor any independent witness has been associated with the recovery of alleged pistols. Apart from this the Marasella EX-PW1/3 reveals that the time of report is shown as 16:40 hours but the time of occurrence is shown as 16:10 hours which is not appealable to prudent mind that when the accused is allegedly arrested red handed on 16:10 hours and Marasella drafted on spot, then how is it possible that the time of occurrence and report could be different. On the other hand, record shows that accused facing trial have legal documents and duly permitted by the authority concerned for making business in arms under the name of Pak Star Arms Dealer. The invoice in respect of the pistols in question is also available on file which has been issued to the accused facing trial by Zafar & Sons Armory. It is also on record that the alleged recovered pistols have been returned to the accused Abdul Wahab vide order dated: 14/01/2021 by the then JMIC, Peshawar. The said order is also available on file. This fact shows that either the accused facing trial has malafidely been dragged in the instant case or the alleged Marasella report as well as the FIR is concocted and planted one. As per the available record, it is held that the Section of law i.e. 15-AA & 17-AA is not applicable upon the accused facing trial.


 22/7/2021
 MUHAMMAD AHMAD
 JMIC
 Peshawar

ATTESTE
 02 AUG 2021
 (Examiner)
 District Court Peshawar

13

Therefore, keeping in view the above stated facts, circumstances and evidence led by prosecution in support of the charge against the accused facing trial, it is safely held that the prosecution has failed to establish the charge against the accused facing trial beyond reasonable doubts. It is further held that the section of law leveled against the accused facing trial is not applicable. Resultantly, the accused facing trial namely Mubarak Ali s/o Misbah ud Din and Abdul Wahab s/o Banat Gul residents of District Charsadda, are hereby acquitted from the charge leveled against them. Sureties of the accused are hereby discharged from the liabilities of bonds.

Interim custody in respect of the case property dated: 14/01/2021 is hereby confirmed and its sureties are absolved from liabilities of bail bond given to the SHO concerned.

Copy of this judgment be placed on police record, while file of the Court be consigned to record room after necessary completion and compilation.

Announced:
27/07/2021

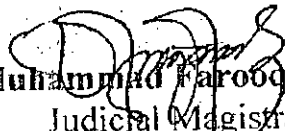
CERTIFIED TO BE TRUE COPY 100
(Exemplary)
Copying Agency District Court
Peshawar

Muhammad Farooq Ahmad
Judicial Magistrate-I,
Peshawar

MUHAMMAD FAROOQ AHMAD
JMIC - I,
Peshawar

Certificate

Certified that this judgment of mine consist of eleven (11) pages, each page has been signed, and corrected by me where required.


Muhammad Farooq Ahmad
Judicial Magistrate-I,
Peshawar

MUHAMMAD FAROOQ AHMAD
JMIC - I
Peshawar

ATTESTED

02 AUG 2021

(Examiner)
District Court Peshawar

18

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, D.B
PESHAWAR.

No.

Appeal No..... 7269 of 20 21

..... Mubarak Ali Appellant/Petitioner

Versus

..... P.P.O. Tash Respondent

Respondent No..... 1

Notice to: - The Provincial Police Officer, KPK Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 16/12/2021 at 8.00 A.M. If you wish to urge anything against the appelland/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 17

Day of..... Dec 20 21

[Signature]
02/12/21

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

D.B

No.

Appeal No..... 7269 of 20 21

..... Mubarak Ali Appellant/Petitioner
Versus

..... P.P.O. Pesh. Respondent

Respondent No..... 2

Notice to: - The Capital City Police
Officer, Peshawar.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 16/12/2021 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

• Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 16
Day of..... Dec 20 21

2/12/2021

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, D.R
PESHAWAR.

No.

Appeal No..... 7269 of 20 21

..... Mubarak Ali Appellant/Petitioner

Versus

..... D.P.O. KPK Pesh. Respondent

Respondent No..... 3

Notice to:

The Superintendent of Police
Headquarters Peshawar.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 16/12/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this..... 16

Day of..... Dec 20 21

Received 5:10:35
21/12/21

[Signature]
Registrar
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.