

15.08.2022

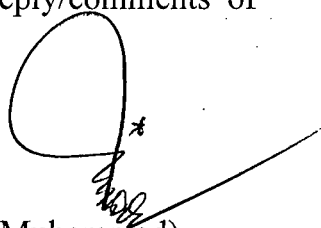
Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents No. 1, 3 & 5 present. Mr. Shahab Khattak, Legal Advisor for respondents No. 2 & 4 present and submitted reply/comments which are placed on file. Copy of the same is handed over to learned counsel for the appellant. Reply/comments on behalf of respondents No. 1, 3 & 5 are still awaited. Learned Additional Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up for reply/comments on behalf of respondents No. 1, 3 & 5 before the S.B on 04.10.2022.


(Mian Muhammad)
Member (E)

04.10.2022

Clerk of counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for respondents No. 1, 3, 5 present. Mr. Ali Gohar Durrani, Advocate/Legal Advisor for respondent No. 2 present and Wakalatnama in his respect placed on file.

Written reply/comments of respondents No. 1, 3 and 5 are still awaited and request for further time made on their behalf. Last opportunity is granted. To come up for written reply/comments of respondent No.1, 3 and 5 on 25.11.2022 before S.B.


(Mian Muhammad)
Member (E)

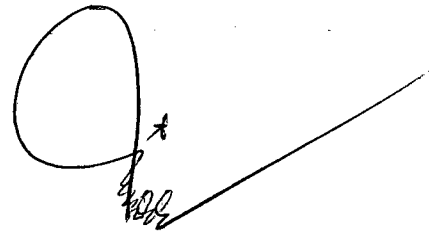
22.04.2022

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant while arguing the case stated that the appellant was serving as cook since 28.07.2007 who was involved in a case FIR No. 723 dated 16.08.2012 under Section-302/324 PPC at PS Dagar District Buner. The information on that account were communicated on 12.09.2012 upon which he was removed from service w.e.f 18.08.2012 vide impugned order dated 20.06.2013. The appellant submitted departmental appeal for reinstatement on 18.02.2020 which was regretted on the ground being badly time barred vide appellate order dated 25.03.2022, where-after the present service appeal was instituted on 18.04.2022. It was further contended that the impugned order is illegal, against the law, facts, natural justice, fundamental rights and record available. The appellant has not been treated according to law and rules and the impugned orders are liable to be set aside with reinstatement of the appellant with all back benefits.

The appeal is admitted to regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 23.06.2022 before S.B.

Rs-700/-
A. M. Butt
22/4/22



(Mian Muhammad)
Member(E)

23rd June, 2022

Appellant alongwith his counsel present. Mr. Muhammad Adeel Butt, Additional AG for respondents present.

Respondents have not submitted written reply/comments. Learned AAG seeks time for submission of written reply/comments. To come up for written reply/comments on 15.08.2022 before S.B.





(Kalim Arshad Khan)
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 572/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/04/2022	<p>The appeal of Mr. Sheikh Fareen presented today by Mr. Manzoor Khan Khalil Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p><i>Noted</i> <i>MS</i> <i>Shabbir Akhond</i> <i>19/4/22</i></p>	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>22-04-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOON KHAWA PRSHAWAR

Service appeal , No 512/2022

Sheikh Fareen VS Govt KPK

INDEX

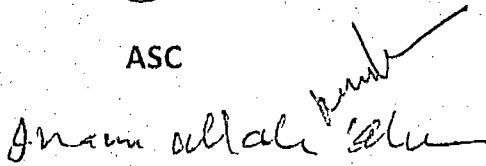
S.No	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1	Grounds of appeal		1-3
2	Affidavit		4
3	Appointment order dated	A	5
4	Copy of FIR	B	6
5	Copy of letter of information dated 12/09/2012 communicated by the principal to DG Tech Education & man power Trg KPK	C	7
6	Copy of removal office order dated 20/06/2013 issued by DG Tech Education & man power Trg KPK	D	8
7	Copy of judgment of acquittal passed by the learned criminal trial court dated 14/02/2020	E	9
8	Copy of application / representation dated 18/02/2020 for reinstatement	F	
	Copy of impugned order dated 25/03/2022	G	
	Copies of office order of reinstatement of gul Niaz & sher Hassan along with others relevant documents	H & I	
	Copies of different applications filed by the appellant for redressal before the respondents	J & K	
	Wakalatnama		

Petitioners

Through


Manzoor Khan Khalil

ASC


Manzoor Khan Khalil
Address

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOON KHAWA PRSHAWAR

Service appeal , No---572/2022

Sheikh fareen son of abdul mateen . Ex-cook man Technical college Buner / residence of
Kalpani BunerAppellant

Versus

- 1, Chief Secretary Government of Khyber pukhtoon khawa
- 2, Secretary Industries commerce & Technical Education Department Govrnment of Khyber Pakhtoon khwa , Peshawar
- 3, Secretary Establishment Government of Khyber pukhtoon khawa
- 4, Director General Technical Education & manpower Training KPK , Peshawar
- 5, Principal Technical College District BunerRespondents

Appeal under section 4 of the Khyber pakhtunkhwa service tribunal act 1974 against the impugned final order dated 25/3/2022 passed by the respondent No. 2 whereby the appeal / representation filed by the appellant against the impugned order dated 20/06/2013 issued by the respondent No, 4 was rejected

PRAYER

on acceptance of this appeal the impugned order dated 25/03/2022 passed by the respondent No, 2 by which the representation / appeal filed by the appellant against the impugned removal office order dated 20/06/2013 issued by the respondent No, 4 was dismissed may please be set aside and the appellant may kindly be reinstated in service as a cook with all back benefits.

Respectfully sheweth

1, That the applicant was appointed as a cook vide order dated 28/07/2007 and performed his duty with honesty to the best of his capabilities and satisfaction of his superior. Copy attached as annexure, A

2, That the appellant being head of the family As well govt servant had been charged by the opponent with mala fide intention in false criminal case with concocted allegation against the appellant in case FIR, No, 723 dated 16/08/2012 u/s 302/324/337-D/34 PPC, police station Gagra District Bunner , copy of FIR is attached annexure , B

3, That the respondent No , 5 / principal of the institution conveyed / communicated the report information of the police through office letter No , dated 12/09/2012 to respondent No, 4 for necessary action , so the respondent No, in pursuance of that information removed the appellant from service vide office order No, DGTE&MT/EASTT/22-14(49)3997(1-1) dated 20/06/2013 with

effect from 17/08/12 , while the innerving period from 17/08/2012 onward has been treated as un-authorized absence from duty . Copies are attached as annexure, C & D respectively

4, That the appellant surrendered himself before the competent court of law , so thereafter on conclusion of trial the learned criminal trial court scrutinizing the entire evidence of the prosecution acquitted the appellant from the charge mentioned in the said case FIR vide judgment dated 14/02/2020 . Copy is attached as annexure, E

5, That on 18/02/2020 the appellant soon after acquittal conveyed the judgment of the learned criminal trial court mentioned above to respondents through written representation / application in accordance to law for reinstatement the appellant on service post position , which was rejected vide office order dated 25/03/2022. Copy attached as annexure, F

6, That the appellant aggrieved from the impugned order and act and action of the respondents approaches to this august tribunal on the following grounds amongst others.

GROUNDS

A, That the impugned order / finding of the respondent no, 2 is illegal , against the law , fact , natural justice , fundamental right and record available on the case file , hence untenable in the eye of law and liable to be set aside

B , that the impugned decision of the respondent No,2 is not judicious , fairly , impartially , as the respondents was bounds to make a judicious consideration of the fact of the case to arrive at correct conclusion / decision , further no reasonable opportunity of show cause was offered to the appellant and neither any opportunity of hearing was given to appellant to full fell their legal obligation and nor any fair inquiry was conducted to arrive into right conclusion of the facts of case as provided by the law, therefore the respondent no, 2 has not decided consciously the facts of the case through impugned decision. Furthermore the respondent No,2 have failed to appreciate and understood the factum of the case in its true perspective in an accordance with law , Hence misread , misconceived and misunderstood , therefore committed material illegalities and gross irregularities and also exercised their jurisdiction not vested to it by the law for the subject . Hence the impugned order is liable to be set aside.

C, That in view of Art 25 of the constitution of Islamic republic of Pakistan 1973 all citizen are equal before law and are entitle to equal treatment and protection of law i , e all subjects to a law should be treated alike under all circumstances and condition , the case of t the appellant is place in the same set of circumstances for equal justice , As the case of the appellant having similar back grounds of the one Gul Naiz junior clerk , his case was previously decided by the administrative department vide office order / letter No, SOIII (IND) 6-2/2017 DATED 15/01/2018 , whereas the official was reinstated in service with all back benefit and similarly the case one Sher Hassan, who was also reinstated through office order dated 01/01/2005 , but it is very unfortunate the respondents through impugned office

3

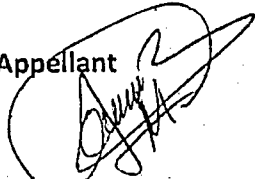
order denied the same treatment with the appellant , which was enjoyed by the other persons in alike circumstances , it is pertinent to mention here that appellant through written application as well through his counsel requested to respondents for the similar treatment, but in vain. Hence the impugned order is not sustainable in the eye of law and liable to be struck down and in view of the facts and circumstances of the case the appellant is entitle for reinstatement in his service with all back benefit . Copies of office order Gul Niaz dated 15/01/2018 and office order dated 01/01/2015 of Sher Hassan and applications are attached as annexure G, H, I, J & K

D, That the appellant belong to a poor family and being a head of the family , having no other sources on income except the instant post service , therefore the opponent of the appellant being influential in all respect d charge the innocent person(appellant)to deprive the poor family from livelihood and to torched the innocent family members with multiples' issues , furthermore the appellant has never been thinking to be absent from duty ,so the absentee of the appellant during that tenure / period from service duty was not intentionally neither deliberately and nor willful , rather , it was the outcome of the baseless allegation against the appellant in said FIR lodged on the base of mala fide to harass and humiliate and torch the appellant through local police , so on the grace of almighty Allah the appellant have proved his innocence before the competent court of law , while the prosecution failed to prove their allegation against the appellant before the competent court of law , so it the result of which the appellant was acquitted from the charge vide judgment dated 14/02/2020 , which got finality ,it once again to reiterate that the same was communicated to respondents well within time in prescribed manner for redressal , but failed to exercise their jurisdiction vested to them for the purpose in true perspective an accordance to law. Hence in view of fact narrated above the respondent s are/were bounds to reinstate the appellant on his service with all back benefit.

E, That further legal and factual points will be raised before this tribunal an accordance with in view of the fact and circumstances of the case during the course of argument.

It is therefore humbly prayer that on acceptance of this appeal the impugned order dated 25/03/2022 passed by the respondent No, 2 by which the representation / appeal filed by the appellant against the impugned removal office order dated 20/06/2013 issued by the respondent No, 4 was dismissed may please be set aside and the appellant may kindly be reinstated in service as a cook with all back benefits.

Any other relief which has not been specifically prayer for in the instance appeal as per facts and circumstances of case in hand may also be ordered in favor of the appellant throughout.

Appellant
Through 
Manzoor Khan Khalil

ASC
28
Manan Ullah 12/11/2022
Adkaset

4
BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOON KHAWA PRSHAWAR

Service Appeal , No-----

Sheikh Fareen VS Govt KPk

AFFIDAVIT

I, Sheikh Fareen son s of of abdul mateen . Ex-cook man R/O Kalpani District
Buner , do hereby solemnly affirm and declare on oath that that the contents
of the instant service appeal are true and correct to the best of knowledge and
belief and nothing has been concealed from this Hon,able tribunal court,

Identified by

Deponent

D

DIRECTORATE OF TECHNICAL EDUCATION,
AND MANPOWER TRAINING, N.W.F.P.,
PESHAWAR.

OFFICE ORDER:-

No.DTE&MT/Estt: /

The following candidates are hereby appointed in Government Polytechnic and Vocational Training Centre, Bunir on fixed pay @ Rs: 4000/- P.M against the vacant posts as noted against each from the date of taking over charge and subject to the terms and conditions stated as under: -

S.No	Name & Father's Name/ Full address.	Posted at
1-	Mr. Farooq Ali S/O Muhammad Sher, P.O. Navagai, Tehsil Daggar, Distt: Bunner.	Shop Attendant.
2-	Mr. Akhtar Zeb S/O Ghafoor Khan, Gedar Hujru, Tehsil Daggar, Distt: Bunir.	Shop Attendant.
3-	Mr. Adil Shah S/O Abdil Ahmad Shah, P.O. & Tehsil Daggar, Distt: Bunir.	Shop Attendant.
4-	Mr. Saïd Qaim Shah S/O Saïd Ghafoor Shah, Vill: Bulomai Bakra, Tehsil Daggar, Distt: Bunir.	Tube Well Operator.
5-	Mr. Sheikh Fareen S/O Abdul Matcen, Tehsil Daggar, Distt: Bunir.	Cook.

TERMS AND CONDITIONS:-

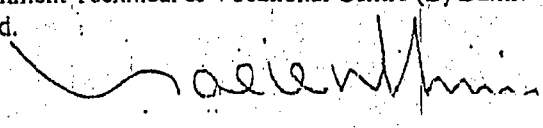
- 1- Their appointment will be purely on fixed pay and their services can be terminated at any time without assigning any reason.
- 2- They will have to join duty at their own expenses.
- 3- They will have to produce a certificate of Medical fitness from concerned Medical Superintendent / Civil Surgeon of the area.
- 4- They will be governed by such rules and orders as may be prescribed and issued by the Government from time to time for the category of Government Servants to which they belong.
- 5- Their character and antecedents are verified good by the Police authorities.
- 6- They will have to perform any duty assigned to them in connection with the affairs of this department.
- 7- If they wish to accept the post on the above terms and conditions, they should report for duty to the Principal concerned within 30 days of the issue of this order failing which the offer of appointment will be treated as cancelled.

(MUHAMMAD TARIQ AWAN)
DIRECTOR.

Endst: No.DTE&MT/Estt:/ 3894(1-8)

Dated 28 / 7 / 2007.

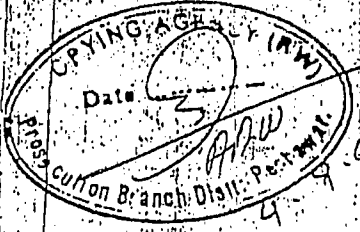
Copy forwarded for information & necessary action to:-

- 1- Mr. Habib-ur-Rahman, MPA, NWFP.
 - 2- The District Accounts Officer, Bunir.
 - 3- The principal, Government Technical & Vocational Centre (B) Bunir.
 - 4- Candidates concerned.
- 

6

2

Ann-B



ایستادگی (Handwritten text)

کونہ... نام... تاریخ... (Handwritten notes and dates)

Table with multiple rows and columns containing handwritten entries, possibly a ledger or record book.

تعمیر... (Large handwritten text block, possibly a contract or agreement)

پتو

7 3
Annex
OFFICE OF THE PRINCIPAL,
GOVT: POLYTECHNIC INSTT:
SWARI DISTRICT BUNER.

NO: GPI(BNR)/PF/260

Dated: 12th September, 2012

To

The Director General,
Technical Education & Man Power Trg.,
KPK., Peshawar.

Subject:

INFORMATION REGARDING ARREST OF ACCUSED
SHEIKH FARIN S/O: ABDUL MATEEN R/O KALPANI
DISTRICT BUNER INVOLVED IN CASE FIR NO. 723
DATED 16.08.2012 U/W. 302/324 PPC POLICE STATION GAGRE
DISTRICT BUNER.

Reference: Head of investigation Police Department Buner letter
NO.1372/Invest, dated Daggar the 31/08/2012 on the subject quoted above (Photo Copy
attached).

It is stated for your kind information and necessary action that it has been
reported by the S.P. Investigation Buner that Mr. Sheikh Farin S/O; Abdul Mateen Cook
of this Institute has been charged in the above cited case and he is also absent from his
official duty since 17th August, 2012 and the undersign has submitted source to the
District Accounts Officer, Buner inactiveness of his salary.

It is therefore, requested that departmental proceedings may please be
initiated against him with endorsement to this Office.

0/L.
Principal

8

ANN-D

~~1/1~~

~~1/1~~

DIRECTORATE GENERAL TECHNICAL EDUCATION
AND MANPOWER TRAINING KHYBER PAKHTUNKHWA.

OFFICE ORDER.

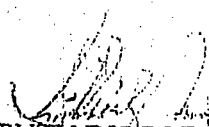
Under the provision of the Khyber Pakhtunkhwa Govt. Servants Efficiency and Discipline Rules, 2011, Mr. Sheikh Farin, Cook, Govt. Polytechnic Institute, Buner is hereby removed from service with effect from 17-08-2012 due to his willful absence from duty. The intervening period from 17-08-2012 onward has been treated as un-authorized absence from duty.

DIRECTOR GENERAL.

Endst: No. DGTE&MT/Estt/22-14(49)/ 3997(1-3) Dated 20/6/2013.

Copy forwarded for information and r/action to:-

- 1- The District Accounts Officer, Buner.
- 2- The Principal, Govt. Polytechnic Institute, Buner.
- 3- Mr. Sheikh Farin, Cook C/O Principal, Govt. Polytechnic Institute, Buner.


DEPUTY DIRECTOR (ADMIN)

21/13 قعدہ 56/7 رجسٹر 2/19 سالانہ حوالہ

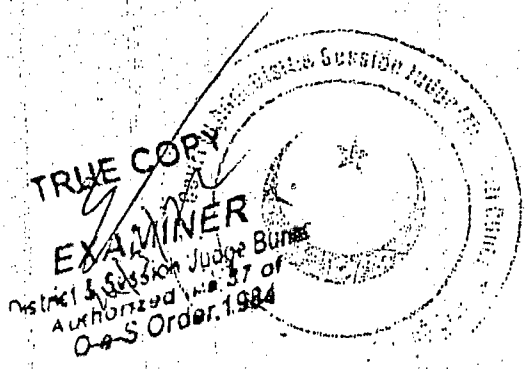
The State vs Sheikh Fareen

Order...23
14.02.2020

محمد شعیب فرین

9

APP for the state present. Accused produced in custody. Complainant also present. Arguments already heard. Vide my detailed judgment of even date consisting upon 24 pages, the prosecution in the instant case has not been able to prove the charge against the accused and bring the guilt of the accused at home through convincing and reliable evidence, therefore, while giving him benefit of doubt, accused facing trial is acquitted of the charge leveled against him in the present case. Accused facing trial is in custody, be set at liberty forthwith if not required to be detained in any other case. As regards the case against the absconding co-accused, Muhammad Fareen, he is already declared proclaimed offender, perpetual non-bailable warrant of his arrest have already been issued so no need of re-issuance of the same, however, his name be also entered in the relevant register of P.Os. Case property be kept intact till the arrest and trial of absconding accused. File be consigned to record room after its completion and compilation.



(KASHIF DILAWAR)
ASJ-II/JMCTC/JGBVC/ZQ,
Buner at Daggar

54

10

IN THE COURT OF KASHIF DILAWAR
ADDITIONAL SESSIONS JUDGE/JUDGE MODEL CRIMINAL
TRIAL COURT /IZQ, BUNER.

Session Case No. 56/7 of 2019

Date of Institution.....02.03.2019
Date of entrustment to this court.... 19.09.2019
Date of commencement of trial.....01.10.2019
Date of Decision.....14.02.2020

State through Shaibar Khan s/o Musafir r/o Kalpani District
Buner..... (Complainant)

VS

Shiekh Faren s/o Abdul Mateen r/o Kalpani District
Buner.....(Accused)

Charged in Case F I R No. 723 Dated 16.08.2012

U/Ss 302/324/337-D/34PPC Police Station Gagra District Buner.

JUDGMENT

1. Through this judgment, case against accused will be disposed of.
2. Prosecution story as unfolded in the FIR is that on the day of occurrence, on receiving information, the local police rushed to emergency room where the complainant/injured Shaibar Khan along with his injured brother Noor Feroz was present and the complainant reported the matter to the local police that on the day of occurrence, he along with his brother/injured came to Bazar Kalpani for buying commodities. On coming back to home, when they reached to the place of occurrence i.e. general thoroughfare, Tawas Khan at Kalpani

[Handwritten signature]
14-2-2020
ADDITIONAL SESSIONS JUDGE
MODEL CRIMINAL TRIAL COURT
BUNER
TRUE COPY
KASHIF DILAWAR
Additional Sessions Judge Buner
Authorized by Order 1984

65
11

Buner, accused Muhammad Fareen and Sheikh Fareen sons of Abdul Mateen were already present there, attempted at their lives by firing at them. Resultantly, the complainant sustained fire arm injuries on left side of his abdomen and on his back while his brother sustained injuries on his chest at left side and on his back. Motive was explained as exchange of hard words between the parties prior to the occurrence. Later on, the brother of the complainant succumbed to the injuries. Hence, the instant case.

3. Initially accused facing trial and co-accused remained absconder and due to their absence, proceedings u/s 512 Cr.P.C were initiated and after evidence, on 08.06.2013, accused were declared as proclaimed offenders and perpetual warrants were issued against them. Later on, accused facing trial was arrested and supplementary challan was submitted against him. After observing codal formalities, accused was charge sheeted on 10.04.2019, to which he did not plead guilty and claimed trial. Therefore, in order to substantiate the charge against the accused, the prosecution recorded the statements of PWs with the following resume:

PW-1 Hussain Zada Inspector (Rtd.) stated that during the days of occurrence, he was posted in police station Daggar. On receipt of copy of murasila from Zar Wali Khan ASI through constable Ijaz No. 362, the contents of murasila were incorporated on his dictation into FIR without any addition by muharrir of the PS. The copy of said FIR was Ex-PA.

17/04/2000
Kashif Durrani
AD S. M/120-11
Model Criminal Court, U.S.
Buret of Highway

TRUE COPY
EXAMINER
District Sessions Judge Sunc
Authorized by Secy of
O.S Order. 1984

1-2

PW-2 Zar Wali Khan SI stated that on 16.08.2012, he received information and went to casualty DHQ Hospital Daggar, where the complainant/injured along with deceased (the then injured) were present there. He prepared the injury sheets of both the injured which were Ex-Pw-2/1 and Ex-Pw-2/2 and were referred to doctor. Thereafter, the complainant reported the matter to him which he reduced into writing in the shape of murasila Ex-PA/1. After admitting it correct, the complainant put his thumb impression on it while the injured/deceased Feroz put his thumb impression on it being verifier. He sent the murasila through constable Ejaz to the PS for registration of instant case.

PW-3 Dr. Muhammad Farooq MO, DHQ Hospital Daggar, stated that on 16.08.2012 at about 07:10 PM, he examined Noor Faroz s/o Musafir r/o Kalpani brought by relatives and reported by casualty police. On examination, he found the following.

1. Firearm injury, entry wound about 1/3 inches in diameter with charring marks present on the wound at the level of middle of left clavicle bone.
2. Fire arm injury, exit wound about 1/2 inches in diameter on the right side of middle of chest just above coastal margin.

Emergency treatment was given. The surgeon was called. The patient was referred to LRH Peshawar for further management on the advice of surgeon.

Weapon used: Fire arm

Note: Complete and proper opinion will be given after receiving full treatment record of patient.

On 28.08.2012, the injury sheet was received back. The police informed him that the patient had died on the way to LRH Peshawar. The dead body was taken back to home, so,

TRUE COPY

EXAMINER

District Session Judge Buner
Authorized by S.O. 87 of
Q.S. Order. 1984

14-2-2022

AD & SI/120-115
District Court Buner

57

13

probable cause of death, (i) severe bleeding causing hypovolemic shock, (ii) trauma to chest causing cardiorespiratory failure.

His report was Ex-Pw-3/1 which was correct and correctly bore his signature and he had also endorsed the inquest report Ex-Pw-3/2.

On the said date and time, he also examined Mr. Shaiber Khan s/o Musafar r/o Kalpani aged about 38 years brought by relatives and reported by casualty police. On examination, he found the following.

1. Firearm injury, entry wound about 1/3 inches in diameter with charring marks present around the wound on left lower chest.
2. Firearm injury, exit wound about 1/2 inches in diameter on the back at the level of approximately T-7 and T-8 vertebrae.

Emergency treatment was given. The surgeon was called. The patient was referred to LRH Peshawar for further management on the advice of surgeon.

Weapon used: Firearm

Note: Complete and proper opinion will be given once full treatment record of the patient was received.

On 28.08.2012, the treatment record of the patient from LRH Peshawar received which showed record of the chest intubation and laparotomy.

Final opinion.

His report was Ex-Pw-3/3 which was in his hand writing and bore his signature.

PW-4 Javed Ali HC stated that on 08.02.2019, he handed over parcel No.5 containing 03 empties, parcel No. 6 containing 30 bore pistol, on magazine and 04 live rounds to Shams-ur Rahman IHC for taking to the FSL for analysis vide road receipt No. 63/21 which correctly bore his

4-2-2021

Asif Durrani
11/8/2012
District Hospital
Peshawar

TRUE COPY
EXAMINER
District Session Judge
Peshawar
Order 1984

signature. His statement was recorded u/s 161 Cr.P.C by the I.O.

PW-5 Sajid Ali HC stated that during days of occurrence, he was posted in police station Gagra. On.06.02.2019, the accused led the police party to the residential room of his house where he picked a .30 bore pistol along with magazine having 04 live rounds of the same bore and handed over to the I.O which he sealed into parcel No. 6 Ex-P1 vide recovery memo Ex-Pw-5/1 in his presence as well in the presence of other co-marginal witness and signed by them. He also disclosed that it was the same through which the offence was committed. From there, he further led the police to the place of occurrence and pointed out his place and other respective places at the time of occurrence and to this effect pointation memo Ex-Pw-5/2 was prepared in his presence as well as in the presence of other co-marginal witness and signed by them. His statement u/s 161 Cr.P.C was recorded.

PW-6 Shad Ali Khan Inspector stated that at the time of arrest of accused facing trial, he was posted as SHO in police station Gagra. Accused facing trial surrendered to the police who he arrested vide card of arrest Ex-Pw-6/1. After completion of supplementary investigation against accused facing trial, the case file was handed over to him

for submission of challan u/s 173 Cr.P.C Which was Ex-Pw-6/2 which was submitted.

PW-7 Sher Ahmad Khan s/o Ajar stated that on 19.08.2012, he along with Said Zahoor proceeded to PS Gagra and produced the blood stained garments of the deceased Gul Faroz, blackish in colour comprising qamees and shalwar Ex-P1 to the I.O which he took into possession vide recovery memo Ex-Pw-7/1. Similarly, they also produced the blood stained clothes of the injured Shaiber

[Handwritten signature]
2-2-2020

Nashif Dilawar
ADJ & N/120-11
District Court, Gagra
Buner

TRUE COPY

EXAMINER
District & Session Judge Buner
Authorized u/s 87 of
O.S Order, 1984

69

15

Khan which also contain qamees and shalwar sky colour/shin Ex-P2 which was also taken into possession by the I.O vide same recovery memo Ex-Pw-7/1 which he along with co-marginal witness Said Zahoor signed the same. The I.O also recorded their statement to this effect u/s 161 Cr.P.C.

PW-8 Noor Jamal Inspector/SHO stated that during those days, he was posted as SHO in PS Gagra. After completion of investigation, the police file was entrusted to him for giving the complete challan and complete challan Ex-Pw-8/1 bore his signature.

PW-9 Shebar Khan s/o Musafar Khan relied on his earlier statement recorded in proceedings under section 512 Cr.P.C and the same was exhibited by the learned counsel for the complainant as ExPW9/1, which was objected by the learned defense counsel. In said statement the complainant had stated that on the day of occurrence he along with his brother Noor Feroz came to Bazar Kalpani for buying commodities. On returning back, when they reached the place of occurrence, where accused Muhammad Fareen and Sheikh Fareen sons of Abdul Mateen were already present there, attempted at their lives by firing at them. Resultantly, he sustained fire arm injuries on left side of his abdomen and on his back while his brother sustained injuries on his chest at left side and on his back. After occurrence, accused decamped from the spot. Motive was explained as exchange of hard words between the parties prior to the occurrence. Thereafter, they were taken to DHQ, Daggar for treatment, where the police incorporated his report in the shape of murasila Ex-PA/1 and after satisfaction, he impressed his thumb while the then injured/deceased Noor Feroz impressed his thumb as verifier. Later on, the brother of the complainant

14-7-2020

Session Judge
D.D. No. 120/11
Criminal Court
Daggar

TRUE COPY

EXAMINER
District & Sessions Judge
Authorized u/s 67 of
Cr.P.C Order. 1984

succumbed to the injuries. He charged accused for the commission of offence.

PW-10 Sherat Khan s/o Shamas Khan stated that on 16.08.2012, I.O during spot inspection obtained blood stains grass Ex-P4 and leaves Ex-P2 and blood stained paper Ex-P3 and were sealed in parcel vide recovery memo Ex-Pw-10/1 which correctly bore his signature.

PW-11 Muhammad Ghulam Inspector/CIO stated that on 05.02.2019, investigation along with the accused was handed over to him. He cursorily interrogated the accused. On 06.02.2019, he produced the accused vide an application Ex-Pw-11/1 for obtaining his custody, on which one day custody was granted. He interrogated the accused. During investigation, on the pointation of accused Sheikh Fareen, he recovered weapon of offence i.e. .30 bore pistol Ex-P1 along with four live bullets, magazine form his residential room lying in a cupboard of the room and took into possession the same and sealed into parcel No.6. In this respect, recovery memo, he prepared the recovery /pointation memo already Ex-Pw-5/1. Similarly, he also prepared sketch regarding the recovery which was Ex-Pw-11/2. He also issued parwana for addition of section 15AA which was Ex-Pw-11/3. The accused also made pointation of the place of occurrence and in this regard, he prepared pointation memo already Ex-Pw-5/2. Vide an application Ex-Pw-11/4, he sent the recovered pistol along with empties to FSL. He issued parwana Ex-Pw-11/5 to muharrir for handing over already recovered empties lying in malkhana. He produced the accused for recording his confession vide application Ex-Pw-11/6 who denied and was sent to judicial lock up. The FSL report received back as Ex-Pw-11/7 which was placed on file. He recorded the statement of PWs. He handed over the file to SHO concerned for

[Handwritten signature]
4-2-2019

Kashif Dildar
ADDITIONAL
Muzim of Police

TRUE COPY

EXAMINER
District & Sessions Judge Buner
Authorized as per
G.O.S Order. 1984

(71)

17

submission of challan after completion of investigation.

PW-12 Ishfaq DFC stated that during those days, he was posted in PS Gagra as DFC. On 25.08.2012, warrants u/s 204 Cr.P.C against accused Muhammad Farin and Shiekh Farin Ex-Pw-12/1 and Ex-Pw-12/2 were entrusted to him for compliance. He visited the houses of the accused but they were not traced out. In this regard, he obtained the statements of elders of locality and prepared his reports which were Ex-Pw-12/3 and Ex-Pw-12/4. Similarly, proclamation notices u/s 87 Cr.P.C were also handed over to him for compliance which were Ex-Pw-12/5 and Ex-Pw-12/6. In compliance thereof, he obtained the statements of elders. In this respect, he submitted his reports Ex-Pw-12/7 and Ex-Pw-12/8. He had complied both the warrants and notices according to law.

PW-13 Atiq-Ur-Rahman SI (Rtd.) stated that during those days, he was posted in police station Gagra as SI. On 16.08.2012, investigation was entrusted to him. He rushed to the spot and prepared site plan Ex-PB on the pointation of eye witness Shirat Khan. During spot inspection, he recovered blood stained earth Ex-P1 and blood stained piece of paper and blood stained grass, leaves Ex-P2 and Ex-P3 took into possession and sealed in separate parcels and prepared the recovery memo Ex-Pw-10/1. He also recovered from the spot three empties of .30 bore Ex-P4 and sealed in parcel and prepared recovery memo Ex-Pw-13/1. He also prepared search memo Ex-Pw-13/2 of the house of accused. He issued parwana Ex-Pw-13/3 of section 302 PPC. He also issued parwana Ex-Pw-13/4 regarding correction of names of the deceased. He prepared list of LRs Ex-Pw-13/5. He also prepared recovery memo already Ex-Pw-7/1 vide which Akbareen s/o Musafar produced blood stained shirt black colour of the

14-2-2012

SEARCHED
INDEXED
SERIALIZED
FILED

TRUE COPY

EXAMINER
District of Sargodha
Authorized by
O.S. Order. 1987

72

18

deceased Gul Fairoz and Shalwar blue colour in torn condition in respect of the injured/complainant and prepared the recovery memo. Vide application Ex-Pw-13/6, he applied for reservation of empty .30 bore to FSL. Vide application Ex-Pw-13/7, he sent the recovered garments to FSL. He issued parwana of addition of section of law 337-D PPC which was Ex-Pw-13/8. He applied for warrant u/s 204 Cr.P.C against the accused Shiekh Farin and Muhammad Farin which was Ex-Pw-13/9. He also applied for obtaining proclamation notices against the said which was Ex-Pw-13/10. On the death of Gul Fairoz, he also prepared inquest report which was Ex-Pw-13/11. On receiving FSL report, he placed it on file as Ex-Pw-13/12. He recorded the statements of PWs u/s 161 Cr.P.C. on completion of investigation, he handed over file to SHO for submission of challan who submitted the same.

During proceedings, it was reported by concerned DFC that PW Afrin was died, therefore, counsel for complainant submitted an application for transposing his statement of PW Afrin earlier recorded u/s 512 Cr.P.C, which was allowed and statement of said PW already recorded in 512 Cr.P.C was hereby transposed which was reproduced as under;

مجروح شیبیر خان ولد گل فروز میرے سگے برادران ہیں۔ بروز وقوعہ میں گھر خود میں تھا۔ مجھے اطلاع ملی کہ ملزمان شیخ فرین اور محمد فرین جو کہ ہمارے چچا زادگان ہیں میرے سگے برادران مذکورین پر فائرنگ کر کے زخمی کئے جائے وقوعہ آیا تو معلوم ہوا کہ واقعی ملزمان بالائے وقوعہ سرزد کیا ہے اور میرے برادران کو ہسپتال لے گئے۔ جہاں پر میرے بھائی گل فیروز کو پشاور refer کیا جا رہا تھا کہ راستہ میں دم توڑ دیا گیا جبکہ شیبیر خان کو LRH پشاور میں داخل کیا گیا جسے موقع سے تین عدد خول

کارتوس 30 بور Ex-P1 پیش کر کے موقع پر بند بہ پارسل کیا گیا اور اسی طرح میں مورخہ 19.08.2012 کو مجروح اور مقتول کے ٹیڑے I.O کو پیش کر کے بند بہ پارسل سر بمہر کئے گئے ہیں۔ شہیرخان کی مجروحیت اور گل فیروز کے قتل کا برخلاف ملزمان دعویدار ہوں۔

4. After completion of evidence, accused was examined under section 342 Cr.P.C wherein he denied the allegations and pleaded his innocence but he neither wished to be examined on oath nor he opted to produce any witness in defence.

5. Learned APP for state assisted by learned counsel for complainant argued that accused facing trial along with co-accused was directly charged in the FIR for commission of offence and the co-accused was still absconder. That the complainant also sustained injuries in the occurrence. That the occurrence was witnessed by the eye-witnesses. That the accused remained absconder for about seven years. That both the parties were cousins interse and there was no question of mis-identification. That the prosecution fully connected the accused facing trial along with co-accused with the commission of offence. That the medical evidence in the instant case fully supported the complainant's version. That the weapon of offence was also recovered from the house of accused. That though one of the eye-witness was declared as hostile due to his deviation from his earlier statement but sole statement of complainant/injured was sufficient to convict the accused. That the incriminating recoveries of blood, blood stained garments, FSL reports and site plan further supported the prosecution evidence. That no contradiction in between the witnesses

Karshid Chhawani
ADJ & SJ/170-11
Mudhol Court, Tal. Dargay
Baber, Dargay

TRUE COPY

EXAMINER
District & Sessions Judge
Authorized under 57 of
C.S. Order. 1984

7/1

was brought on record. That the motive was advanced between the parties as exchanged of hard words prior to the occurrence. That case against accused was proved beyond any doubt. The prosecution placed their reliance on case laws titled "Zafar Arbab vs The State" reported in 1995 P Cr. L J 1784, "Qaisar Khan and others vs The State" reported in 2009 SCMR 471, "Ghulam Mustafa vs The State and others" reported in PLD 2015 Peshawar 23, "Zeeshan Afzal alias Shani and another vs The State and another" reported in 2013 SCMR 1602, "Muhammad Nawaz vs The State and another" reported in 2001 P Cr. L J 1014, "Imran Ashraf vs The State" reported in 2012 YLR 325, "Waris Hussain Shah vs Abid Hussain and 3 others" reported in 2001 P Cr. L J 268, "The State through Mehmood Ahmed Butt vs Sharaf-ud-Din Sheikh and another" reported in 2013 SCMR 565 and "Riaz Hussain vs The State" reported in 2001 SCMR 177.

2074

At Dera Ismael Khan
 District & Sessions Judge
 District & Sessions Judge
 District & Sessions Judge

6. On the contrary, learned counsel for the accused argued that the prosecution case was full of doubts and contradictions. That the story advanced by the complainant was not based on true facts and circumstances of the case. That the occurrence was even not seen by

TRUE COPY

Witnesses was not established. That the recovery of empties was not
 District & Sessions Judge Buner
 Authorizing Officer of
 G-9-S Order.

the complainant injured and likewise the presence of other eye
 believable. That the site plan contradicted the ocular account. That no
 specific role was attributed to accused facing trial. That the medical
 report also did not support the version of prosecution. That the alleged
 recovered empties were not sent to FSL at time of its recovery for
 ascertaining the fact of being shot by one or some other weapons.

That the marginal witnesses of recovery memo were not produced. That the recovery was planted one and non-compliance of section 103 Cr.P.C was made. That one independent witness Sharafat Khan was shown as witness, however, the said witness negated the story of prosecution. That motive advanced by the prosecution was not proved. That there were dis-honest improvements in the statement of complainant. That there were charring marks on the body of deceased, however, according to site plan, in view of distance of accused and deceased shown as the coming of charring marks on the body of deceased was not possible. That the accused had not confessed his guilt. That the mode and manner as described by the complainant was totally against the facts and circumstances of the case which created serious doubts, therefore, the accused was entitled for acquittal. He placed his reliance on case laws titled "Farman Ali alias Bholi vs The State" reported in 2013 P Cr. L J 1847, "Mulazim Hussain vs The State and another" reported in 2010 P Cr. L J 926, "Muhammad Iqbal vs Abid Hussain alias Mithu and 6 others" reported in 1994 SCMR 1928, "Barkat Ali vs Muhammad Asif and others" reported in 2007 SCMR 1812, "Sher Ali vs The State" reported in 2018 YLR 1836 and "Haji Qasim Khan vs The State" reported in Cr.A. No. 33-M/2011 of Peshawar High Court/Mingora Bench (Dar-ul-Qaza) Swat.

14-2-2020

Kashif Dilawar
AD & SI/120-11
District Criminal Trial Court
Mingora Bench

TRUE COPY
EX-1
District & Sessions Judge
Authorized under
G.O.S Order 1987

7. I have given thorough consideration to the contentions on both the sides and have gone through the entire record of the case meticulously, with the assistance of learned counsel.

8. My understanding of different aspects of the case and findings

76

thereon are as follow. As per prosecution story, the complainant reported to local police that on the day of occurrence, he along with his brother/injured came to Bazar Kalpani for buying commodities. While on coming back to home, when they reached the place of occurrence i.e. general thoroughfare Tawas Khan at Kalpani Buner, accused Muhammad Fareen and Sheikh Fareen sons of Abdul Mateen were already present there, attempted at their lives by firing at them. Resultantly, the complainant sustained fire arm injuries on left side of his abdomen and on his back while his brother sustained injuries on his chest at left side and on his back. Motive was explained as exchange of hard words between the parties prior to the occurrence. Later on, the brother of the complainant succumbed to the injuries. The evidence which was produced before this Court was the ocular account i.e. furnished by the eye witnesses, complainant as PW-9. Ocular version of the complainant needed support from the physical circumstances of the case as well as corroborative evidence of the case. The injury sheets, inquest reports and post mortem reports affirmed that the deceased and complainant sustained firearm injuries. The site plan EXPB was available on the file being supportive document to make the picture of occurrence understandable. Blood stained earth Ex-P1, blood stained piece of paper and blood stained grass, leaves Ex-P2 and Ex-P3 were taken into possession vide recovery memo Ex-Pw-10/1. Similarly, three empties of .30 bore Ex-P4 were recovered through recovery memo Ex-Pw-13/1 from the spot. Vide recovery memo Ex-Pw-7/1, blood stained garments of deceased

14-2-2021
 Rashid Dillawar
 AD & M/170-11
 District & Sessions Judge
 District of Dargaj

TRUE COPY
 EXAMINER
 District & Sessions Judge
 District of Dargaj
 Order 19

were taken into possession and were sent to FSL through application Ex-Pw-13/7 of which report Ex-Pw-13/12 and the same was available on file being incriminating evidence. Moreover, the accused made pointation on the spot regarding crime scene vide memo ExpW5/1 which the prosecution claimed as discovery of facts. More so, during investigation, police recovered .30 bore pistol Ex-P1 along with four live bullets, magazine from his residential room and the investigation officer sent the same to FSL and report of FSL, EXPW11/7 received back and placed on record. The learned counsel for prosecution claimed their case proved on the strength of above referred evidence. However, learned defence counsel challenged each and every referred point on the strength of standard of appreciation of evidence.

9. The main objections and arguments of learned defense counsel revolve around certain points; that the statement of the complainant was contradictory to the report and site plan; that the recovery of weapon of offence was not proved; that medical report of the deceased and injured contradicted to the ocular account; that the names of so called eyewitnesses were neither mentioned in the report nor they deposed against the accused; that the occurrence was not committed by the accused and that motive for the crime was not proved.

10. It is the general principle of appreciation of evidence that direct testimony from a primary source always has precedence over corroborative evidence, provided such testimony is consistent, unbiased and capable of standing the test of cross examination. It is

7

18/2/20

Shri Dilawar
J.S. 54/170-11
Criminal Court
Amritsar

TRUE COPY

EXAMINER
Dated: 18/2/20
Authorized under 17 of
S Order, 1983

78

also equally important to note that corroborative testimony is used to second the direct evidence and it by no stretch of imagination, can outweigh what comes out of primary source.

11. To avoid the repetition of facts, this Court will take the ocular account of the case first for appreciation. PW-9 Shaibar Khan, the complainant relied on his earlier statement recorded in proceedings under section 512 Cr.P.C and the same was exhibited by the learned counsel for the complainant as ExPW9/1, which was objected by the learned defense counsel at the time of its exhibition. Later on, the prosecution submitted application for re-examination of complainant to fill up the deficiency which was disallowed by this court on the pretext that the witness was properly cross-examined regarding his exhibited statement, though the examination-in-chief statement of complainant was required to be recorded afresh but such act of the witness amounts to irregularity but not illegality because the witness though relied on his earlier statement recorded in proceedings u/s 512 Cr.P.C but the learned defense counsel properly with great length cross-examined the

Handwritten signature and stamp: 14-2-2000, District Court, Buner

TRUE COPY

EXAMINER
District Session Judge Buner
Authorized in 87 of
S Order, 1982

witness in the light of said exhibited statement. Since, the said statement has been subjected to cross-examination by the learned defense counsel in presence of accused, thus found admissible. Now coming to the statement of complainant, from perusal of said statement it reveals that the complainant claimed himself as the eye-witness of the occurrence as on the eventful day he along with deceased were coming from bazar Kalpani and when they reached to Tawas Khan Kalpani, accused facing trial along with absconding co-accused were

79

present there and the opened fire at them. Resultantly, he sustained injuries on front side of abdomen and on back while his brother/deceased Noor Feroz sustained injuries on chest at left side and on back and resultantly, his brother succumbed to injuries. He recorded his report in hospital and after its reduction, he thumbs impressed the same while his brother Noor Feroz thumb impressed it as verifier. Learned counsel for the complainant contended that since the verifier of the report of the complainant had died, thus, the report be treated as dying declaration as per article 46 of Qanoon-e-shahdat. Here, it is pertinent to mentioned that neither the doctor has attested the report of complainant nor he has issued any consciousness certificate of the deceased, the then injured. Although the medical officer, PW-3 stated in his cross-examination that at the time of examination of deceased, the then injured he himself identified him but perusal of medical report its reveal that the name of deceased, the then injured is mentioned wrongly and its not appealing to the prudent mind that if the deceased, the then injured introduced or identified himself to the medical officer then why his name is not mentioned correctly. Under the circumstances, the contention of prosecution regarding the fact of considering the act of verification by the deceased, the then injured could not treated as dying declaration. Bare perusal of report it reflects that the complainant attributed general role of firing to both the accused but despite stating the fact of having short distance from the accused,. Here, question does arise that how the complainant was unable to identified the kind of weapon of offence and specification or

[Handwritten signature]
 11/12/2011

MAJID BISHWAKI
 ADV. & LEGAL CONSULTANT
 HONORARY JUDGE
 DISTRICT COURT
 DISTRICT BUNJUR

TRUE COPY
 OF EXAMINATION
 District & Sessions Judge Bunjur
 Authorized to sign
 S. Order.

bifurcation of the role of each accused. Likewise, the complainant has neither utter any word regarding the presence of any witness at the spot in his court statement nor mentioned the names of eyewitness in his report. Similarly, the complainant has also not stated about the presence of any eye witness at the spot. However, the I.O on the same day prepared the site plan on the pointation of eye witnesses and got recorded their statement u/s 161 Cr.P.C. The said alleged eye witnesses were not only cited as eye witnesses but the I.O also took into possession articles from the spot in their presence. Surprisingly, the eyewitness Sherat Khan got recorded his statement during proceedings u/s 512 Cr.P.C as well as in the instant trial. During twice statement of the said witness, he did not state any facts regarding the occurrence rather he only stated about the recovery of alleged recovered articles from the spot. At that time learned counsel for the complainant contended that the witness be declared hostile and though the status of declaring the witness as hostile was preserved till final judgement, however, the complainant counsel was allowed to cross-examined the witness but nothing favorable could be scored out by the prosecution.

80

2-2-2020

Mr. Dinesh Kumar
 S/172/19
 District Court
 District of Durgam

TRUE COPY

ELLY SIVIER
 District Court
 Order 1984

Since, the witness admitted the spot proceeding and his deposition to the extent of spot recoveries of articles and denial to the extent on witnessing the occurrence and preparation of site plan, thus, he in absence of any suggestion of allegation regarding any ill will with the complainant could not be declared as hostile because it is not appealing to prudent mind that why someone put forward himself for deposition being ocular account when actually he had not seen the same. More so,

81

the complainant during his cross-examination also stated that after the occurrence the family of Sherat Khan came on the spot after the occurrence. Likewise, the complainant stated that the family of Sherat Khan are not the witnesses of the occurrence. Further, the prosecution abandoned the other so called eye witness being won over which also put an adverse inference on the court. Now coming to the site plan, though the I.O prepared the same and have got exhibited in his statement, however, on whose pointation it had allegedly been made, uttered not a single word in his court statement. Let's suppose for the sake of arguments if this court put a bird view eye on site plan, it reflects the places and distance between the accused and the complainant party are found contradictory to the direction of receiving injuries or fire arms bullets on the person of deceased and complainant as per medical report as well as of complainant statement recorded in cross-examination. Similarly, the differences of distance as mentioned in site plan and stated by the complainant are contradictory to each other which negated the fact of receiving fire arms injuries from a short distance resulting into charring marks and blacking.

[Handwritten signature]
14-2-2000

Poshni Dargah
11/8/81/12/111
Dist. Criminal Court
Buneri District

TRUE COPY
EXAMINER
District & Session Judge Buneri
Authorized on 17/02/2000
O.S. Order. 1994

Next important aspect of the case was that the prosecution claimed that they have evidence in shape of discoveries on pointation of the accused. The accused facing trial during the course of investigation led the police party in handcuff to the place of recovery i.e. residential room of his house from where on his pointation the I.O recovered and took into possession one .30 bore pistol having charger loaded with four bullets. Here, it is pertinent to mention that the I.O did

not make compliance of section 103 of Cr.P.C by associating any independent witness to said recovery. The empties were collected on the eventful day but the same were not sent to FSL on same or following day in order to ascertain the fact that whether these empties were fired from one weapon or different ones, however, after recovery of .30 bore pistol the same were sent to FSL and report ExpW11/7 whereof received back as negative. During custody, the accused also led the IO to the place of occurrence and pointed out the same which was recorded by the IO on pointation memo ExpW5/2. Further, one cannot say it as discovery because the spot of occurrence was already in the knowledge of all the PWs and IO of case prior to disclosure of accused and the word discovery indicates that it would be regarding those facts which were not discovered yet, so the alleged discovery is not the admissible piece of evidence as the same was not discovery and without incriminating recovery during discovery. Under the circumstances, such possibility could not be ruled out of consideration that the alleged recovery of empties from the spot and then the pistol has been managed or maneuvered by the complainant by making fire shots from sending the same to FSL. Likewise, in respect recovery of blood stained garments of deceased and complainant/injured the witness to said recover memo appeared in witness box as PW-7 and during the cross-examination of PW-7, the witness stated in cross-examination that that both the clothes of deceased and complainant were torn and it was correctly mentioned in memo that the clothes were torn on chest, on the request of learned defense counsel the parcel

74-2-2-92
 District Judge Buncer
 District Court
 Buncer at Buncer

TRUE COPY
 BY EXAMINER
 District Judge Buncer
 District Court
 Buncer at Buncer

83

Ex.P1 and parcel Ex.P2 were de-sealed by the court and it was observed that in parcel Ex.P1 the qameez of deceased was found blackish colour and in torn condition, however, not torn specifically on chest but from other angle pertaining to back side. The clothes also not visibly suggested blood stained. Similarly, it was observed that in parcel Ex.P2 the qameez belonging to complainant was not found of sky colour as mentioned in the recovery memo. As per observation, contradiction regarding the blood stained on clothes and regarding the side of torn and colour of shirt of complainant have been found which also created doubts in respect of said recovery. Besides that, the physical circumstances of the case which are already discussed, the same are not supportive to the prosecution and the investigation of the IO is not only creating inherent defects in the case of prosecution but also creating serious doubts about the spot of occurrence. The corroborative evidence and physical circumstances of the case are not extending any sort of help to eye-account.

17-2-2012
 District Collector
 District of Bagmati

13. When it comes to the medical evidence in the instant case, the same was in the shape of injury sheet followed by inquest reports of the deceased and injury sheet of complainant injured which examination was conducted by the doctors who appeared in witness box as PW-3, stated that on 16.08.2012 at about 07:10 PM, he examined Noor Faroz s/o Musafir r/o Kalpani brought by relatives and reported by casualty police. On examination, he found the Firearm injury, entry wound about 1/3 inches in diameter with charring marks present on the wound at the level of middle of left clavicle bone and

TRUE COPY

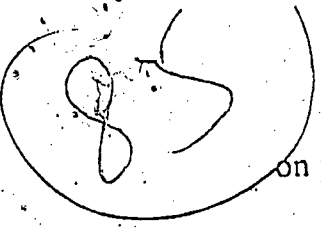
Director
 of
 Order

84

Fire arm injury, exit wound about 1/2 inches in diameter on the right side of middle of chest just above coastal margin. On the said date and time, he also examined Mr. Shaiber Khan. On examination, he found the Firearm injury, entry wound about 1/3 inches in diameter with charring marks present around the wound on left lower chest and Firearm injury, exit wound about 1/2 inches in diameter on the back at the level of approximately. Whereas, Zar Wali Khan SI PW-2, prepared the injury sheets of both the injured which were Ex-Pw-2/1 and Ex-Pw-2/2 and referred them to doctor and he further stated that thereafter, the complainant reported the matter to him which he reduced into writing in the shape of murasila Ex-PA/1, seems little out of order as usually, the report of injured reduced first then he got examined by the doctor, the timing of report as per record is 07:30 PM which suggests that after examination the initial report was scribed and if after medical examination the doctor referred the deceased then injured to surgeon for further management then how the report of complainant reduced and how the deceased verified the same as rider, thus had shaken the very foundation of FIR and would cast doubts on its authenticity. Similarly, during cross examination of doctor, the learned defense counsel brought the fact of direction of injury received on person of deceased as one entry wound from upward position to down position having charring marks without any back injury on person of deceased whereas the complainant stated that the deceased had received injuries on front and on back. The contention of complainant regarding receiving of fire arms shots and its direction

[Handwritten signature]
14-2-2020

TRUE COPY
 EXAMINER
 District Court, District Judge, District Judge
 Authorized under Order 1908



on person of deceased also found contradictory to medical report.

14. The other main points for consideration were in respect of motive and abscondence of accused. If motive behind the occurrence as shown by the complainant party is even taken as proved, it would not help out the prosecution case as this nature of evidence only carries corroborative value and in a case where there is no confidence inspiring direct evidence of charge, such type of evidence is of no worth. Further, motive is a double edged weapon which cuts both the sides as if it will be considered strong reason for commission of offence then on other hand it could be scored as probable malafide on part of the other party. Same is the case with the abscondence of accused, which too, if taken as proved, could not be substituted for real evidence or in other words could not be treated as evidence of charge against the accused facing trial as it is also corroborative nature of evidence. Mere abscondence is not conclusive proof of guilt of an accused person; it is only a suspicious circumstance against an accused that he was found guilty of the offence. However, suspicions after all are suspicions. The same cannot take place of proof. Per law, abscondence can be taken into consideration when substantial evidence of unimpeachable character or strong circumstantial evidence is available to connect the accused with the commission of offence.

[Handwritten signature]
 14-2-2026

KASHI D. S. Sarda
 AD & SI (P) 13
 Addl. Commr. (Legal) 13
 Bhubaneswar

TRUE COPY

[Handwritten signature]
 District Judge
 Bhubaneswar
 Order 183

15. From the available record and evaluation of evidence in juxtaposition, this Court concludes that the complainant failed to prove the presence of ocular account and the presence of accused at



the time of occurrence at the crime scene. The physical circumstances of the case are negating the prosecution story and the corroborative evidence was not supportive to the version of prosecution. The incriminating recoveries as well as discoveries were of no use for prosecution because the prosecution failed to prove the same independently as good evidence

16. For safe administration of criminal justice, prosecution is duty bound to prove its case beyond any shadow of doubt and as held by the Superior Courts of the Country in numerous cases that only a single doubt in the prosecution case can be considered enough for giving benefit to the accused. However, in view of the above mentioned facts and circumstances, the prosecution case against the accused facing trial is not free from reasonable doubts. As this court is of the view that the prosecution in the instant case has not been able to prove the charge against the accused and bring the guilt of the accused at home through convincing and reliable evidence, therefore, while giving him benefit of doubt, accused facing trial is acquitted of the charge leveled against him in the present case. Accused facing trial is in custody, be set at liberty forthwith if not required to be detained in any other case.

[Handwritten signature]
14/02/2023

AD & S...
Criminal...
District...

TRUE COPY

WINNER
37 of
S Order

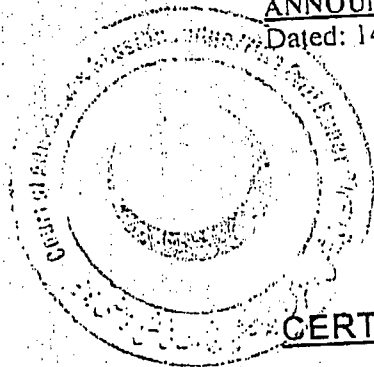
Reliance placed on case law titled "Riaz Ahmad vs The State" reported 2016 P. Cr. L J 114 (Peshawar), of which concluding para reproduced as under;

"(a) Criminal trial-----Benefit of doubt---Prosecution was duty bound to prove its case beyond any reasonable doubt and if any single and slightest doubt was created, benefit of the same must go to accused and it would be sufficient to disbelieve the prosecution story and held the accused for

acquittal---Many doubts were not needed in the prosecution case' rather any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind, was sufficient for acquittal of accused---Accused, was always considered as the most favourite child of law and every benefit of doubt would go to him, regardless of fact whether he had taken any such plea or not.

17. As regards the case against the absconding co-accused, Muhammad Fareen, he is already declared proclaimed offender, perpetual non-bailable warrant of his arrest have already been issued so no need of re-issuance of the same, however, his name be also entered in the relevant register of P.Os. Case property be kept intact till the arrest and trial of absconding accused. File be consigned to record room after its completion and compilation.

ANNOUNCED.
Dated: 14-02-2020



(Kashif Dilawar)

Addr: Sessions Judge-II/JMCTC/IZQ,
Buner at Daggar

CERTIFICATE

Certified that this judgment consists of twenty four (24) pages, each has been read, checked, signed and corrected by me wherever it was necessary.

TRUE COPY

[Signature]
Judge Buner
37 of
Order 1934

(Kashif Dilawar)

Addr: Sessions Judge-II/JMCTC/IZQ,
Buner at Daggar

CD No: 1542
Date of Application 21-3-2020
Date of Receipt of File 21-6-13
Date of Preparation 21-3-2020
Date of Notice _____
Words 25 P
Fees _____
Urgent Fees _____
Date of Delivery 24-3-2020
Signature _____

[Signature]
Kashif Dilawar
Sessions Judge-II/JMCTC/IZQ,
Buner at Daggar

مضمون صحیح و اثر نیک مستفید ہوا

KPK

سہ ماہی: محمد زین و عبدالحقین صاحبان کا ذکر بہتر

در فروع ہذا در علم کی جامع دوبارہ بحال و مستحکم تحقیق ہوگی

کامیاب ہو رہی ہے خاص طور پر 302 ہر جہ کی کتابوں سے اور دیگر نثرانی
نفاستوں کو بہر خاص مندرجہ ذیل کتابوں سے۔

ضیائی!

در فروع مستحکم ہو رہی ہے

۱) پدم سنگھ تحقیق کا سفر، کوک (ملازم صاحب) کی تحقیق

دنی سواری کا علم بہتر ہے اور دینی امور سے وابستہ۔

۲) پدم سنگھ کا دورہ خاص طور پر 302 کا ہر جہ سے اور مستحکم ہے

۳) کوک صاحب اور دوسروں کے ساتھ ساتھ دیگر نثرانی سے بہر خاص مندرجہ
ذیل کتابوں سے۔

۴) پدم سنگھ کا دورہ خاص طور پر 302 کا ہر جہ سے اور مستحکم ہے اور

مستحکم ہے اور دینی امور سے وابستہ۔

۵) پدم سنگھ کا دورہ خاص طور پر 302 کا ہر جہ سے اور مستحکم ہے اور

مستحکم ہے اور دینی امور سے وابستہ۔

۶) پدم سنگھ کا دورہ خاص طور پر 302 کا ہر جہ سے اور مستحکم ہے اور

مستحکم ہے اور دینی امور سے وابستہ۔

۷) پدم سنگھ کا دورہ خاص طور پر 302 کا ہر جہ سے اور مستحکم ہے اور

مستحکم ہے اور دینی امور سے وابستہ۔



35
GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE & TECHNICAL
EDUCATION DEPARTMENT

No. SOIII(IND)/6-2/2017/Sheikh Fareen/
Dated 25th March, 2022

1495
Annex E

To,

✓
Mr. Sheikh Fareen,
Ex-Cook, Government Polytechnic Institute
Buner

SUBJECT: APPEAL REGARDING RE-INSTATEMENT IN SERVICE OF SHEIKH FAREEN, EX-COOK, GOVT: POLYTECHNIC INSTITUTE, BUNER

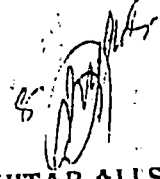
I am directed to refer to your appeal on the subject noted above and to state that the Appellate Authority has examined the case and it has been decided that removal from service had been made accordingly on the basis of willful absence from duty. moreover after lapse of 07 years the appeal is badly time barred, therefore the appeal for re-instatement in service is regretted with sorrow.

However, you may extend all financial emoluments if any, to Managing Director KP-TEVTA, as admissible under the rules, please.

Encl: As Above

Endstt: No. & Date even.

Copy forwarded for information to MD KP-TEVTA with reference to his letter No. KP-TEVTA/Estt/Sheikh Fareen/9067(1-2) dated 03.01.2022


(AKHTAR ALI SHAH)
Section Officer-III

Section Officer-III

To

Mr. Sheikh Farin S/O Abdul Mateen,
R/O Kalpanai, District Buner.

Subject: - EXPLANATION.

I am directed to refer to a letter No.260 dated 12-09-2012 received from your Principal, and reported that you have been absent from your duty since 17-08-2012 due to involvement in criminal case. Your this act is contrary to the office discipline & Government rules.

You are therefore, directed to appear before the Police authority for your physical arrestment as per requirement of the law, otherwise strict disciplinary action would be initiated against you under the prevailing rules.

ASSISTANT DIRECTOR (ADMN).

Endst: No. DGTE&MT/Estt/22-14(49) 337363 Dated 9/10/12

Copy forwarded for information & n/action to the Principal, GPI, Buner w/r to his letter No. quoted above.

ASSISTANT DIRECTOR (ADMN). 9/10/12

Explanation

Seen
classm



No. KP-TEVTA/Estt/Sheikh Fareen/9067(1-2)

Dated 3/04/2021

To,
The Section Officer-III,
Industries, Commerce, & Technical Education,
Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - APPLICATION FOR REINSTATEMENT IN SERVICE

I am directed to refer to your letter No. SOIII(IND)6-7/2021/6335 dated 09-12-2021 on the subject noted above and to re-submit self-contained note for your kind perusal and onward submission to the quarter concerned for seeking advise in the matter as desired as under in respect of Mr. Sheikh Fareen S/O Abdul Mateen Ex-Cook Govt. Polytechnic Institute, Buner.

The accused official was charged in a murder case vide F.I.R. No. 723 dated 16-08-2021 U/S 302/324/34 PPC Police Station Gagra, Buner (Annex-I).

The accused remained absent from duty from August 17, 2012 and also remained absconder onward. He was proceeded against under E&D Rules for his absence ^{from} for duty and as a result was accordingly removed from service vide TE&MT office order No. DGTE&MT/Estt/22-14 (49)/39997 (1-3) dated 20-06-2013 (Annex-II).

Later on, the accused was arrested and was accordingly went under trail in session case No.56/7 of 2019 in the court of Additional Session Judge/ Judge Model Criminal Trial Court/IZQ, Buner and whereas the accused was acquitted of the Charges. The accused official was, therefore, wet at liberty w.e.f 14-02-2020 (Annex-III).

The accused afterword has submitted an application dated 18-02-2020 for his re-instatement in Service. This office is of the view that in the instant case, while the accused/ Ex-official was removed from service vide order dated 20-06-2013.

A Case having similar back ground of Gul Niaz, Junior Clerk (BS-11) was previously decided by the Administrative Department vide its letter No. SOIII (IND) 6-2/2017 / 777 dated 15-01-2018 and whereas the official was in Service with all back benefits, keeping in view the above, the worthy Secretary Industries, Commerce & Technical Education Department as the appellate Authority may decide whether the Ex-Official:-

- i. Be reinstated in Service with all back benefits OR
- ii. Be reinstated in Service and the absentee period from 17-08-2012 to 20-06-2013 be considered extra-ordinary Leave without pay OR
- iii. The request of the Ex-Official for his re-instatement in Service be rejected or any order deem appropriate by the Competent Authority.

Endst: No. KP-TEVTA/Estt/Sheikh Fareen/
Copy for information to the Ex-official, GPI, Buner.

DEPUTY DIRECTOR (ESTT)

Dated _____/2021

DEPUTY DIRECTOR (ESTT)

Handwritten notes at top of page, possibly including a date or reference number.

Handwritten name or signature in the upper middle section.

Block of typed text, likely a letter or report, containing several lines of information.

Vertical handwritten notes on the right margin, possibly a list or index.

Large block of typed text, possibly a main body of a document or a long letter.

Text at the bottom of the main document area, possibly a footer or reference.

Handwritten text at the bottom left corner, including 'H-n-H' and '38'.

39

BETTER COPY

Govt of NWFP

Planning environmental & development

Govt NWFP

ORDER

No, _____ under the provision of Art 194, A of CSR Mr, Sher Hassan Assistant planning environmental & development department govt NWFP is hereby suspended from service with effect from 16/02/1998 on account of his environment in criminal case of Mr khurshid and others vide FIR 425 dated 13/11/1997 P/S Mattra Peshawar till his handing over to the police authority and finalization of his case in the court of law.

Secretary govt NWFP

Office order no.

DATED 29/06/1998

DISTRICT & SESSIONS JUDGE-X, PESHAWAR.

07.2004

Accused Maiwa Khan, Jamshed Khan, Atlas Khan, Bara Mas Khan, Rasheed Khan and Sher Hassan are present on bail alongwith their counsel, APP for the state present. One of the remaining legal heir namely Abdul Sattar Khan produced in court today. His statement has already been recorded. According to his statement he has effected compromise with the accused and pardoned them in the name of Almighty Allah and accordingly waived his right of Qisas and Diyat. That the compromise was effected voluntarily without any duress, coercion or undue influence. The statement was reiterated to him and after admitting it to be correct his signature obtained thereon.

The statements of the other legal heirs have already been recorded on 29.7.2004. Similarly, the statements of the female legal heirs of the three deceased have already been recorded through a female local commission duly identified by their male near relatives. In addition the statements of the elders of the locality have already been recorded and they have also confirmed the factum of compromise. Their statements were also orally reiterated to them which they accepted as correct and their thumb impressions have already been obtained.

Accordingly, being satisfied from the genuineness of compromise and keeping in view the fact that the offence U/S 302 PPC is compoundable; the accused petitioners are acquitted from the charge levelled against them. So far as the remaining section of law i.e. 148 and 149 PPC is concerned, some of the accused are quite elders therefore, no useful purpose would be served to fined them therefore, they are also acquitted U/S 148 and 149 PPC. Sureties are discharged. Case property if any be kept in tact till the expiry of period of appeal/revision. File be consigned to R.R after its completion.

Announced: -
Dated: - 31.07.2004.

(Muhammad Jamal Khan)
Additional District & Sessions Judge-X,
Peshawar.



CERTIFIED TO BE TRUE COPY

Examined by
Copying Agency, Sessions Court
Peshawar.

Compromised

41

134

GOVERNMENT OF NWFP
PLANNING & DEVELOPMENT DEPARTMENT

Dated Peshawar the January 1, 2005

ORDER

NO. SO (ESTT) P&D / 087 / 2-146 / 97 / Vol-II. In exercise of powers conferred upon me Under Rule-5 of the Appeal Rules, 1986 read with FR-54 (b) and Establishment Department letter No. SOE-IV (E&AD)2(137)/87, dated 06/12/2004, Mr. Sher Hassan, Assistant is hereby re-instated in service with effect from the date of his removal from service i.e. 17/02/1998, however, his absence from duty be treated as leave without pay.

ADDITIONAL CHIEF SECRETARY
P&D DEPARTMENT

Endst: No.SO(ESTT:) P&D / 087 / 2-146 / 97 / Vol-II. Dated Peshawar the 30-December 2004

Copy forwarded to the: -

- o Accountant General, NWFP, Peshawar.
- o Secretary to Government of NWFP, Establishment & Administrator.
- o Department w/r to their letter referred to above.
- o Section Officer (B&A), Planning & Development Department.
- o P.S. to Additional Chief Secretary, P&D Department.
- o P.S. to Secretary, P&D Department.
- o P.A. to Deputy Secretary (Admr) P&D Department.
- o Official concerned for compliance.

Rodul
Section Officer (Establishment)



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. OP.5(25)/LD/2012 / 5198-99
DATED PESHAWAR THE 04 APRIL 2012

To
The Secretary to Govt of Khyber Pakhtunkhwa,
Establishment Department.

Subject: APPLICATION FOR RE-INSTANTMENT/ GRANT OF PAY.

Dear Sir,
I am directed to refer to your letter No.SOR V(E&A)/Gen:lr:/2012/ dated
16-03-2013 on the subject noted above and to say that parawise reply is as under:

i- Whether the Administrative Department before such advice has
considered/ Inquired into the fact of the official's suspension under
the provision of CSR-194, from the Administrative Department?

Reply: Yes, the Administrative Department after receipt of Information
about involvement of official in case vide FIR No. 10-A/2000 dated
8.4.2000 PS Levies Thana Zohb the Administrative Department took
prompt action and suspended the official in light of CSR 194 vide
order No. 28370-39/34/- (I) dated 4.7.2000 (copy enclosed).

ii- Whether suspension of an official who is absconder, is necessary
under CSR-194 or otherwise?

Reply: Under CSR-194, in case a Government servant is not arrested, the
competent authority may suspend him by specific order, if the
charge against him is connected with his position as Government
servant or is likely to embarrass him in the discharge of his duties or
involve moral turpitude. So, if, the department is unaware of the
fact that the Government servant is absent due to any criminal
charge against him, then he will be preceded under Efficiency and
Discipline rules for his absence. But when it comes in the
knowledge of department, that Government Servant is involved in
criminal offence or debt and is not arrested, he may be suspended
under CSR-194.

Whether the official had informed his department about the said
event or otherwise?

Reply: The official has not informed his Department about the said event.

iv- What action was taken by the Administrative Department soon after the absence of the said official? Had Law Department taken into account these factors before tendering advice in the instant case?

Reply: Detail reply has been furnished in reply to para (i) above.

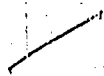
Yours Faithfully,



(AZMATULLAH KHAN)
SECTION OFFICER (OPINION-I)

Ends: of even No. & date.

Copy forwarded to the P.S to Secretary Law for information.



SECTION OFFICER (OPINION-I)

GOVERNMENT OF N.-W.F.P.
Law Department, Peshawar.

No. OP:5(33)/LD/2004/3931 - Dated Peshawar the 19/4/11

To

The Secretary to Govt. NWFP,
Works & Services Department.

Subject:- Re-instatment in service.

Dear Sir,

I am directed to refer to your letter No. E&A/W&S/13-1/777, dated 1.6.2004 on the subject noted above and to say that if the dismissal of the employee, from service was ordered solely on the ground of his involvement in the murder case, and on no other ground, then he be re-instated in the service, having been acquitted of the said charges by the court.

23/6

n.u.

Q. 2/16

80(6)

Yours faithfully,

Section Officer (Opinion)

Recd. No. & Date	
17036/2	
19/4	

DFA

Reference Para- 22/N

23- The Establishment Department views contained in para 18 to 20 of the Summary fully explained ably and aptly the real facts of the case. From the facts of the case, it transpires that the official was involved and arrested in murder case in 1998. The Department has taken disciplinary action for willful absence from duty. The rules provide that as soon as the person is involved in criminal case, his suspension is automatic from the date of arrest. When the Government Servant is acquitted for being involved in commission of offence, then it is the discretion of the executive authority or appellate authority to form its opinion on the material placed before it, whether such person has been honourably acquitted or not.

24- The expression "honourably acquitted" has not been defined in rules anywhere else. There is no reference in the Code of Criminal Procedure to the term "honourably acquitted". In the ordinary sense, "honourable acquittal" would imply that the person concerned had been accused of the offence maliciously and falsely and that after his acquittal, no blemish whatsoever attaches to him. In cases where the benefit of doubt is given to him or where he is acquitted because the parties have compromised or because the parties on account of some extraneous influence resiled from their statements then as held by the Learned Division Bench of the erstwhile High Court of West Pakistan Lahore Seat in case reported as Sardar Ali Bhatti Vs. Pakistan (PLD 1961 Lah. 664) in spite of the acquittal of the person concerned cannot be declared to have been "honourably acquitted". This decision has been upheld by the Hon'ble Supreme Court of Pakistan (PLD 1976 S.C 202).

25- Notwithstanding this fact, the conviction or acquittal of the accused is based on establishing the charge on the basis of evidence and witnesses produced by the prosecution. The accused are treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the commission of the crimes and as such, deserves to be convicted to meet the ends of justice.

26- In this case, the prosecution miserably failed to establish the charge against the accused for a long period of trial and the acquittal of the accused persons was on account of compromise, therefore, the benefit of doubt goes to the accused official.

(MUHAMMAD ARIFEEN)
Secretary to Govt. of Khyber Pakhtunkhwa,
Law Parliamentary Affairs &
Human Rights Department

CHIEF SECRETARY

27. Para 20 (i) (ii) approved. Absence period to be treated under

FR 54 (a)

CHIEF SECRETARY
21.12.2012

By Secy. Khyber Pakhtunkhwa
1409
Diary No. 27-12-12
Dated 27-12-12

PS to Secretary Law, KPR
Despatch No. 551
Dated 24-12-12
20/12/2012

1A S.S.
21/12/2012

ACS (P&D)
21/12/2012
26/12

ANN-46



EDUCATION

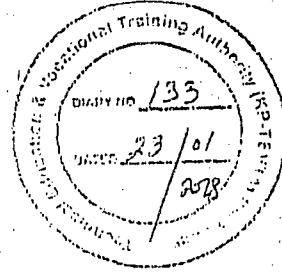
777

No.SOTII(IND)6-2/2017

Dated Peshawar, the 15th January, 2018.

To

The Managing Director,
KP-TEVTA, 3-A Chinnar Road,
University Town, Peshawar.



Subject: - RE-INSTATEMENT IN SERVICE.

I am directed to refer letter No.KP-TEVTA/HR-II/PPF/Gul Niaz/4544 dated 02.11.2017 on the subject noted above and to state that the case has been thoroughly examined in the department and it is found that the case of a civil servant who committed to prison, is dealt under CSR 194-A (copy attached), according to this competent authority and not the next higher authority, may suspend and reinstate such civil servant.

2. It is, therefore, requested that the case of Mr.Gul Niaz, Junior Clerk may be dealt as per CSR-194-A and MD KP-TEVTA being appointing (competent) authority of civil servant under Rules 4(3)(ii) of Appointment, Promotion and Transfer Rules, 1989 (copy attached) may re-instate his services under the law

خدمت صباک سیکرٹری انٹرنیشنل ایئر لائنز کونسل پاکستان اسلام آباد

AM72

دفعہ دست لہذا کے بحالی درغلزیت COOK بتسلسل مسائل
مکرم بحالی عمل بیاز فلک آفیس آرڈر 2017-2018 لائن 50
تاریخ 15-01-2018

صباک عالی گذریش ہے

یہ کہ مسائل آپ صباک زیر مسائل 2007 کو بحیثیت COOK ملازمت کا
موقع ملکہ اپنی سرکاری ڈیوٹی کو وقتوں کے سلسلے میں بطور سیکرٹری
دینا شروع کیا ہے یہ اس وقت تک ہے کہ مسائل نے اپنی ڈیوٹی کے دوران
تیار کی ہے کہ کسی سرکاری ملکیت کا موقع نہیں دیا گیا ہے
ڈیوٹی دہن کو اپنے سے سرانجام دیتا ہے۔

یہ کہ مسائل کو ملازمت سے محال نہیں ہے محض بددیہی کی بنا پر اس کے ملازمت
میں سے علیحدگی ہوئی ہے ایسا ایف اے آر 623 سے 2012ء تک
بخام 337/34-324-342 تھا مگر بطور سیکرٹری چارج کیا۔ اور اس کے
کو تفریح کے بارے میں آپ صباک کے مسائل کو براہ راست
ملازمت ہے۔

یہ کہ مسائل کو ملازمت اپنے آپ کو قانونی طور پر اپنے حقوق سے
میں بھی کرنا چاہئے کہ مسائل کو ملازمت حجاز بنے سے 2012ء تک
باغی ہو کر ملازمت سے علیحدگی ہے۔ لیکن یہ سب قابل و تامل ہے
کہ مسائل نے ہر وقت صحت قانونی اپنی کام سے جو کہ زیر نظر ہے
یہ کہ آپ صباک ایک ملازم مسیحا کیاز ملکوں کو بخوبی سمجھتا ہے بحالی
مسائل کا اور عمل بیاز کے لیے ایک صیغہ ہے اور مسائل اپنی اس طرح کے
کے ملک کے لیے اور مسائل کے تمام یہ کہ قانونی اور قانونی ہے۔

یہ کہ مسائل ایک شادی شدہ لہذا ہے اور چھوٹے چھوٹے مسائل کے
کہ تفریح کے لیے ہرگز کو ملازمت لہذا ہے نہ ہے مسائل کے مسائل کے

انگریزی مشقوں سے دو بار سے اظہارِ ناقص کی ترقی کی ضرورت ہے۔
 انگریزی میں وہ سب سے پہلے خانہ سب سے آج صبا سے ہفت روزہ
 کے لئے اعلیٰ نیاز کی ہے۔ Analogous اور سب سے پہلے
 اور کماحقہ سے آدرش ہے

لیکن سب سے پہلے سب سے پہلے سب سے پہلے
 علمِ عالی کی سب سے پہلے سب سے پہلے سب سے پہلے
 علمِ عالی کی سب سے پہلے سب سے پہلے سب سے پہلے
 علمِ عالی کی سب سے پہلے سب سے پہلے سب سے پہلے
 علمِ عالی کی سب سے پہلے سب سے پہلے سب سے پہلے

تاریخ
 07
 2021
 9898896 - 0330
 سب سے پہلے

بخدمت جناب چیف سیکریٹری خیبر پختونخواہ، پشاور

Ann-k

درخواست برائے بحالی ملازمت Cook بسلسلہ سابقہ حکم بحالی گل نواز کلرک

آفس آرڈر SOIII(IND)6-2/2017 مورخہ 15-01-2018

جناب عالی!

مودبانہ گزارش ہے کہ سائل آپ جناب کے زیر سایہ 2007 کو بحثیت Cook ملازمت کا موقع ملکر اپنی سرکاری ڈیوٹی گورنمنٹ پولی ٹیکنیکل انسٹیٹیوٹ بونیر میں سرانجام دیتا رہا۔ یہاں پر یہ بات قابل ذکر ہے کہ سائل نے اپنی ڈیوٹی کے دوران افسران بالا کو کبھی بھی کسی قسم کی کوئی تکلیف کا موقع نہیں دیا اور اپنی ڈیوٹی احسن طریقے سے سرانجام دیتا رہا۔

یہ کہ سائل کو علاقہ میں مخالفین نے محض بدینتی کی بناء پر سرکاری ملازم ہونے کی وجہ سے ایک من گھڑت کیس ایف۔ آئی۔ آر۔ 723 مورخہ 16-08-2012 بحرم 302-324-337/34 تھانہ گاگرہ بونیر میں چارج کیا۔ اور اسی طرح سائل کو مذکورہ FIR کی بناء پر آپ جناب نے سائل کو برخاست ملازمت کیا۔

یہ کہ سائل کو بروقت اپنے آپ کو قانون کے حوالہ کرتے ہوئے باقاعدہ برطابق قانون ٹرائیل ہو کر سائل کو عدالت مجاز مورخہ 14-02-2020 باعزت طور پر بری کیا۔ نقل فیصلہ لف ہے۔ یہاں پر یہ آلہ قابل وضاحت ہے کہ سائل نے بروقت حسب قانون اپیل کی ہے جو کہ زیر تجویز

ہے۔

یہ کہ آپ جناب نے ایک ملازم مسمی گل نیاز کلرک کو بحوالہ حکم بالا بحال کر چکا ہے۔

چونکہ سائل کا اور گل نیاز کا کیس ایک جیسا ہے اور سائل بھی اسی طرح کی Treatment کا طلب گار ہے اور سائل کی بحالی میں کوئی قانونی امر مانع نہ ہے۔

یہ کہ سائل ایک شادی شدہ بندہ ہے اور چھوٹے چھوٹے 6 بچے ہیں۔ سائل کا کوئی زیر

معاش سوائے ملازمت ہذا کے نہ ہے۔ سائل اور سائل کا اہل خانہ مشکلات سے دوچار ہیں۔ اور

فاتے کی زندگی گزارنے پر مجبور ہیں۔ بدیں وجہ سائل اور اہل خانہ آپ جناب سے بحیثیت سربراہ

محکمہ کے گل نیاز کلرک کی طرح Anology سلوک کا طلب گار ہے اور دعائیں دیں گے۔ (آرڈر لف

ہے)۔

لہذا استدعا ہے کہ سائل کو بسلسلہ سابقہ حکم بحالی گل نیاز کلرک مذکورہ بالا مندرجہ عنوان

بمراہ درخواست سائل کو بحال کرنے اور خدمت کرنے کا موقع دیا جا کر مشکور فرمائیں۔ اس کے لیے

سائل اور اہل خانہ تاحیات دعا گو رہیں گے۔

المرقوم: 25-10-2021

الحاضر

شیخ پرین ولد عبدالستین

سکنہ کال پانوی بوئیر

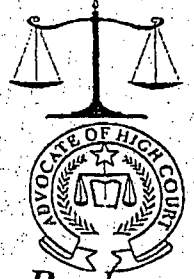
شناختی کارڈ نمبر 3-15101-0367237

موبائل نمبر 0330-9898896

51
Fayaz Ahmad Khan Dalookhail

Advocate High Court
Distt. Court Shangla
B.A LLB

Office: 0996-850250
Home: 0996-885650
Cell: 0340-235021
0300-5891732



Office: Collage Road Alprai Bazar Home Address: Village Barkana
Shahpoor Distt Shangla

Date: 28.10.2020

S No: _____

P.L

To,

The deputy Director (ADMN)
Technical education and manpower
Training Khyber pakhtun khwa,
at peshawer.

Respected Sir, I have received your letter NO KP-
TEVTA/ESTT/22-14 C49/3202 (1-2), dated 02-9-2020
to day on 28 october 2020 with regard of my client
Mr. Sheikh Faris ex - Cook Govt polytechnic institute Buner,
in respect of his removal from service with effect
17-08-2012 office order NO DGTE & MT/ESTT 3997 (1-3)
Dated 20/6/2013 on the ground that he was absent
from duty willfully.

The above mentioned order is void, illegal and unlawful
on the following ground.

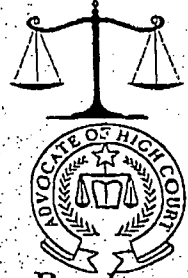
(a) The above mentioned order was issued on 20/6/2013
having no retrospective effect and the accused was

(Continued)

Fayaz Ahmad Khan Dalookhail

Advocate High Court
Distt. Court Shangla
B.A LLB

Office: 0996-850250
Home: 0996-885650
Cell: 0340-235021
0300-5891732



Office: Collage Road Alprai Bazar Home Address: Village Barkana
Shahpoor Distt Shangla

Date: _____

P-2

S No: _____

removed from service with effect from 20/6/2013 which is against the law and constitutional protection of profession which is the fundamental right of my client.

As you know Sir, that my client was charged in a false case FIR No 723 Dated 16.8.2012 police station Gagra Buner and he was acquitted from the above mentioned charge by competent court of law Additional Session judge Buner on 14.2.2020, which clarifies the innocence of my client.

(ii) As to the question of willful absence my opinion with regard of that is as you know Sir, that a criminal case above mentioned was registered against my client and the crucial police official were run behind the arrest of innocent person and to toucher him unjustifiedly and illegally the natural action and reaction is that to save himself and not become the assassination animal that absence can not be amount the willful absence from the duty but there is sufficient cause and ~~real~~ reason behind that, my client is acquitted by competent court of law and not punished for that so the order of awarding major penalty in shape of

(Continue)

Fayaz Ahmad Khan Dalookhail

Advocate High Court
Distt. Court Shangla
B.A LLB

Office: 0996-850250
Home: 0996-885650
Cell: 0340-235021
0300-5891732



Office: Collage Road Alprai Bazar Home Address: Village Barkana
Shahpoor Distt Shangla

Date: _____

p. 3

S No: _____

removal from service is not legal and justified.

(iii) that according to the Civil servant Act 1973 and the rules there under no one can be removed from service with out a fair enquiry and befor the enquiry no show cause notice was issued to the said accused and not the service of the notice was made upon my client which is a metrical irregularity and illegality, on the face of the said order.

(iv) my client has the right of fair enquiry under the ^{section} rule 3 sub rule 2 The Removal from service (special powers) ordinance 2000 ordinance No XVII dated 27 may, 2000 which is not followed, no opportunity of defence had been given to accused, no show cause notice had been issued and served upon the accuse, but also the removal from service order was not issued and served upon the accuse, so the said order is null and void in the eye of law the famous maxim of english law and also the Islamic principle is that «no one can condemn until heard», but all the rules and principles of law had been violated. The reason

Continues

54

12

Fayaz Ahmad Khan Dalookhail

Advocate High Court
Distt. Court Shangla
B.A.LL.B

Office: 0996-850250
Home: 0996-885650
Cell: 0340-235021
0300-5891732



Office: Collage Road Alprai Bazar Home Address: Village Barkana
Shahpoor Distt Shangla

Date: _____

P. 4

S No: _____

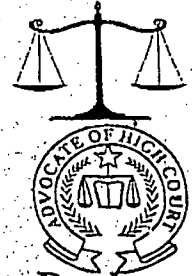
of absence is also not mentioned in the said order because of lacking of enquiry, in the above circumstances the accused person only can be suspended from the service and can not be removed without the conviction from court of law and the accused having the right of inquiry and section 3A of the said ordinance. The section 5 of the said ordinance is also with regard of fair enquiry committee which has been violated. The reliance is kept on the following decisions of superior court.

1. Recording the evidence in inquiry: where in disciplinary proceeding evidence was recorded behind the back of the accused and that ⁱⁿ of the narrative forms; Held, that such procedure did not fulfil norms and principles of evidence. The penalty order of removal from service in circumstances was set aside by tribunal. 1983 PLC (C13) 902.
 2. Assessment of evidence: where the enquiry officer relied upon the opinion of a witness without going into details of reasons on basis of which his conclusion were arrived at the finding of inquiry in circumstances
- (Continue)

+

Fayaz Ahmad Khan Dalookhail
Advocate High Court
Distt. Court Shangla
B.A LLB

Office: 0996-850250
Home: 0996-885650
Cell: 0340-235021
0300-5891732



Office: Collage Road Alprai Bazar Home Address: Village Barkana
Shahpoor Distt Shangla

Date: _____ P. 5 S No: _____

was held to be not sustainable 1983 PLCC (S) 878
in the above circumstances the removal order
mentioned above against the law, principles of
Islam, and the rules laid down, wrong and not
sustainable against the natural justice and liable
to set aside.

In the above circumstances the
service of my client may kindly
be reinstated and the removal order
may kindly be set aside.

with regard:

Fayaz Ahmad

Fayaz Ahmad Dalookhail Advocate
Peshawar High Court

Fayaz Ahmad Khan Dalookhail

Advocate High Court
Distt. Court Shangla
B.A LLB

Office: 0996-850250
Home: 0996-885650
Cell: 0340-235021
0300-5891732

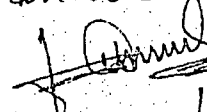


Office: Collage Road Alprai Bazar Home Address: Village Barka
Shahpoor Distt Shang

Date: 18.02.2020

S No: 1

It is hereby certified that the one
Shiekh fareen S/o Abdul Mateen R/o
Calpani Burneev has been charge in
a Criminal Case FIR No 723 Dated 16.08.2012
P/S Gagra under sections. 302/324/337-D/34 ppc.
The said Shiekh fareen were arrested and
prossented in the Court of Add. Sessions Juncer
an the decision were Announce by the honor
able Court on 14.02.2020. The said Shiekh-
fareen is declared a innocent in the above
case and acquitted, I persoud the above
mentioned case as Defence Council on behalf
of Shiekh fareen. As a counsel for the said
shiekh fareen I Andors and appreciate the said
decision and he is being declared amozocent by
the competent Court


18.02.2020
Fayaz-Ahmad Dalookhail
Advocate High Court circuit

خدمتِ خاصہ - خدمتِ ڈائریکٹریٹ کی - پورا ایشیا

عنوان دوبارہ نکالی

صاحبِ عالی

خودمانہ گزارش ہے کہ سائل کی بار درجہ اس میں
لکھا ہے لیکن کوئی مشورائی نہیں ہوئی۔

صاحبِ عالی

سائل ایک عزیز آدمی ہے اور چھوٹے چھوٹے
کے میں سائل کا کوئی اور ذریعہ معاش نہیں ہے۔
درواز سے قرضوں پہ گزارا کر رہا ہوں جبکہ اب جدید
کنجائیں نہیں ہندہ قرضوں داروں سے مدد چھما کر پھر رہا ہوں
صاحبِ عالی:-

آپ سے التماس ہے کہ سری دوبارہ نکالی
کے احکامات جاری کرنے میں شکر فرمائیں تاکہ سائل زہنی
کوہت اور معاشی تندرستی سے نجات حاصل کر سکے۔
سائل صاحبان دعاگوں رہے گا

الغرض

شیخ حسین

Ex-cook

محلی ائی لوئر

0330-9875896

المترجم 2021-02-01

حکومت صاب منجند ڈائریکٹریٹ کی میٹنگ ایسا اور
عنوان - دوبارہ تعیناتی

خود بنا کر گزارش ہے کہ سائل کے وکیل نے سیرے دوبارہ
تعیناتی کیلئے درخواست دی ہے لیکن تا حال کسی قسم کی
کارروائی محل میں نہیں آئی دکھائی گئی ہے

آب سے گزارش ہے کہ بندہ کی غریب کو حد نظر
رکھتے ہوئے سائل کے معاملہ پر غور فرمائیں دوبارہ تعیناتی
کے احکامات صادر فرمائیں مشکور و متمن
بندہ تاحیات دعاگو رہے گا۔

الغرض

سید سیریں
Cook
CPI (Bunair)
0330 9398896

Dear Madam SB,
Amely. Process
With care.

CHIRWAN ODJEMPA PK-24
SYED FAKHAR JELAN
BUNIER

سوال نمبر 1 شیخ برین بنالہ گلہ

س: آپ شیخ برین گلہ سے GPI یونیرسٹی میں ملازمت کر رہے تھے؟
ج: میں شیخ برین 28/07/07 سے GPI یونیرسٹی میں ملازمت کر رہا تھا۔

س: کالج بعد میں ڈیوٹی سے کیوں غیر حاضر رہے۔ اور کب سے آپ غیر حاضر تھے جس کی بنیاد پر ملازمت سے برضاست کر دیئے گئے؟
ج: 16/08/2007 کو محو ہوا 302 کی FIR درج کر دی گئی تھی جسکی وجہ سے مور 20/08/2007 سے میں اپنی ڈیوٹی سے غیر حاضر رہا کیونکہ میرے سر کا شدید خطرہ تھا۔ اسی وجہ سے میں اپنی ڈیوٹی سے غیر حاضر رہا۔

س: مذکورہ کیس میں آپ اکیلے ملزم تھے یا کوئی اور فیملی ممبر تھا؟
ج: اس کیس میں میں اور میرا بھائی محمد برین دونوں ملزم تھے۔

س: اگر مجازاً تھا تو آپ کی ملازمت بحال کر لیں تو یونیرسٹی GPI چونکہ لوکل انشورنس ہے جس کی وجہ سے آپ کے جان کو خطرہ ہو سکتا ہے۔ سیکورٹی کی ذمہ داری کیس کی ہوگی؟
ج: سیکورٹی کی ذمہ داری میں اپنے سر خود لیتا ہوں۔

س: آپ کے فیملی کتنے افراد پر مشتمل ہے؟
ج: میرے 4 بیٹے اور 2 بیٹیاں ہیں۔

س: ملازمت کے خاتمہ کوئی اور ذریعہ معاش ہے کہ نہیں؟
ج: ملازمت کے خاتمہ کوئی اور ذریعہ معاش نہیں ہے۔

شیخ برین

21-02-07



No.KP-TEVTA/Estt/Sheikh Fareen/ 9067(1-2)

Dated 31/01/2021

To,

The Section Officer-III,
Industries, Commerce, & Technical Education,
Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - APPLICATION FOR REINSTATEMENT IN SERVICE

I am directed to refer to your letter No. SOIII(IND)6-7/2021/6335 dated 09-12-2021 on the subject noted above and to re-submit self-contained note for your kind perusal and onward submission to the quarter concerned for seeking advise in the matter as desired as under in respect of Mr. Sheikh Fareen S/O Abdul Mateen Ex-Cook Govt. Polytechnic Institute, Buner.

The accused official was charged in a murder case vide F.I.R. No. 723 dated 16-08-2021 U/S 302/324/34 PPC Police Station Gagra, Buner (Annex-I). P-85/c

The accused remained absent from duty from August 17, 2012 and also remained absconder onward. He was proceeded against under E&D Rules for his absence from duty and as a result was accordingly removed from service vide TE&MT office order No. DGTE&MT/Estt/22-14 (49)/ 39997 (1-3) dated 20-06-2013 (Annex-II). P-83/c

Later on, the accused was arrested and accordingly went under trail in session case No.56/7 of 2019 in the court of Additional Session Judge/ Judge Model Criminal Trial Court/IZQ, Buner and whereas the accused was acquitted of the Charges. The accused official was, therefore, wet at liberty w.e.f 14-02-2020 (Annex-III). P-77/c

The accused afterword has submitted an application dated 18-02-2020 for his re-instatement in Service. This office is of the view that in the instant case, while the accused/ Ex-official was removed from service vide order dated 20-06-2013.

A Case having similar back ground of Gul Niaz, Junior Clerk (BS-11) was previously decided by the Administrative Department vide its letter No. SOIII (IND) 6-2/2017 / 777 dated 15-01-2018 and whereas the official was in Service with all back benefits, keeping in view the above, the worthy Secretary Industries, Commerce & Technical Education Department is the appellate Authority may decide whether the Ex-Official:-

- i. Be reinstated in Service with all back benefits OR
- ii. Be reinstated in Service and the absentee period from 17-08-2012 to 20-06-2013 be considered extra-ordinary Leave without pay OR
- iii. The request of the Ex-Official for his re-instatement in Service be rejected or any order deem appropriate by the Competent Authority.

DEPUTY DIRECTOR (ESTT)

Endst: No.KP-TEVTA/Estt/Sheikh Fareen/
Copy for information to the Ex-official, GPI, Bunner.

Dated _____/2021

DEPUTY DIRECTOR (ESTT)



No.KP-TEVTA/ESTT/22-14 (49)/

5580 (A-2)

Dated 27-8-2021

To,

The Section Officer-III,
Industries, Commerce, & Technical Education,
Khyber Pakhtunkhwa,
Peshawar.

Subject: - APPLICATION.

I am directed to refer to your letter No. SOIII (IND)6-2/2017/9303 dated 12-07-2021 on the subject noted above and to state that Mr. Sheikh Fareen S/o Abdul Mateen, Ex-Cook, Government Polytechnic Institute, Buner was charged in a murder case vide F.I.R No. 723 dated 16-08-2012 U/S 302/324/34 PPC Police Station Gagra, Buner(Annex-I).

The accused remained absent from duty from 17th August, 2012 and also remained absconder onward. He was proceeded against under E&D Rules for his absent for duty and as a result was accordingly removed from Service vide TE&MT office order No. DGTE&MT/Estt/22-14(49)/3997(1-3) dated 20-06-2013 (Annex-II).

Later on, the accused was asserted and was accordingly went under frail in session case NO. 56/7 of 2019 in the court of Additional Session Judge/Judge Model Criminal Trial Court/IZQ, Buner and whereas the accused was acquitted of the charges. The accused/official was, therefore, set at liberty w.e.f 14-02-2020 (Annex-III).

The accused afterward has submitted on application date 18-02-2020 for his re-instatement in Service. This office is of the view that in the instant case while the accused /Ex-official was removed from service vide order dated 20-06-2013, the worthy Secretary Industries, Commerce & Technical Education Department is the appellate Authority. A case having almost similar background namely Gul Niaz, Junior Clerk (BS-11) was previously decided by the Administrative Department vide its letter No. SOIII (IND) 6-2/2017/777 dated 15-01-2018 and whereas the said official was reinstated in service with all back benefits. Keeping in view the above, the instant case is submitted for perusal of the Competer Authority for decision whether the Ex-official.

- i). Be reinstated in Service with all back benefits or
- ii). Be reinstated in Service and the absentee period from 17-08-2012 to 20-06-2013 be considered extra-ordinary Leave without pay or
- (iii) The request of the Ex-official for his re-instate in service be rejected or any order deem appropriate by the Competent Authority.

Submitted for further order please.

DA/As above.

Encls: No.KP-TEVTA/ESTT/22-14 (49)/

DEPUTY DIRECTOR ()
Dated _____/2021.

Copy forwarded for information to the Ex-official, GPI, Buner.

DEPUTY DIRECTOR

5
31/8

**MINUTES OF THE MEETING HELD ON 17-03-2022 AT 11:00 AM UNDER THE
CHAIRMAN SHIP OF SECRETARY INDUSTRIES COMMERCE & TECHNICAL
EDUCATION DEPARTMENT.**

**SUBJECT: APPEAL REGARDING RE-INSTATEMENT IN SERVICE OF SHEIKH
FAREEN, EX-COOK, GOVT. POLYTECHNIC INSTITUTE BUNER.**

1- A meeting on the subject noted above was held on 17-03-2022 at 11:00 am under the chairmanship of Syed Zulfiqar Ali Shah, Secretary Industries Commerce & Technical Education Department Khyber Pakhtunkhwa in his office, attended by the following.

- a. Mr. Perwaiz Sabat Khel, Special Secretary,
Industries Commerce & Technical Education Department.
- b. Akhtar Ali Shah Section Officer -III,
Industries Commerce & Technical Education Department.
- c. Mr. Inam Ullah, Section Officer (R-III),
Establishment, Department, KPK.
- d. Mr. Masood Khan, Budget Examiner,
Finance Department, KPK.
- e. Mr. Farid Ullah, Deputy Director,
KP-TEVTA, Peshawar.
- f. Syed Yousaf Ali Shah, Assistant Director,
KP-TEVTA, Peshawar.
- g. Mr. Usman Ali, Section Officer (Opinion)
Law Department
- h. Mr. Shekh Fareen, Applicant

2- Deputy Director, KP-TEVTA brief the forum as following.

- a. That after receipt of information from the principal GPI Buner, to Head Office, regarding alleged involvement of the accused in case of FIR No.723 dated 16-08-2012 U/W 302/324 PPC Police Station Gagra District Buner, the ex-official on his willful absence from duty was served several explanations and a notice "registered acknowledgement" on his home address, directing him to resume his duty/ appear before the police authority for his physical arrestment as per requirement of law, but no response had been received from the accused.
- b. Finally absentee notice had been published in two leading newspaper i.e. Daily Mashriq and daily AAJ dated 11-05-2013 respectively, directed him to resume his duty, but he failed to respond.

63
c. The accused on account of his willful absence from duty w.e.f 17-08-2012 was accordingly proceeded against under relevant E&D Rules, 2011 and removed him from service vide order No. DGTE&MT /Estt /22-14(49)3397 (1-3) dated **26-06-2013**.

d. The accused after his acquittal by the Courtvide order dated 14-02-2020, approached this office for his re-instatement (After Lapse of 07 years). The instant appeal of the accused has thoroughly been probed through fact finding inquiry, where the committee was of the view that **"such like criminal cases are being dealt with under section 16 of the Civil Servant Act 1973 read with Khyber Pakhtunkhwa Efficiency and Disciplinary Rules 2011, Section 194 and 194-A if Civil Servant Rules who are charged under criminal FIR and apprehended shall be treated as under suspension"**.

ii. Worthy Secretary asked that, "whether suspension of an official who is absconder, is necessary under CR-194?"

a) Muhammad Usman Ali SO (OP) Law, Department explained that, in case a *Government Servant* is not arrested, the competent authority may suspend him by specific order, if the charge against him is connected with his position as *Government servant* or is likely to embarrass him in the discharge of his duties or involve moral turpitude. So if, the department is unaware of the fact that the *Government servant* is absent due to any criminal charge against him, then he will be proceeded under *Efficiency & Disciplinary rules* for his absence. But when it comes in the knowledge of department, that *Government Servant* is involved in criminal offence or debt and is not arrested, he may be suspended under CRS-194.

iii. Whether decision made by the Appellate Authority in case of Gul Niaz Junior Clerk, GPI, Buner regarding re-instatement in service is applicable in instant case?

The representative of Law Department explained that Gul Niaz, Clerk's case is not similar to the applicant, where Gul Niaz though was proceeded under E&D Rules and was removed from service for his will full absence, where the official concerned has approached the Appellate Authority for his reinstatement in service well in time, moreover the official was in the custody of police during his absent period and also intimated the department concerned in this regard.

while the applicant Mr. Shekh Fareen remained absconder for seven years and approached the department for his re-instatement on the analogy of said official which is neither tenable Nor applicable in the instant case. Laps of seven years is badly time bard and could not be condoned by any means, law/ Rules.

3- DECISION : -

The Appellate Authority, after threadbare discussion has thoroughly examined all the allied documents and decided that removal from service of the applicant/ex-official had been made accordingly on the basis of willful absence from duty vide order No. Dated 20-06-2013, moreover after lapse of 07 years the appeal is badly time barred, therefore, the order in question has attained finality. Moreover the Appellate Authority has directed that, the ex-official may extend all financial emoluments if any admissible under the rules.

Meeting ends with votes of thanks.



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

NO. SO(OP-I)/LD/5-2/2021
DATED: PESH: THE 07TH DECEMBER, 2021

65

3453

To

The Secretary,
Government of Khyber Pakhtunkhwa
Industries, Commerce, & Technical Education Department.

Attention: Section Officer -III

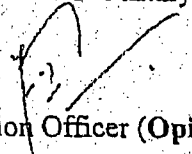
Subject:- APPLICATION FOR REINSTATEMENT IN SERVICE.

Dear Sir,

I am directed to refer to your Department's letter No.SO-III(IND)/6-2/2017/5709 dated 30-11-2021 on the subject noted above and to state that the accused official had been removed from service on the basis of absence from duty vide order dated 20.06.2013 which has no nexus with his involvement in criminal case. His application for reinstatement, after laps of more than 7 years, is badly time barred. Therefore, ibid order has attained finality.

2. Moreover, being service matter the Administrative Department, may also obtain advice of Establishment Department.

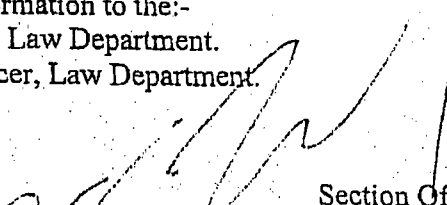
Yours Faithfully,


Section Officer (Opinion-I)

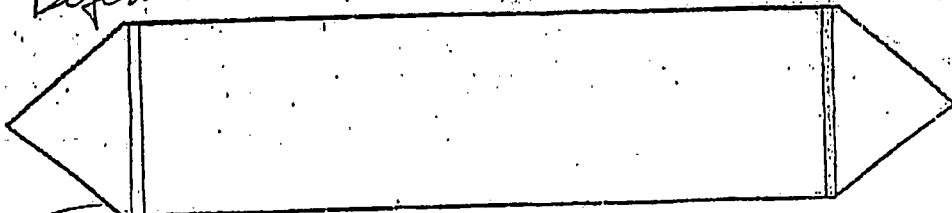
Endst: of even No. & date.

Copy is forwarded for information to the:-

1. PS to Secretary, Law Department.
2. PA to Law Officer, Law Department.


Section Officer (Opinion-I)

Before Begum Tribunal *CPK case*
 بعد اکت *CPK case*



Appellant *بنام*
CPK

Muzam *Shaukat Kanee - 3/0*
 Advocate *Abdul Mateen RTO Rai Pindi*
Bunee

باعث تحریر آنگہ

مقدمہ مذکورہ رجسٹرڈ عدالت میں اپنی نظر آنگہ سے واسطے پیروی اور جواب دہی اور انکار واپس متعلقہ

آنگہ مقام *CPK* کیلئے *Muzam ul Haque*

مقررہ کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار دیا گیا۔ نیز
 دیکھا، بہ صاحب کو رجسٹرڈ نامہ کرنے والے دفتر ثالثیت و فیصلہ بر حلف دینے کے جواب دہی اور اقبال دعویٰ اور
 اس وقت ڈگری کرنے کے اجراء اور وصولی چیکب ورڈ پر عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرا میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخ
 نیز دائر کرنے کے اپیل گرانے 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 ساتھ
 سے اخذ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جات التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ نہ ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 کے لئے کریں۔ لہذا وکالت نامہ لکھنے کے لئے

20

Handwritten signature and date

المترجم

بمقام

“B”

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

No. *Regd* *SB*
 Appeal No. *572* of 20 *22*
Sheikh Fardeen Appellant/Petitioner

Chief Secy ^{Versus} *Govt of KPK* Respondent

 Respondent No.
 Notice to: — *DG Technical Education & manpower Training*
KPK Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa 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 *23/05/2022* 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.....
 Day of..... *May*20 . *12th*

[Signature]
 Registrar, *W*
 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. **SB**

No. **Regd**

572

22

Appeal No. of 20 ..

Sheikh Fareen

Appellant/Petitioner

Chief Secy ^{Versus} **Govt of KPK**

Respondent
(S)

Respondent No.

Notice to: — **Principal Technical College District Buner.**

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa 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.....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..... **12/11**

Given under my hand and the seal of this Court, at Peshawar this.....
Day of.....**May**.....20 **22**

For Reply

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. *SB*

No.

Appeal No. *572* of *2022*

Sheikh Fareen Appellant/Petitioner

Chief Secy Govt of KPK Versus Respondent
(1)

Respondent No.

Notice to: — *Chief Secy Govt of KPK*

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa 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 *23/08/2022* 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 *12th*

Day of *May* *2022* .

For Reply

ISSUE BRANCH
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa
Peshawar *18-5-22*

Jm

[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.

SB

No.

Appeal No. 572 of 20 22

Sheikh Fareen

Appellant/Petitioner

Chief Secy Govt ^{Versus} of KPK

Respondent

Respondent No. (2)

Notice to: —

Secy Industries Commerce & Technical Education Deptt:
Govt of KPK

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa 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 23/06/2022 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 12th

Day of May 20 22

For Reply

23.05.22

[Signature]

[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.

No.

SB

Appeal No. 572 of 20 22

..... Sheikh Fareen Appellant/Petitioner
Versus

..... Chief Secy Govt of KPK Respondent
Respondent No. (3)

Notice to: — Secy Establishment Govt of KPK

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa 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.....29/05/2022.....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.....12th.....

Day of.....May.....20 22

For Reply

S. Iqbal Khan
PS/Secy E&AD/KF

He
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Diary No. _____

- 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.
Date. _____

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 572/2022.

Sheikh Fareen S/O Abdul Mateen, Ex-Cookman, Technical College, Buner /
residence of Kalpani BunerAppellant.

VERSUS

1. Chief Secretary, Govt: of Khyber Paktunkhwa, Peshawar.
2. Govt: of KPK through Secretary Industries, Commerce and Technical Education (IC&TE), Peshawar.
3. Secretary Establishment, Govt. of Khyber Paktunkhwa.
4. Director General, Technical Education and Manpower Training, KPK, Peshawar.
5. Principal, Technical College, Buner. Respondents.

S.No	Description of documents	Annex	Page No
1.	Comments Reply	--	1-2
2.	Affidavit	--	3

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 572/2022.

Sheikh Fareen S/O Abdul Mateen, Ex-Cookman, Technical College, Buner /
residence of Kalpani BunerAppellant.

VIBER S I S

1. Chief Secretary, Govt: of Khyber Paktunkhwa, Peshawar.
2. Govt: of KPK through Secretary Industries, Commerce and Technical Education (IC&TE), Peshawar.
3. Secretary Establishment, Govt. of Khyber Paktunkhwa.
4. Director General, Technical Education and Manpower Training, KPK, Peshawar.
5. Principal, Technical College, Buner.Respondents.

PRELIMINARY OBJECTIONS:

- A- That the Appeal is badly time barred.
- B- That the Appellant has no cause of action.
- C- That the Appellant has got no locus standi.
- D- That the Appellant has not come to this honorable Tribunal with clean hands.
- E- That the Appellant has been estopped by his own conduct to file the present appeal.
- F- That the appeal is not maintainable for non-joinder and misjoinder of necessary parties.

Reply on behalf of the Respondents:

Respectfully Sheweth:

1. Pertains to the appellant's record.
2. Pertains to the appellant's record.
3. It is correct.
4. It is correct with further clarification that the appellant surrendered himself before the authority after the lapse of almost 7 years. Though the appellant was acquitted by the competent court of the charges of murder, yet the department had already removed him from service because of his willful absence from duty as evident from annexure-D of the appeal.
5. It is correct in view of the aforementioned reply.
6. The appellant has got no cause of action to file the instant appeal.

GROUNDS:


- A. It is incorrect. The impugned order of the respondent No,2 is legal, according to law, natural justice, fundamental right and record of the case.
- B. It is incorrect. The appellant was supposed to surrender himself before the Police Authority forth with after the incident. He remained absconder for long time and hence also remained willful absent from duty. The respondent department was, therefore, constrained to take disciplinary action against the appellant in this regard.

- C. It is incorrect. Each case has its own merit. The case of the appellant is different from those he has referred in the instant para.
- D. It is irrelevant para as explained in the aforementioned reply.
- E. The respondents seek leave to raise additional grounds at the time of arguments..

It is, therefore, most humbly prayed that the instant appeal for having no force of law and facts may be dismissed with cost please.

Respondent No.2. 

Govt: of KPK through Secretary Industries, Commerce and Technical Education (IC&TE), Peshawar.

Respondent No.4 

Managing Director, Khyber Pakhtunkhwa Technical Education & Vocational Training Authority Peshawar (Instead of respondent No. 4. Director General, Technical Education and Manpower Training, KPK, Peshawar.)



IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 572/2022.

Sheikh Fareen S/O Abdul Mateen, Ex-Cookman, Technical College, Buner /
residence of Kalpani BunerAppellant.

V E R S U S

1. Chief Secretary, Govt: of Khyber Paktunkhwa, Peshawar.
2. Govt: of KPK through Secretary Industries, Commerce and Technical Education (IC&TE), Peshawar.
3. Secretary Establishment, Govt. of Khyber Paktunkhwa.
4. Director General, Technical Education and Manpower Training, KPK, Peshawar.
5. Principal, Technical College, Buner. Respondents.

AFFIDAVIT

It is solemnly affirm and confirm on oath that the contents of the accompanied reply in the aforementioned Service Appeal is true and correct to the best of my knowledge and belief and that nothing in this regard has been concealed or altered.

DEPONENT