

18.10.2022

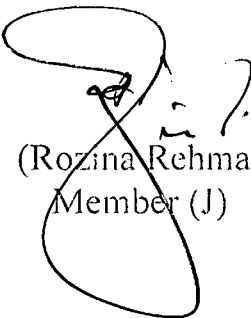
Appellant present through counsel.

This case was fixed for arguments on office objection No.2 regarding non-availability of copy of the first departmental appeal. As per record, appellant was proceeded departmentally on the charges of his involvement in criminal case and was recommended for major punishment, however, Chief Capital City Police Officer Peshawar accepted his appeal and he was reinstated into service and the period he remained out of service was treated as leave without pay. No benefit was granted for the intervening period. He filed the present service appeal for grant of back benefits which were refused to him vide order dated 31.03.2022. So, there is no need of departmental appeal. Office objection is removed, preliminary arguments heard and record perused.

All the respondents were put on notice

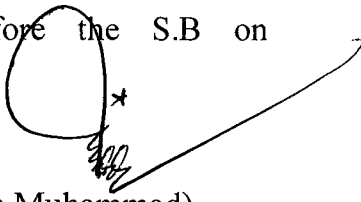
Rs-100/-
Appellant Deposited
Security & Process Fee
A. Jaffar
01/11/22

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of reply/comments. To come up for reply/comments on 22.11.2022 before S.B.


(Rozina Rehman)
Member (J)

22.09.2022

Clerk of learned counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on office objections before the S.B on 18.10.2022


(Mian Muhammad)
Member (E)



Respected Sir,

It is submitted that the present appeal was received on 18-07-2022 after thoroughly scrutinizing the same many deficiencies were found in it, which was returned to the counsel for the appellant for completion and resubmission within 15 days on 22-07-2022. The appellant resubmitted the same on 02-08-2022, without removing objection no. 2.

The appeal is submitted to your Honour under rule-7(c) of Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order, please.

Counsel was informed telephonically for the date fixed 22/09/22

A
Assistant Registrar
m
5/8/22

HONORABLE MEMBER

Object - be
Fixed before 15
order
26/9/22

The appeal of Mr. Dur Marjan Constable CCPO received today i.e. on 18.07.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of dismissal order is not attached with the appeal which may be placed on it.
- 2- Copy of first departmental appeal is not attached with the appeal which may be placed on it.

No. 2220 /S.T,

Dt. 19/07/2022

A ^{mi}
19/7/22
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ahsan Sardar Adv.
High Court Peshawar.

Respected Sir,

Dismissal Order has been placed on file,
However the Appellant is not having the
Copy of D.A, He is already re-instated
into Service. The instant case is only for
Back Benefits.

30.07.2022.

Ahsan Sardar
Ahsan Sardar
AHC

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

In Service Appeal No. 1539/2022

Dur Marjan, Constable

VERSUS

Inspector General of Police & Others

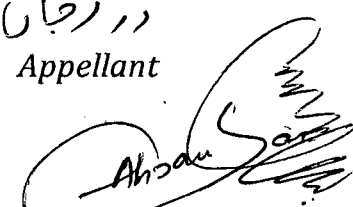

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Dated:18-07-2022

Through

دور مارجان
Appellant


Ahsan Sardar
&
Tahir Khan 
Advocates, High Court
Peshawar.

(1)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR**

In Service Appeal No. 1539/2022

Dur Marjan, Constable, Capital City Police Officer S/o Gul Was Khan
R/o Tehsil Landi Kotal, District Khyber.

..... Appellant

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Capital City Police Officer, Peshawar
3. District Police officer, Khyber.

..... Respondents

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL ACT- 1973, AGAINST THE
IMPUGNED OFFICE ORDER DATED: 31-03-2022
UPTO THE EXTENT OF NON-GRANTING OF BACK
BENEFITS TO THE APPELLANT & AGAINST THE
IMPUGNED OFFICE ORDER DATED VS/1295/22
DATED 17-06-2022, WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT
WAS TURNED DOWN IN A CLASSICAL CUROSRY &
WHIMSICAL MANNER.**

Respectfully Sheweth,

1. That the Appellant is naturally born bona fide citizen of Islamic Republic of Pakistan and hails from a respectable family.
2. That after going through the ordeals & inquisitions of the selection process, the Appellant got inducted onto the rolls of the prestigious Police Force of the Province as Constable years back.
3. That during his employment, the Appellant always remained a pragmatic, sincere & devoted fellow, who never left any stone

(2)

untuned in the performance of obligations bestowed upon his shoulders and for the same reason, was appraised on certain junctures by the high ups for his work ethic & behaviors. During his years long career, there has never been any kind of soot or sootage against the Appellant.

4. That it was in the backdrop of June 2020, whereby a false & fabricated case was registered against the Appellant and was booked in the F.I.R No. 93 dated: 09-06-2020 U/S 302 PPC, P.S: Bara District Khyber.
5. That the Appellant was later suspended and was thereafter dismissed from the services on account of absentia from services.
6. That on conclusions of supra mentioned case, the Appellant got honorably acquitted from the charges leveled against him vide judgment & order dated: 11-12-2021 of the Hon'ble Additional Sessions Judge-II, Khyber. **(Copy of the Judgment & Order dated: 11-12-2021 is annexed here as Annexure "A")**
7. That the major penalty of dismissal from service so imposed upon the Appellant was set aside & the Appellant was reinstated by CCPO Peshawar, vide Order No. 1079-83/PA dated: 31-03-2022 on account of his acquittal in the criminal case. **(Copy of the Order No. 1079-83/PA dated: 31-03-2022 is annexed here as Annexure "B")**
8. That needless to mention here that although the Appellant was reinstated into the service but the period in which the Appellant remained out of service was treated as leave without pay & no benefit was granted to the Appellant for the intervening period.
9. That the Appellant filed a Departmental Appeal before the Respondent No. 1 dated: 02-06-2022 wherein he narrated the

above-cited saga, but to the utter dismay, the same was turned down vide office order bearing no. S/1295/22 dated: 17-06-2022. **(Copy of the Departmental Appeal & Office Order no. S/1295/22 dated: 17-06-2022 is annexed here as Annexure)**

10. That feeling highly aggrieved, the Appellant approaches this Hon'ble Tribunal to address his grievances i.e., consideration of all back benefits, upon the following grounds, inter-alia:

GROUND:

- A. That the Impugned Order Dated: 17-06-2022 up to the extent of not granting back benefits is wrong, illegal & unlawful & and is liable to be set at naught.
- B. That where the Appellant has already been reinstated into service, meaning thereby that he is entitled for all the ancillary benefits but the same has not been extended to the Appellant.
- C. That the Appellant is a naturally born *bonafide* citizen of Islamic Republic of Pakistan where law requires a thing to be done in a manner, the same is to be done in that very manner and not otherwise.
- D. That where the Appellant was reinstated into service, so the same is the ample proof that the Appellant is fully and equally entitled for all the back benefits.
- E. That being falsely charged in a criminal case was beyond the control of the Appellant and was booked for no wrong done on his part, even was again jeopardized by not extending back benefits and treating the same as leave without pay.
- F. That any other ground not raised here may graciously be allowed at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the instant Service Appeal, the impugned Office Order No. 1079-83/PA Dated 31-03-2022 upto the extent of treating the intervening period as leave without pay & impugned office order No. S/1295/2022 Dated 17-06-2022 whereby the Departmental Appeal of the Appellant was turned down be struck down.

(4)

It is further prayed that the Appellant be declared entitled for all the back benefits for the period he remained out of service.

Any other relief not specifically asked for may also graciously be extended in favor of the appellant in the circumstances of the case.

Dated:18-07-2022

Through

در درخان
Appellant

Ahsan Sardar

Tahir Khan
Advocates, High Court
Peshawar.

Syeda Umm E Habiba
Advocate, Peshawar.

NOTE:

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Advocate

(5)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR**

In Service Appeal No. _____ /2022

Dur Marjan, Constable

VERSUS

Inspector General of Police & Others

AFFIDAVIT

I, Dur Marjan, Ex-Constable, Capital City Police Officer S/o Gul Was Khan R/o Tehsil Landi Kotal, District Khyber, do hereby solemnly affirm & declare on oath that all contents of the instant service appeal are true & correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.

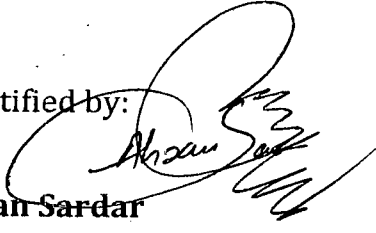
06/11

Deponent

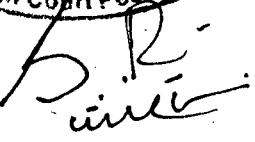
CNIC:2123-4528333-1

Phone No. 0330-1946002

Identified by:


Ahsan Sardar
Advocate
High Court, Peshawar.





16-07-2022.

(6)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR**

In Service Appeal No. _____/2022

Dur Marjan, Constable

VERSUS

Inspector General of Police & Others

ADDRESSES OF PARTIES

APPELLANT:

Dur Marjan, Constable, Capital City Police Officer S/o Gul Was Khan R/o
Tehsil Landi Kotal , District Khyber.

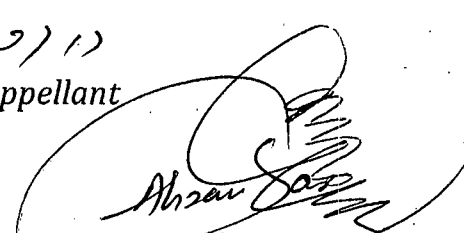

RESPONDENTS:

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Capital City Police Officer, Peshawar
3. District Police officer, Khyber.

Dated:18-07-2022

Through

دورجان
Appellant


Ahsan Sardar
&
Tahir Khan 
Advocates, High Court
Peshawar.

7A

Ann ~ A/I ~

OFFICE OF THE
DISTRICT POLICE OFFICER
KHYBER



ORDER

As per reports of SHO Police Station Bara that Constable Dur Marjan s/o Gul Was Khan BZK involved in Case FIR # 93, dated 06/06/2020. U/s 302 IPC, Police Station Bara. Under Govt. Servants Service & Efficiency Rules 1975 the defaulter was issued a Show Cause Notice with the opportunity to be heard which was not availed.

In reply of the Show Cause notice the defaulter constable failed to submit any reply regarding the allegations leveled against him consequently a Charge Sheet with Summary of Allegations was issued & DSP/Inqs Khyber was appointed as Enquiry Officer vide this office No. 1569/Khyber, dated 15/06/2020.

The Enquiry Officer in his finding report stated that the defaulter failed to receive charge sheet and statement of allegations and also not appeared before the enquiry officer which shows his attitude towards official rules & regulations. Furthermore, being a member of Discipline Force, involvement in a murder case is a gross misconduct and liable to be dismissed from service. The defaulter is also declared as absconder/Proclaimed offender.

Keeping in view the recommendations of the Enquiry Officer & available record and taking an ex-parte action, the Constable Dur Marjan s/o Gul Was Khan BZK is hereby awarded a major punishment of DISMISSAL FROM SERVICE with immediate effect.

D. Sami
DISTRICT POLICE OFFICER
KHYBER

No. 1009 _____ SHO Khyber, District Khyber
Copies to all concerned for necessary action.

08.10.2020

A
Attested

offc / copy

(7)

Ann "A"

In the Court of **AZIZ MUHAMMAD**
ADDITIONAL SESSIONS JUDGE-II, KHYBER

Sessions Case No.01/SC of 2021

Date of Institution: 23.01.2021

Date of Decision: 11.12.2021

THE STATE

..VERSUS..

**Dur Marjan S/o Gulvas Khan R/o Zakha Khel, Pir Maila,
Tirah Medan, District Khyber**

(Accused Facing Trial)

CHARGE: -

Case FIR No.93 dated 09.06.2020, U/s 302 PPC, Registered at PS
Bara, District Khyber.

PRESENT:

Mr. Asif Zeb APP for the state,

M/S Hussain Ali and Abbas Khan, advocates for accused,

JUDGMENT

1. Accused Dur Marjan faced trial in case FIR No. 93, dated 09.06.2020 U/s 302 PPC PS Bara.
2. Facts of the case as spelt out from the FIR, in brief, are that on 09.06.2020, at about 21:00 hours, complainant Hashim Khan, made report to the local police, to the effect that deceased is his brother namely, Ameer Muhammad. That on the eventful day, he alongwith brother Ameer Muhammad and cousins Naik Amal and Rehmat, had come to Pir Maila Bazar for purchasing commodities. That on the spot, Dur Marjan alias Nooray a levy constable was present armed with Kalashnikov on his duty. That after offering Zuhar Prayer, there were some altercation between Dur Marjan and his brother Ameer Muhammad, the former started firing, as a result whereof, Ameer Muhammad got hit and

succumbed to hi injuries on way to hospital. In addition to complaint, the occurrence was stated to have been witnessed by Naik Amal, Rehmat and others. The report of the complainant was reduced into writing in shape of FIR No. 93 (ibid).

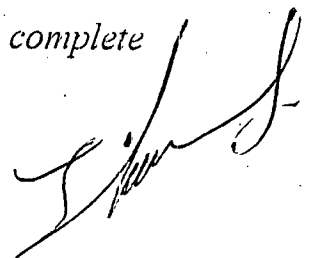
3. After registration of the case, investigation was conducted by Javed Khan SI (PW-08); who proceeded to the spot and prepared site plan (Ex. PW-8/2), on the pointation of complainant. During the course of spot inspection, he had taken into possession 01 empty of 7.62 bore. The blood stained clothes of deceased, were taken into possession, vide recovery memo (Ex.PW-7/1). The blood stained articles were sent to FSL for chemical analysis, report whereof received and placed on file. At the time of arrest, Taza Khan SI recovered weapon of offence i.e. Kalashnikov with fitted magazine containing 37 live rounds and handed over to investigating officer, who had taken the same vide recovery memo (ExpW- 8/3) in presence of marginal witnesses.

The accused was produced before the court of concerned Judicial Magistrate for procuring his physical custody and two days were granted. The accused was again produced before the court of concerned Judicial Magistrate for procuring further physical custody, but it was refused and was sent to Judicial Lock-up. After completion of investigation the case file was handed over to SHO concerned for submission of Challan, who did the same accordingly.

4. On receipt of *Challan* and after observing the legal formalities of S. 265-C Cr.PC, the accused facing trial, was formally charged sheeted but he did not plead guilty and claimed trial. To bring home the guilt of the accused, prosecution produced as many as 09 PWs, the gist of their deposition is given below:

Akbar Khan SHO appeared as (PW-01).

Upon completion of investigation, he submitted complete challan against accused facing trial.



Taza Khan SI appeared as (PW-02).

On arrest of accused, he issued his card of arrest and prepared recovery memo (ExPW- 2/2) regarding the recovered Kalashnikov.

Muhammad Ilyas SI appeared as (PW-03)

On reporting the matter by complainant, he converted the same into FIR (Ex.3/1).

Lal Shah FC appeared as (PW-04). Being the marginal witness of recovery memo (Ex.PW-2/2), he witnessed the recovery of Kalashnikov having magazine containing 37 bullets.

Hasham Khan S/o Ghairat Khan (complainant) (PW-05). He is the complainant in present case, when appeared in Court has taken same stance as taken by him in first report, in shape of FIR. He had nominated accused facing trial for the commission of alleged offence.

Naik Amal S/o Wali Khan appeared as (PW-06).

Being the eye witness of the alleged occurrence, deposed that on the eventful day, in his presence accused Dur Marjan had fired upon Ameer Muhammad, resultantly, he got hit and succumbed to his injury.

Farman Ullah S/o Aziz Khan appeared as (PW-07) That in his presence, complainant handed over last worn garments of the deceased to the IO vide a memo (ExPW- 7/1).

Javed Khan SI appeared as (PW-08).

After registration of FIR, Investigation was entrusted to him and accordingly investigated the case. After completion of investigation, he handed over the case to SHO concerned for submission of challan, who did the same accordingly.

Constable Khalid appeared as (PW-09)

He deposed that in his presence, investigating officer recovered empty shell vide recovery memo (ExPW- 8/1).

Likewise, in his presence Taza Khan SI, had produced crime weapon to investigating officer. He had also witnessed pointation of the spot of occurrence made by accused facing trial.

5. Prosecution closed its evidence, therefore, in order to afford an opportunity to explain circumstances appearing in evidence against the accused, he was examined U/s 342 Cr.PC. He has denied all allegations leveled against him. His case has been of denial of the implication; however, he projected his false implication in the case and posed innocence. He neither opted to lead evidence in his defense nor wished to be examined on oath U/s 340(2) Cr.PC.
6. Mr. Asif Zeb APP for the State, argued that prosecution has proved its case through cogent and reliable evidence. That accused has directly been charged in a promptly lodged FIR. That the occurrence had taken place in the broad day light and the parties were known to each other, therefore no question of wrong identification arise. That recovery from the spot, supported the venue of crime. That prosecution relying on the statements of complainant and one Naik Amal, whose presence on the spot has been established through cogent and reliable evidence. That despite the lengthy and searching cross examination, the defense failed to shatter their testimony. He prayed for awarding capital punishment to accused facing trial.
7. On the other hand, M/S Hussain Ali and Abbas Khan advocates, learned counsel for accused, inter alia, contended that prosecution has badly failed to prove its case against accused facing trial. That preliminary investigation has been conducted before the registration of the case. That the recoveries are highly doubtful as no independent witness was associated to the alleged recovery proceeding. That prosecution badly failed to prove the presence of complainant and alleged eye witness. That no medical report is available on case file to determine the cause of death. That prosecution witnesses had made dishonest

improvement in their statements. That initial report has been lodged with unexplained delay. That crime weapon and empties were sent to FSL with the delay of about 01 month, therefore, FSL report has lost its evidentiary value. That the case of prosecution is full of doubts. They requested for acquittal of accused facing trial, being innocent. They relied on the following judgements of honorable Superior Courts of the country:

2018 SCMR 772, PLD 2019 Supreme Court 64, PLD 2021 Supreme Court 600, 2018 SCMR 1590, 2021 SCMR 1039, 2021 PCr L J 1114.

8. I have given my anxious consideration to the respective arguments of the learned counsel for the parties and scanned the record with their valuable assistance.
9. The case of prosecution is that accused facing trial had murdered Ameer Muhammad in presence of complainant Hashim Khan and eye witnesses Naik Amal and Rehmat. The motive set up as altercation before the occurrence. The prosecution case against accused facing trial mainly revolves around the ocular account of complainant Hashim Khan PW-5 and Naik Amal PW-06, and circumstantial evidence in shape of incriminating recoveries of empty from the spot as well as recovery of crime weapon from the possession of accused.
10. The claim of complainant that he was present with the deceased at the time of occurrence is not believable for the reason that he has shown no plausible justification of his visit to the spotted place at the relevant time of occurrence. According to his version, on the day of occurrence they had visited Pir Maila, after the Zuhar Prayer, there were dispute between accused facing trial and deceased over crossing of a way, which resulted into altercation and accused had fired through his official weapon upon Ameer Muhammad. In chief examination, he did not utter a single word that for what purpose they had gone to Pir Maila. In the first line of his cross examination, he admitted his business at Haji Camp Peshawar. Likewise, the other eye witness Naik Amal also stated that he is serving in police

department and during the days of occurrence was posted in Landi Kotal. Admittedly, both the eye witnesses, having different places of their business. They have brought nothing on record to show that on the day of occurrence, their day was off due to any reason, to justify their presence on the spot. Whenever, a witness is employed in a service, if routine hours and his timing of duty coincides with the time of occurrence, then it is the duty of prosecution to bring on record a documentary or oral evidence that the witness on that particular time was on leave or he was not present on his duty at the place of his job or employment. In this case, the prosecution has not brought a single piece of evidence on record in shape of leave application or other document to show the presence of complainant and Naik Amal at the spotted place. Thus, the complainant and PW Naik Amal who are real brother and cousin of deceased, respectively, were chance witnesses, have failed to establish their presence on the spot, therefore, their testimonies are not worth consideration. In this respect reliance can be placed on the dictum laid down by the august Supreme Court of Pakistan in a case of Naveed Asghar and 02 others VS The State reported as 2021 SCMR 600, wherein it was held that;

“Reading of the statement of Mirza Muhammad Umar (PW-13) shows that he is a chance witness...a witness who in view of his place of residence or occupation and in the ordinary course of events is not supposed to be present at the place of the occurrence but claims to be there by chance. Testimony of such witness requires cautious scrutiny and has not accepted unless he gives satisfactory explanation of his presence at or near the place of occurrence at the relevant time.”

11. Their presence on the spot at the time of occurrence is also doubtful keeping in view the glaring contradictions in their statements. According to the version of complainant, there was a walking bridge near the spot, on one side the accused facing trial was present on duty whereas on the other side his brother was present, the accused approached toward his brother Ameer

Muhammad and asked him for giving space / way. The same fact narrated by Naik Amal (PW-06) in a different mode by stating that after the prayer time, deceased was going ahead of the accused, the later wants to cross him and asked the deceased to give way and thereafter started firing through his official weapon. Both the witnesses narrated the fact leading to the instant occurrence in a different way and contradictory manner. The complainant testified that after the occurrence, deceased then injured was taken to Bagh Army Hospital but no treatment was provided to him. The other witness Naik Amal stated that in Bagh Army hospital after giving first aid medical treatment to deceased then injured, he was shifted to Peshawar. The complainant had not only contradicting the other prosecution witness but also negated the story contained in FIR. When he was confronted by the learned defence counsel with the contents of FIR, he testified that it was incorrectly recorded in FIR that any medical treatment was provided to deceased then injured in Bagh Army Hospital. The complainant while omitting the story contained in FIR, tried to improve his statement by introducing a new story qua altercation over crossing a walking bridge. The learned defence counsel when confronted him with the contents of FIR, he frankly conceded that facts regarding the walking bridge and approaching of accused facing trial toward deceased for giving space, have not been mentioned in his initial report. The aforementioned glaring contradiction interse the statements of eye witnesses on material particular of the occurrence clearly suggest that they were not present on the spot at the relevant time of the occurrence otherwise they would have recorded consistent statements. Thus both the PWs are mere chance witnesses because their presence on the spot at the time of occurrence has not been established. Besides, they had contradicted each other on material aspects of the case, therefore their testimony cannot be relied upon for awarding conviction to the accused facing trial. In this respect, reliance can be placed on the judgement,

titled **Muhammad Ashraf alias Acchu VS the State (2019 SCMR 652)** wherein the august Supreme Court of Pakistan observed that

“Concocted evidence provided by chance witnesses---Where the court reached a conclusion that the eye witnesses are chance witnesses, they had not witnessed the occurrence and the prosecution story was concocted by the prosecution witnesses, then the case of the accused merited plain acquittal.”

- 12. In addition to the above, according to the site plan and depositions of prosecution witness, the complainant and alleged eye witnesses were at the mercy of accused but no threat was extended to them. Such unbelievable courtesy extended by the accused person to the complainant, knowing well that they will be deposed against him. The unusual conduct of complainant and two eye witnesses speaks volumes of their absence from the spot at the time of occurrence. According to available record their ages were about 33 to 35 years and age of the accused was about 30 years at the time of occurrence. It is strange enough that the accused who was younger than complainant and eye witnesses committed murder of real brother of complainant but the complainant and other PWs remained silence spectator during the altercation before the occurrence as well as after the occurrence. Suffice it to say that it was also not the case of prosecution that accused had aimed his gun upon the complainant and eye witnesses or extended any threat to them. Thus their unusual and unnatural conduct at the time of occurrence clearly show that they were not present on the spot at the time of occurrence. The absence of complainant party gets further support from inordinate and unexplained delay of about 31 hours in lodging the report, though the distance between spot of occurrence and police station Bara was shown about 110 Kilometers but as per version of complainant just after the occurrence they shifted deceased then injured to Bagh Army hospital Tirah and after giving first aid medical

11.12.2019
SIGNED
[Signature]

[Signature]

treatment, he was referred to Peshawar Hospital. The complainant and his companions have not tried to inform the local police regarding the murder of his brother rather they shifted the dead body to their house and buried the same on the following day. There are two possible reasons for lodging the report with the delay of 31 hours. Firstly, that complainant was not available on the spot even in his village otherwise he would have timely reported the matter to the police. Secondly, the most probable reason behind the delayed report is deliberation and consultation for implicating the accused facing trial. In this regard, reliance can be placed on a judgement passed by the august Supreme Court of Pakistan, reported as **PLD 2003 Supreme Court page 70**, wherein it was held that:

“There is extra ordinary delay of at least 03 hours in lodging the FIR with police Station Saddar, DI Khan. The High Court rightly held that the accused house is at a distance of about 4/5 miles from the police station Saddar and had the complainant being present in the house and seen the occurrence, he would have immediately rushed to the police station to lodge the report, whereas according to the statement of Abdul Jalil ASI (PW-10) who stated on oath, that he heard rumor about the murder while he was on patrol duty, thereafter he went there and recorded the FIR. The delay in lodging the FIR has not been explained plausibly, which shows that it was lodged after preliminary inquiry investigation, deliberation and consultation and the complainant (PW-08) was called from his village Dinpur, which was at a distance of at about 03 miles from the house of the respondent.”

13. Besides, no medical report is available on case file to show the unnatural death of deceased despite the fact that, as per prosecution version, he had met an unnatural death by receiving fire arm injuries. The complainant while deposing as PW-05 stated that after the occurrence, deceased was shifted to Bagh

whereas the Kalashnikov was also taken as weapon of offence on the same day. Both the articles were sent to FSL for chemical analysis on 08.07.2020 with the delay of about 28 days. Nothing available on case file to show that in whose custody those articles were lying in the intervening period. Sending of those articles with such an unexplained delay, is not a safe course and it smokes of some foul play on part of investigating officer. In such circumstance, this piece of evidence is not credible and of no assistance of prosecution against the accused in circumstance.

15. The learned APP for the state contended that the accused had failed to show any mala-fide or reason for his false implication and failed to prove his stance. It is settled principle of law that prosecution is bound to prove its case through cogent and reliable evidence and could not take any benefits from the weakness of the case of defense. Accused was not bound to take a specific plea and even if he takes a plea and thereafter failed to prove the same, it would not improve the case of the prosecution. In the case of "**Muhammad Shah Vs State**" the Honorable Supreme Court of Pakistan has held that:-

(b) Penal Code (XLV of 1860)...

....S.302(b)Qatl-e-Amad... Appreciation of evidence....Stand taken by accused in cross examination...Value...Any stand taken by accused in cross examination is merely in the form of suggestion...accused can take several defenses, but that will not improve the prosecution case, which has to stand on its own evidence.

16. It is cardinal principle of criminal jurisprudence that accused are assumed to be innocent till his guilt is proved to the hilt. There are many material contradictions, improvements and doubts in the prosecution story and a doubtful story cannot culminate in conviction, as per well settled principle of law that benefit of even a single but reasonable doubt should be extended to an accused, as a matter of right; as laid down by the

august Supreme Court of Pakistan in the case of "Muhammad Akram ...vs... the State", reported as 2009 SCMR 230, by holding that:

"It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right".

- 17. In view of the above, prosecution has not been able to establish its case beyond reasonable doubt and as such accused entitled to benefit of doubt, accordingly, accused **Dur Marjan** is hereby **acquitted** from the charges leveled against him. He is in custody, he be set free, immediately, if not required in any other case,
- 18. Case property be disposed of, after expiry of period of limitation, if any, in accordance with law.
- 19. File be consigned to the record room after necessary completion and compilation.

Announced
11.12.2021

AZIZ MUHAMMAD
Addl: Sessions Judge-II, Khyber

CERTIFICATE

Certified that this judgment consists of (12) pages. Each page has been read over and signed by me after making necessary corrections therein.

AZIZ MUHAMMAD
Addl: Sessions Judge-II, Khyber

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20/12/21

1980

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20/12/21



18

Ann "B"

OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable Dur Marjan s/o Gulwas Khan who was awarded the major punishment of "Dismissal from service" under PR-1975 by District Police Officer Khyber vide order No.1009/PSO, dated 08-04-2021.

2- Short facts leading to the instant appeal are that the appellant while posted at Police Station Bara District Khyber was proceeded against departmentally on the charges of his involvement in criminal case vide FIR No.93 dated 06.06.2020 u/s 302-PPC Police Station Bara District Khyber.

3- He was issued proper Charge Sheet and Summary of Allegations by District Police Officer Khyber. DSP/HQrs: District Khyber was appointed as inquiry officer to scrutinize the conduct of the accused official. The inquiry officer after conducting proper inquiry submitted his findings and recommended the accused official for major punishment. The competent authority in light of the findings of the inquiry officer awarded him the above major punishment.

4- He was heard in person in O.R and the relevant record along with his explanation perused. During personal hearing the appellant stated that he was falsely been implicated in the FIR and on that grounds, the Honorable Court of Additional Session Judge-II Khyber acquitted him of the charges on 11.12.2021. Keeping in view his contention and other documentary proof, his appeal for reinstatement is hereby accepted. The punishment order of District Police Officer Khyber issued vide order No.1009/PSO Khyber, dated 08-04-2021 is hereby set aside. **He is hereby reinstated in service and the period he remains out of service is treated as leave without pay. No benefit is granted for the intervening period.**

542
31-3-2022

(MUHAMMAD IJAZ KHAN) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 1079-93 /PA dated Peshawar the 31 / 03 / 2022

Copies for information and necessary action to the :-

1. District Police Officer Khyber, along with complete inquiry file.
2. DSP/HQrs Khyber.
3. Accountant & OASI Khyber
- ✓ 4. Official concern.

To,

The Worthy,
Inspector General of Police
Khyber Pakhtunkhwa

Mode: Through Proper Channel

Subject: Departmental Appeal.

Respected Sir,

With high reverence, due deference and utmost obeisance, the Appellant very humbly solicits the instant Departmental Appeal to your good-self office, to the following facts & effect.

1. That the Appellant is the bonafide citizen of Islamic Republic of Pakistan and hails from respectable family.
2. That after going through the ordeals and inquisitions of selection process, the Appellant got inducted & appointed on the rolls of prestigious Police Force of the Province as Constable years back.
3. That during the course of his employment, the Appellant always remained a pragmatic, sincere and devoted fellow, who never left any stone unturned in performance of obligations bestowed upon his shoulders and for the same reason, was appraised on certain junctures by the high-ups for his work ethic and behavior. During his years long career, there has never ever been any kind of soot or sootage against the appellant.
4. That it was in the backdrop of June 2020, whereby a false and fabricated case was registered against the Appellant and was

(22)

have always discouraged, depreciated and deplored any variation or violation of the rules.

- F. That such reckless demeanor on part of the officials is an unreasonable departure from the principles of policy contained in the Constitution, requiring them to secure well being of the Appellant by ensuring equitable adjustment of rights between the Appellant & the Officials.
- G. That from all angles, the appellant is liable to be granted all the back benefits for the intervening period.

It is therefore most humbly prayed that on acceptance of the instant Departmental Appeal, the Impugned Office Order dated: 31/03/2022 up to the extent of not granting the back benefits to the Appellant, may kindly be set aside and the Appellant may kindly be given all the back benefits for the intervening period, the Appellant remained out of service.

The Appellant also beseech and implores for personal hearing as well.

Dated: 02-June-2022

Sincerely Yours,

دُر مَرَجَان

Dur Marjan
Constable
CCPO Office
Peshawar.

(23)

Ann "B"



OFFICE OF THE
INSPECTOR GENERAL OF

KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. S/ 1295 /22, dated Peshawar the 17/6 /2022.

To : The Capital City Police Officer,
Peshawar.

Subject: - **REVISION PETITION.**

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Dur Marjan s/o Gul Was Khan of Khyber district Police against the punishment of the period he spent out of service was treated as leave without pay awarded by CCPO Peshawar vide order Endst: No. 1097-38PA, dated 31.03.2022 of being time barred.

The applicant may please be informed accordingly


(NOOR AFGHAN)

Registrar,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.



booked in the FIR No. 93 dated 09/06/2020 U/s 302 PPC, PS: Bara District Khyber.

5. That after being booked in the captioned criminal case, the Appellant was arrested and was behind the bars for sufficient long period. During the custody, the Appellant was unable to mark his presence or could inform his high-ups about the whole eventuality.
6. That the Appellant was later on suspended and was thereafter dismissed from the service on account of absentia from service.
7. That on conclusion of supra mentioned case, the Appellant got honorably acquitted from the charges leveled against him vide Judgment & Order dated 11. 12. 2021 of the Hon'ble Additional Sessions Judge II, Khyber. **(Copy of Judgment & Order dated 11.12.2021 is annexed).**
8. That the major penalty of dismissal from service so imposed upon the Appellant was set aside and the Appellant was reinstated by CCPO Peshawar vide Order No: 1079-83/PA dated 31/03/2022 on account of his acquittal in the criminal case.
9. That needless to mention here that although the Appellant was reinstated into the service but the period, the Appellant remained out of service was treated as leave without pay and no benefit was granted to the Appellant for the intervening period.

10. That feeling aggrieved the Appellant prefers the instant Departmental Appeal to your good-office for granting back benefits for the intervening period upon the following grounds inter alia:-

GROUND:

- A. That the impugned order dated 31/03/2022 up to the extent of not granting back benefits is wrong, illegal & unlawful and is liable to be set at naught.
- B. That where the Appellant has already being reinstated into service, meaning thereby that he is entitled for all the ancillary benefits but the same has not been extended to the Appellant.
- C. That under the mandate of Article 4 of the constitution, no one should be treated otherwise than in accordance with law, therein Article 25 postulate that alike are to be treated alike, but here the case is volta-facie and a totally different yardstick has been used to treat the Appellant.
- D. That discrimination in any form is highly abominable and bete-noire and has always been checked down by the Superior Courts. Reason behind checking it down or chucking it away is to ensure equality, equal treatment of its citizen and to remove any sense of discrimination.
- E. That the law and the law courts of the land have always preferred and encouraged that rules are to be followed and

50 روپے

30163

ایڈوکیٹ: AHSAN SARDAR

بار کونسل/ایسوسی ایشن نمبر: BC-15-5815

رابطہ نمبر: 0313-9204759



پشاور بار ایسوسی ایشن، خیبر پختونخواہ

KPK SERVICES TRIBUNAL, PESHAWAR. بعد اٹ جناب:

مخائب: APPELLANT

دعویٰ: SERVICE APPEAL



علت نمبر: -

مورخہ: 15-07-2022

جرم: -

تھانہ: -

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
آن مقام لائبریری کیلئے احسن سردار طاہر خان کے ایک کوویٹ مقرر
کر کے قرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز کوویٹ صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائرہ کے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو کوئی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساتھ پر واضح منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانبہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب یا ہمدرد ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے

المقوم: 15/07/2022
PESHAWAR BAR ASSOCIATION
KHYBER PAKHTOONKHWA

المقام: پشاور

Ahsan Sardar
Tahir Khan
Ms. Syeda Umm E Habiba

نوٹ: اس وکالت نامہ کو کوئی ناقابل قبول ہوگی۔

Accepted by

“B”

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

No. 1000 AD

Appeal No. 39 of 2022
M. J. J. Appellant/Petitioner
P. S. P. PPR Peshawar Respondent
 Respondent No. (3)

Notice to: District Police Officer 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 27/11/2022 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 04 Day of Nov 2022.

For Party

[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
11/29
Appeal No. of 20²²
D. M. J. Appellant/Petitioner

T-G-P KPK Peshawar
Versus
..... Respondent
(2)

Respondent No.

Notice to: - Capital City Police Officer 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..... 11/11/2022..... 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..... 04

Given under my hand and the seal of this Court, at Peshawar this.....
Day of..... Nov 20²²

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.**

No.

Appeal No. 1139 of 20 12

D. M. J. Appellant/Petitioner

G. S. P. K. P. J. Respondent

Respondent No. (1)

Notice to: — Inspector General of Police 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 22/11/2012 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 24

Day of Nov 2012

Registrar
Copy
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.

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have always discouraged, depreciated and deplored any variation or violation of the rules.

- F. That such reckless demeanor on part of the officials is an unreasonable departure from the principles of policy contained in the Constitution, requiring them to secure well being of the Appellant by ensuring equitable adjustment of rights between the Appellant & the Officials.
- G. That from all angles, the appellant is liable to be granted all the back benefits for the intervening period.

It is therefore most humbly prayed that on acceptance of the instant Departmental Appeal, the Impugned Office Order dated: 31/03/2022 up to the extent of not granting the back benefits to the Appellant, may kindly be set aside and the Appellant may kindly be given all the back benefits for the intervening period, the Appellant remained out of service.

The Appellant also beseech and implores for personal hearing as well.

Dated: 02-June-2022

Sincerely Yours,

دُر مَرَجَان

Dur Marjan
Constable
CCPO Office
Peshawar.

Accepted
A

23

Order on
Dept. Appeal

Ann "B"



OFFICE OF THE
INSPECTOR GENERAL OF

KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. S/ 1295 /22, dated Peshawar the 17/6 /2022.

To : The Capital City Police Officer,
Peshawar.

Subject: - REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Dur Marjan s/o Gul Was Khan of Khyber district Police against the punishment of the period he spent out of service was treated as leave without pay awarded by CCPO Peshawar vide order Endst: No. 1097-38PA, dated 31.03.2022 of being time barred.

The applicant may please be informed accordingly


(NOOR AFGHAN)

Registrar,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.



