

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 265/2017

Date of Institution ... 20.03.2017

Date of Decision ... 29.07.2021

Muhammad Saleem (No.688) son of Muhammad Akbar, resident of Shahkot,
Tehsil & District Mansehra.

... (Appellant)

VERSUS

District Police Officer, Mansehra and two others.

... (Respondents)

MR. MUHAMMAD ASLAM TANOLI,
Advocate

... For Appellant

MR. USMAN GHANI,
District Attorney

... For Respondents

SALAH-UD-DIN ...

MEMBER (JUDICIAL)

ROZINA REHMAN ...

MEMBER (JUDICIAL)

ATIQU-UR-REHMAN WAZIR ...


MEMBER (EXECUTIVE)

JUDGMENT

ATIQU UR REHMAN WAZIR MEMBER (EXECUTIVE): The instant service appeal was heard by a Division Bench of this Tribunal on 21-02-2019 and judgment was pronounced. The two learned Members, however, differed in their respective opinions. A larger Bench was, therefore, constituted which heard the matter on 29-07-2021.

02. Brief facts of the case are that the appellant was appointed as Constable on 30-03-1995 in police department. While on three days leave from duty, an FIR

U/Ss 302/324/427/148/149 PPC, dated 23-03-2011 was lodged against him by his opponents, due to which the appellant did not resume his duty after expiry of the leave. Consequently, the appellant was suspended vide order dated 24-03-2021 and disciplinary proceedings were initiated against the appellant under Removal from Service (Special Powers) Ordinance, 2000 in absentia. The appellant was ultimately dismissed from service vide order dated 11-05-2011. The appellant remained fugitive from law for a longer time, until he was arrested on 19-10-2013. The appellant however was acquitted from the charges by the trial court vide judgment dated 30-07-2015, thereafter, he filed departmental appeal dated 11-09-2015, which was rejected vide order dated 27-09-2016. The appellant filed mercy petition on 30-10-2016, which was also rejected vide order dated 21-02-2017, hence the instant service appeal instituted on 20-03-2017 with prayers that the appellant may be re-instated in service with all back benefits.

03.  Learned counsel for the appellant has contended that the appellant was proceeded against on the charges of registration of an FIR against him in a criminal case, which have formed the foundation for his removal from service. He further contended that such proceedings were undertaken on the back of the appellant and the appellant was not associated with the inquiry proceedings. Learned counsel for the appellant argued that no charge sheet/statement of allegations and show cause notice was served upon the appellant. He further argued that the respondents hastily conducted such proceedings without affording proper opportunity of defense to the appellant, so much so that it took only 42 days right from his suspension up to his dismissal. Learned counsel for the appellant explained that the respondents without waiting for the decision of the criminal court opted to proceed with the matter in an unnecessary haste resulting in miscarriage of justice to the appellant; that such proceedings were conducted only to the extent of fulfillment of codal formalities and the appellant was kept ignorant of such proceedings, which resulted

into delay in receipt of the impugned order of dismissal and which was received by the appellant on 04-09-2015. He further explained that regular inquiry is must before imposition of major penalty of dismissal, which however was not done in case of the appellant; that the appellant was acquitted from the criminal charges vide judgment dated 30-07-2015 and it is a well settled legal proposition supported by numerous judgments of the apex court that when an accused official is acquitted from criminal charges after trial by competent court of law, he cannot be ousted from service on the same very charges. On the question of limitation, learned counsel for the appellant argued that the impugned order has been passed retrospectively, therefore, the same is void and limitation does not run against the impugned order.

04. ~~Learned District Attorney~~ appearing on behalf of the respondents has contended that the appellant was involved in many criminal cases and remained history sheeteer of police station Phulra. He further contended that the appellant willfully absented himself from lawful duty without permission of authority due to his involvement in a criminal case. Learned District Attorney argued that the appellant remained proclaimed offender for a longer period. He further argued that the august Supreme Court have held that even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned District Attorney explained that to seek condonation of absence during absconsion would amount to putting premium on such act; that the appellant was properly proceeded against under the relevant law and rule. He further explained that charge sheet/statement of allegations were served upon the appellant at his home address, but since the appellant was absconder, hence was proceeded against in absentia. Learned District Attorney pointed out that when the appellant himself is not available for personal hearing, no rule of natural justice or requirement of law regarding notice or hearing or about regular inquiry had been infringed. He further pointed out that the

impugned order of dismissal was issued on 11-05-2011, whereas the appellant filed departmental appeal on 11-09-2015, which is badly time barred; that when appeal before departmental authority is time barred, service appeal before service Tribunal is incompetent. Reliance was placed on 2017 SCMR 965, 2006 SCMR 453, 2007 SCMR 513, 2011 SCMR 1429 and 2021 SCMR 144.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that on 20-02-2011, the appellant received telephonic information about murder of his two brothers by their opponents, due to which three days leave was granted to the appellant. The appellant joined the funeral rituals of his brothers and also registered case FIR No. 30 dated 20-02-2011 U/S 302/34 PPC against the accused. Due to such tragic incident, the appellant being in shock, sent another application seeking five days leave from the authority, however the leave was not sanctioned. In the meanwhile, his opponents lodged an FIR against the appellant in a criminal case on 23-03-2011 U/Ss 302/324/427/148/149 PPC, due to which the appellant did not report back to his place of duty. The respondents suspended the appellant in absentia on 24-03-2011 and ex-parte disciplinary proceedings were initiated against him under Removal from Service (Special Power) Ordinance, 2000 on the ground of his involvement in a criminal case as well as absence from duty. It however was noted that there is no provision in the said ordinance, whereby a civil servant could be proceeded against ex-parte, nor any such procedure is available in the said ordinance to deal the civil servant, in case the civil servant is involved in a criminal case and is later on granted acquittal by the trial court. We are also conscious of the fact that the appellant was not available at that particular time for disciplinary proceeding, however it appears that the absence of the appellant was not willful, rather it was due to security reason as two brother of the appellant were killed and his own life was also at risk. In a

situation, principals of natural justice demands that respondents must have waited for decision of a criminal court, which is also supported by section 194-A of CSR. It is also settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152. As is evident from their comments, the respondents were well aware that FIR was lodged against the appellant on the basis of blood feud enmity and that his absence was not willful, where he lost two of his brothers, the respondents instead of taking lenient view, proceeded the appellant in haste and did not afford appropriate opportunity of defense as was required under the provisions of the said ordinance, rather conducted proceedings only to the extent of fulfillment of codal formalities, hence the appellant was condemned unheard. In PLJ 2016 Tr.C (Services) 326, it has been held that when a power is conferred on a public functionary and it is exercisable for benefit of any affected party then that party gets an implied right to move for exercise of such power. In case of imposing major penalty, principle of natural justice requires that a regular inquiry be conducted in matter and opportunity of defense may be provided to civil servant proceeded against. Moreover, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076.

07. The FIR lodged against the appellant would reveal that as per practice in vogue, eleven male family members of the appellant including the appellant had been charged in the said FIR and all of them were acquitted on merit by the competent court of law vide judgment dated 30-07-2015. Statement of the

complainant, who had lodged such FIR, would reveal that the appellant was not guilty, hence was acquitted of such charges. Statement of the complainant contained in the judgment is reproduced as under:-

"It is correct that when we reached at the spot, indiscriminate firing started from behind the boulders, bushes and thick jungle all of a sudden. He further admitted that the accused had concealed behind the boulders, bushes and jungle and I could not identify them. He also admitted that we had enmity with the accused; therefore, I charged them on the basis of said ill will/enmity. He also admitted it correct that I do not charge the accused facing trial anymore".

In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460

08. We are also mindful of the question of limitation, as the appellant filed departmental appeal after earning acquittal from the charges leveled against him, but the circumstances in the instant appeal are eccentric, which requires dealing in a distinguishable manner, if compared with numerous cases decided by this Tribunal as well as superior court, where government employees remain fugitive from law for years, but in case of the appellant, major penalty was awarded within 40 days from the date of institution of criminal case. The Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

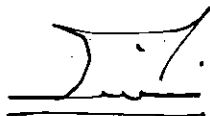
09. In order to justify their stance, the respondents had projected the appellant with a tainted past, whereas on the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C. (Services) 324, it cannot be made a ground for awarding penalty to a government servant. This Tribunal however has ample power under Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 to confirm, set aside, vary or modify the orders, against which appeal is made.

10. We have also examined the second part of the allegation, which was absence. It was noted that absence was offshoot of the first allegation, as the appellant was placed under suspension just after registration of FIR against him, when the appellant was not absent; rather he was on three days leave. Total absence between the periods from registration of FIR against him, until his dismissal from service comes to 48 days. As discussed above, the appellant has already been acquitted in the criminal case, therefore, the impugned penalty imposed upon the appellant is liable to be set aside.

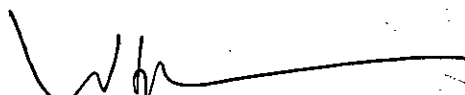
11. In view of the foregoing discussion, the instant appeal is accepted and the appellant is re-instated in service, however the intervening period of his absence from duty shall be considered as leave of kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

29.07.2021



**(SALAH-UD-DIN)
MEMBER (JUDICIAL)**



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



**(ROZINA REHMAN)
MEMBER (JUDICIAL)**


29.07.2021

Mr. Muhammad Aslam Tanoli, Advocate, for the appellant present.

Mr. Muhammad Nazeer alongwith Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted and the appellant is re-instated in service, however the intervening period of his absence from duty shall be considered as leave of kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
29.07.2021



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)



(ROZINA REHMAN)
MEMBER (JUDICIAL)

15.07.2021

Appellant in person present. Mr. Muhammad Nazeer Assistant
alongwith Mr. Usman Ghani learned District Attorney for respondents
present.

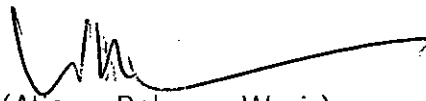
During perusal of the file, it transpired that copies of complete
record of the inquiry proceedings have not been submitted, therefore,
respondents are directed to produce the same before the Tribunal and to
come up for re-arguments before the Larger Bench on 29.07.2021.



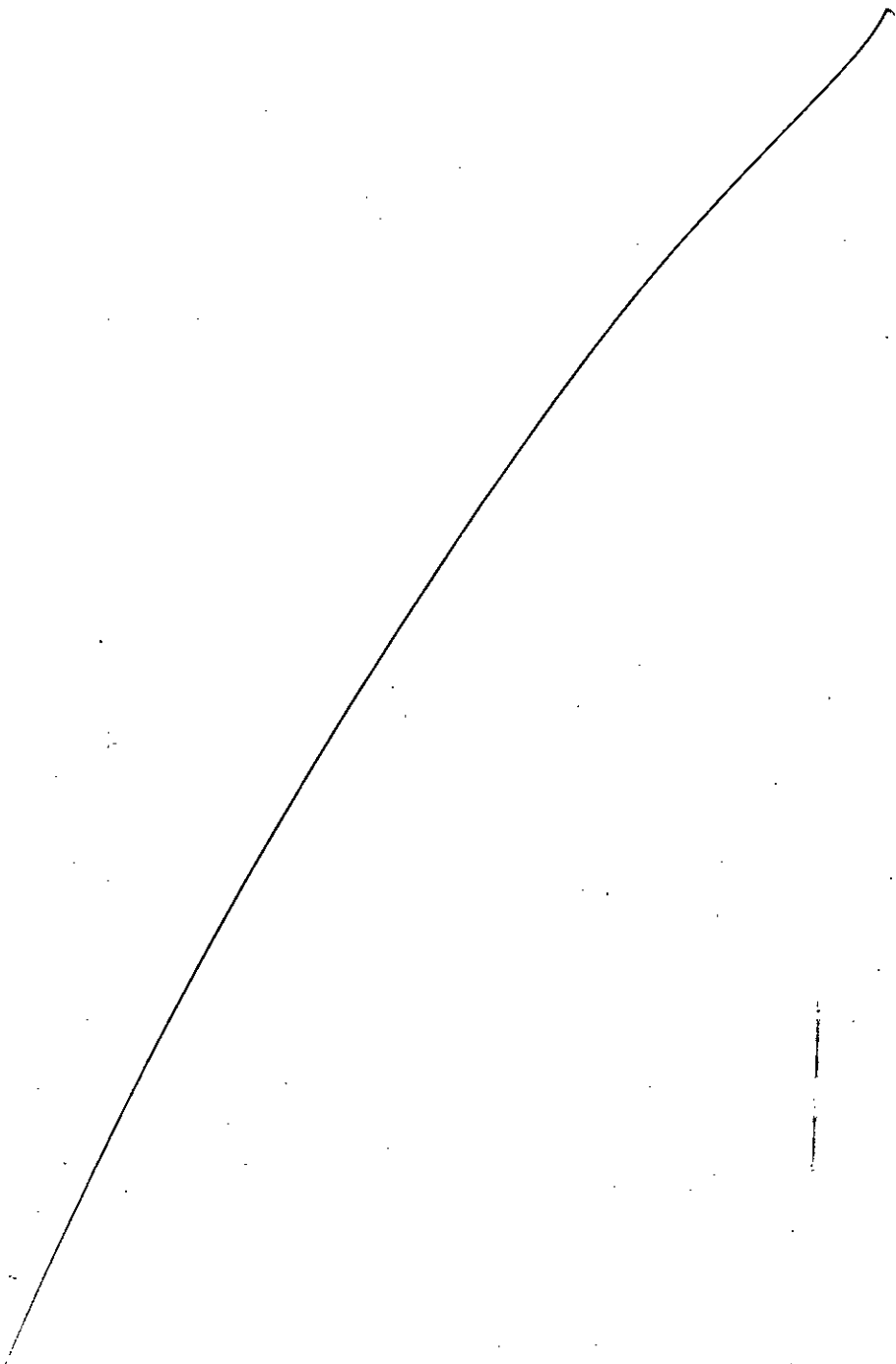
(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)



(Atiq ur Rehman Wazir)
Member (E)



29.06.2021

Mr. Muhammad Aslam Tanoli, Advocate, for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

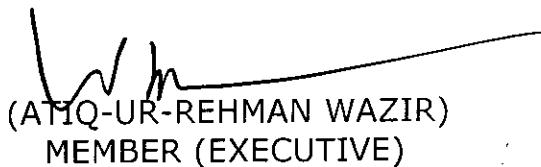
Later requested for adjournment on the ground that the issue of retrospective effect is involved in the instant appeal regarding, which Full Bench has already been constituted. Adjourned. To come up for arguments before the Larger Bench on 07.07.2021.



(ROZINA REHMAN)
MEMBER (JUDICIAL)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

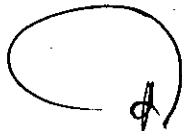


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

07.07.2021

Mr. Muhammad Aslam Tanoli, Advocate, for the appellant present. Mr. Usman Ghani, District Attorney for the respondents present.

Arguments heard. To come up for order before the larger Bench on 15.07.2021.



(ROZINA REHMAN)
MEMBER (JUDICIAL)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)




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

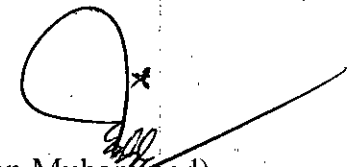
09.03.2021

Counsel for the appellant and Addl. AG alongwith for the respondents present.

Arguments heard. To come up for order on 01.04.2021 before this Larger Bench.


(Atiq-ur-Rehman Wazir)
Member(E)


Chairman


(Mian Muhammad)
Member(E)

01.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 31.05.2021 for the same as before.


Reader


31.05.2021

Appellant present in person.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Perusal of record would reveal that arguments were advanced before the Larger Bench, therefore, the matter is adjourned to 29.06.2021 before Larger Bench.

(Mian Muhammad)
Member (E)

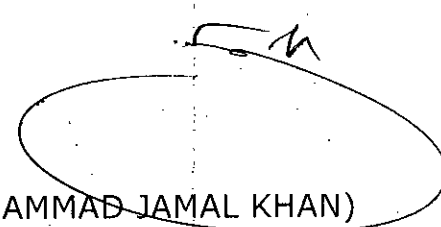

(Rozina Rehman)
Member (J)

03.12.2020

Counsel for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General, for the respondents is also present.

Learned counsel representing appellant requested for adjournment that he has not prepared the brief of the instant appeal. Request is accepted. The appeal is adjourned to 11.02.2021 on which date file to come up for arguments before Larger Bench.


(MIAN MUHAMMAD)
(MEMBER EXECUTIVE)



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)


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

11.02.2021

Counsel for the appellant and Addl. AG for the respondents present.

Adjourned to 09.03.2021 for hearing before the Larger Bench due to paucity of time today.


(Rozina Rehman)
Member(J)

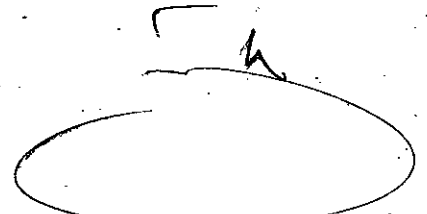

Chairman


(Atiq-ur-Rehman Wazir)
Member(E)

10.11.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Ameerullah, Head Constable, for the respondents are also present.

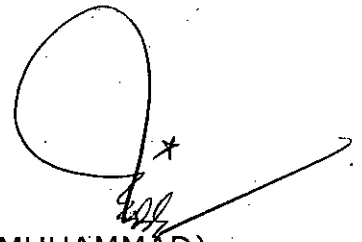
Since the Members of the High Court as well as of the District Bar Associations, Peshawar, are observing strike today, therefore, learned counsel for appellant is not available today. Adjourned to 03.12.2020 on which date to come up for arguments before the Larger Bench.



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)



(ROZINA REHMAN)
MEMBER (JUDICIAL)



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

02.09.2020

Counsel for appellant and Mr. Usman Ghani learned District Attorney for respondents present.

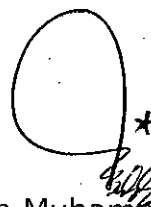
At the outset it was pointed out that many other cases involving proposition regarding retrospectivity of operation of penalty, are fixed before Larger Bench on 10.11.2020.

In the circumstances, it shall be appropriate to adjourn instant matter to the said date for hearing alongwith similar appeals.

Adjourned accordingly.



(Rozina Rehman)
Member (J)



(Mian Muhammad)
Member (E)




Chairman

06.02.2020

Appellant with counsel and Mr. Usman Ghani, District Attorney for the respondents present.


The Worthy Chairman is on leave, therefore, the matter is adjourned to 14.04.2020 for arguments before the Larger Bench.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

14.04.2020

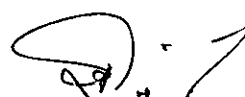
Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 14.07.2020 before Larger Bench.


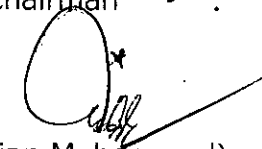

Reader

14.07.2020

Nemo for the appellant. Mr. Usman Ghani District Attorney for the respondents present.

Notice be issued to appellant/learned counsel for arguments on 02.09.2020 before the Larger Bench.


(Rozina Rehman)
Member



Chairman

(Mian Muhammad)
Member

08.11.2019

Counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present.

To come up alongwith Appeal No.474/2017 for orders regarding application for formation of Bench comprising all the Members and Chairman of the Tribunal, on 12.12.2019 before Larger Bench.


(Mr. Hamid Mughal)
Member


(Hussain Shah)
Member


CHAIRMAN


12.12.2019

Appellant in person and Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present.

Vide our detailed order of even date in service appeal No. 474/17, the objection regarding constitution of Bench is over ruled and the appeal is posted before a Bench already constituted.

A request for adjournment is made due to non availability of learned counsel for the appellant, owing to general strike of the bar. Adjourned to 06.02.2020 before Larger Bench.

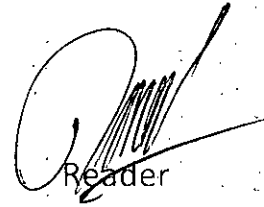

(M. Hamid Mughal)
Member


(Hussain Shah)
Member


CHAIRMAN

25.06.2019

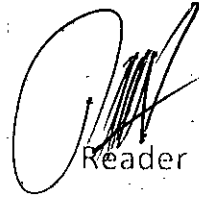
Learned Chairman is in disposed, while learned member Mr. Hussain Shah is on tour to camp court D.I.Khan. To come up on 05/07/2019.



Reader

05/07/2019

Due to incomplete bench, the case is adjourned. To come up on 29/08/2019.



Reader

29.08.2019

Learned counsel for the appellant present. Mr. Riaz Kahn Painsdakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 08.11.2019 for arguments before Larger Bench.



(Muhammad Hamid Mughal)
Member



Chairman




(Hussain Shah)
Member

22/3/2019

By the direction of the worthy Chairman, the instant appeal is fixed before the larger bench comprising of Hon'ble Mr. Justice Hamid Frooq Durrani, Chairman, Mr. Muhammad Hamid Mughal learned Member(J) and Mr. Hussain Shah, learned Member(E) for arguments on 11/4/2019 at Peshawar. Notices be issued to the parties/counsel for the date fixed.


REGISTRAR

11.04.2019

Junior to counsel for the appellant and Addl. AG for the respondents present. 

Due to general strike on the call of Bar Association instant matter is adjourned to 25.06.2019 before the Larger Bench.


Chairman


(M. Hamid Mughal)
Member


(Muhammad Khan Khan)
Member


(Ahmad Haroon)
Member


(Hussain Shah)
Member

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT ABBOTTABAD

SERVICE APPEAL NO. 265/2017

Date of institution ... 20.03.2017

Date of judgment ... 21.02.2019

Muhammad Saleem (No. 688) S/o Muhammad Akbar,
R/o Shahkot, Tehsil & District Mansehra.

... (Appellant)

VERSUS

1. District Police Officer, Mansehra.
2. DIG Hazara Range, Abbottabad.
3. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORDER OF DPO MANSEHRA VIDE WHICH THE
APPELLANT WAS DISMISSED FROM SERVICE.

Mr. Muhammad Aslam Tanoli, Advocate.

.. For appellant.

Mr. Muhammad Bilal Khan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

DISSENTING JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the

appellant present. Mr. Muhammad Bilal Khan, Deputy District Attorney

alongwith Mr. Ikhtlaq Hussain, Inspector (Legal) for the respondents present.

Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department. He was dismissed from service vide order dated 11.05.2011 on the allegation of absence from duty being involved in a criminal case by the competent authority. The appellant filed departmental appeal on 11.09.2015 which was rejected on 27.09.2016 thereafter, the

appellant filed revision petition on 13.10.2016 which was rejected on 21.02.2017 hence, the present service appeal on 20.03.2017.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant was falsely involved in a criminal case vide FIR No .49 dated 23.03.2011 under sections 302/324/427/435/148/149 PPC Police Station Phulra District Mansehra. It was further contended that on conclusion of trial, the appellant was acquitted by the competent court vide judgment dated 06.07.2017. It was further contended that the appellant was imposed major penalty of dismissal from service without proper and regular inquiry as neither charge sheet, statement of allegation was served upon the appellant nor he was associated in the inquiry proceedings nor any absence notice was issued to the appellant at his home address therefore, the appellant was condemned unheard. It was further contended that there is some delay in filing of departmental appeal but the impugned order has been passed retrospectively i.e from the date of absence, therefore, the same is void and limitation does not run against the impugned order and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department. It was further contended that the appellant was involved in five criminal cases as revealed from the decision dated 23.09.2016 of the departmental authority as well as reply of the respondent-department. It was further contended that the appellant remained absent from lawful duty without permission and sanctioned of the higher authority due to involvement in criminal case FIR No .49 dated 23.03.2011 under sections 302/324/427/148/149 PPC Police Station Phulra District

*M. Amin
21.2.2019*

Mansehra. It was further contended that the appellant remained proclaimed offender for a long period in the aforesaid criminal case. It was further contended that the respondent-department also framed charge sheet, statement of allegation and copy of the same was also forwarded through dairy No. 741-42EA dated Mansehra 28.03.2011 to the appellant with the direction to submit written statement to the inquiry officer within seven days of receipt of this charge sheet, statement of allegation and also to appear before the inquiry officer on the date time and place for departmental proceeding as revealed from the statement of allegation but the appellant was absconder in the aforesaid case and did not appear before the inquiry officer therefore, ex-parte proceeding was initiated against the appellant and the competent authority submitted his inquiry dated 21.04.2011 and recommended for major punishment and on the basis of said inquiry, the competent authority has rightly dismissed the appellant from service. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 11.05.2011 but the appellant has filed departmental appeal on 11.09.2015 after a delay of more than four years therefore, it was contended that the departmental appeal is also badly time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service vide order dated 11.05.2011 on the allegation of absence from lawful duty without permission of the higher authority being involve in the aforesaid criminal case. The record further reveals that copy of charge sheet, statement of allegation was also forwarded to the appellant vide diary No. 741-42 dated 28.03.2011 with the direction to submit written statement to the inquiry officer within seven days to the inquiry officer as revealed from the statement of allegation but the appellant was absconder in the aforesaid therefore, he did not appear before the inquiry officer and the inquiry officer initiated ex-parte proceeding and submitted report

*M. Anwar
21.2.2019*

dated 24.04.2011 to the competent authority wherein the inquiry officer found the appellant guilty of absence from duty and recommended him for major penalty and on the basis of said inquiry report, the appellant was imposed major penalty of dismissal from service by the competent authority vide order dated 11.05.2011. No doubt the appellant was not associated in the inquiry proceeding but admittedly at the relevant time the appellant was absconder in the aforesaid criminal case and despite sending of charge sheet, statement of allegation to the appellant with the direction to appear before the inquiry officer, the appellant could not appear before the inquiry officer being absconder in the criminal case. It is also well settled law that when the appellant himself was not available than he cannot say that any rules of natural justice or requirement of law regarding notice or hearing or about regular inquiry has been infringed. In this respect SCMR 2011 page 1429 cited for *advantages : m*

**Government Servants (Efficiency and Discipline) Rules,
1973**

---Rr. 4 (1)(b)(iv)---Service Tribunal Act (LXX of 1973), S. 4--- Constitution of Pakistan, Art. 212(3)---Dismissal from service---Absence from duty without sanction leave after expiry of ex-Pakistan medical leave--- Non-joining of duty by appellant after department refused his request for three years further leave---Dismissal of appeal by Service Tribunal--- Validity---Appellant himself was not available for personal hearing as he was out of Pakistan as per his own request for extension of leave---No rule of natural justice or requirement of law regarding notice or hearing or about regular enquiry has been infringed---Department had not committed ^m any illegality in proceeding against appellant particularly after refusal of his request for extension of leave, he did not join

*M. Aman
21.2.2014*

duty, which he was bound to do ----Appellant had not raised any substantial question of law of public importance--- Supreme Court dismissed petition for leave to appeal in circumstances.

It was also held in 2011 PLC (C.S) 990 Supreme Court of Pakistan

Constitution of Pakistan---

---Art. 212(3)---Termination from service---Absence from duty---Non-holding of regular inquiry---Effect---Civil servant who was involved in criminal case terminated during the period when he remained fugitive from law---Plea raised by civil servant was that he was acquitted from criminal charge and no regular inquiry was conducted to probe into the matter---Validity---Involvement of civil servant in criminal case and his willful absence from duty were never denied by him, therefore non-holding of regular inquiry did not cause any prejudice to him---Civil servant had been dealt with fairly and was terminated by competent authority after completing all codal formalities---Service Tribunal discussed the matter in depth and assigned cogent and sound reasoning before dismissing appeal filed by civil servant---Neither any misreading or non-reading of material on file could be pointed out in judgment passed by Service Tribunal, justifying interference by Supreme Court, nor any substantial question of law of public importance was involved in the case---Supreme Court declined to interfere in judgment passed by Service Tribunal---Leave to appeal was refused.

M. Amin
21.2.2019

7. Admittedly, the appellant was absconder in the aforesaid criminal case and he did not appear before the inquiry officer despite the fact that the charge sheet, statement of allegation was sent to the appellant through diary No. 741-42 dated 28.03.2011 as revealed from the statement of allegation therefore, the appellant was rightly dismissed from service on the basis of aforesaid inquiry proceeding. It is also pertinent to mention here that the appellant was proceeded under the NWFP Removal from Service (Special Powers) Ordinance, 2000 as revealed from the statement of allegation as well as from the impugned order and the present appellant after rejection of departmental appeal has also filed revision petition before the Inspector General of Police although under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 he was barred ^{from} for submitting revision petition under 11-A of Police Rules, 1975 after rejection of his departmental appeal. The record further reveals that the impugned order was passed on 11.05.2011 and the appellant submitted departmental appeal on 11.09.2015 after a delay of more than four years. Though the appellant was dismissed from service from the date of absence but it is well settled law that a civil servant will be dismissed from service with effect from the date of unauthorized absence and he cannot be treated on duty during the period when he remained absent unauthorizedly. In this regard SCMR 1998 page 1890 is cited for advantage where in it was held

(f) Civil Service---

Long absence from duty without permission---
 Dismissal from service--- Non -holding of regular inquiry---
 Effect--- Factum that civil servant remained absent for a period of 4 years, 8 months and 5 days was not disputed---
 Burden was on the civil servant to have brought on record some plausible explanation which could have warranted holding of a regular enquiry.

M. Hussain
21.04.2019

(g) Civil Service---

---Unauthorized absence of employee from duty for several years---Misconduct---Dismissal from service---
 Employee^m in case of unauthorized absence of employee from duty will be entitled to dismiss or remove or terminate the services of the employee concerned with effect from the date of unauthorized absence of the employee---Employee in such a situation cannot be treated on duty- during the period when he remained absent unauthorisedly.

An executive order cannot operate retrospectively but this principle is not applicable in a case in which an employee is proceeded for misconduct on the ground of unauthorized absence from duty. In such a case, the employer will be entitled to dismiss or remove or terminate the services of the employee concerned with effect from the date of unauthorized absence of the employee. In such a case, the employee cannot be treated on duty during the period when he remained absent unauthorizedly.

8. In the light of above discussion, the appeal is dismissed on merit as well as on limitation being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

21.02.2019

Muhammad Amin
 (MUHAMMAD AMIN KHAN KUNDI)
 MEMBER
 CAMP COURT ABBOTTABAD

(AHMAD HASSAN)
 MEMBER
 CAMP COURT ABBOTTABAD
 (Not agreed dissenting note is attached)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.

Service Appeal No. ~~265~~2017

Date of Institution ... 20.03.2017

Date of Decision ... 21.02.2019

✓ Muhammad Saleem (NO.688) S/o Muhammad Akbar, R/o Shahkot, Tehsil and District Mansehra. ... (Appellant)

VERSUS

District Police Officer, Mansehra and two others. ... (Respondents)

Mr. Muhammad Aslam Tanoli,
Advocate

--- For appellants.

Mr. Muhammad Bilal,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

DISSENTING JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

2. The appellant's version contained in para-2 of the departmental appeal is that while posted to P.S Kaghan, he received a telephonic message about murder of his two brothers by the opponents. He got three days emergency leave and left for home on 20.02.2011. He applied for five days extension in leave but was not sanctioned. It is corroborated by the statement of Moharrir Police Station, Kaghan recorded by the Inquiry Officer. Due to the tragic incident he was in a state of shock. Circumstances warranted consideration of his leave application.

3. Minute examination of the available revealed that three days casual leave was granted to the appellant by the respondents. After expiry of leave he did not report for duty at P.S Kaghan. He was charged in FIR no. 49 dated 23.03.2011 under Section 302/32/427/148/149 PPC Phulra. He was placed under suspension on 24.03.2011. After involvement in the criminal case, the appellant remained absent from duty from 23.03.2011. The record is silent whether any notice on account of absence from duty was give to the appellant or otherwise? Thereafter, departmental proceedings were initiated against the appellant and inquiry was assigned to Inspector Legal (Mansehra) vide order no. 741/42 dated 28.03.2011. It is presumed that charge sheet/statement of allegations were not served on the appellant. Sub-rule 1(a) of Rule-6 of Police Rules 1975 makes it mandatory to frame a charge and communicate it to the appellant. It is a serious departure from the laid down procedure and cannot be ignored. The inquiry was conducted at the back of the appellant and major penalty of dismissal from service was awarded w.e.f 23.02.2011 vide impugned order dated 11.05.2011. It lends credence to the fact that he condemned unheard. Prima-facie this order was never delivered to the appellant. It merits to mention here that there is difference in date of absence mentioned in the inquiry report and the impugned order. It appears that date recorded in the impugned order is correct and in tandem with the charge sheet and statement of allegations. Total absence of the appellant comes to 78 days.

4. According to the impugned order, the appellant was declared Proclaimed offender in the aforementioned criminal case but nothing in black and white is available on the case file to establish/confirm the claim of the respondents. As his suspension from referred to in the preceding para clearly indicated that the issue was in the knowledge of the respondents. Was there any justification for declaring him proclaimed offender? Even

if, he was a proclaimed offender, the present appeal has some distinguishable features which places it in a separate category when compared with the countless cases decided by this Tribunal and superior courts. In those cases the government employees remained fugitive from law for years, but in this case the appellant was awarded major penalty within 40 days from the date of institution of criminal case. Moreover, he has already been acquitted by the court of Additional Sessions Judge, Mansehra vide judgment dated 30.07.2015. The only charge left against the appellant is that of absence from duty for a period of seventy eight days. In the past this Tribunal in a number of cases of similar nature granted relief to the petitioners. The principle of consistency demands similar treatment be given to the appellant. (PLJ 2015 Tr.C (Services) 2008, PLJ 2015 Tr.C (Services) 152 and 2012 PLC(C.S) 502).

5. Show cause notice before imposing of penalty is a basic ingredient of the disciplinary proceedings. In this case show cause notice was not served on the appellant. According to PLJ 2016 Tr.C (Services) 326. In case of imposing major penalty principle of natural justice requires that a regular enquiry should be conducted in the matter and opportunity of defense be provided to a civil servant proceeded.

6. Respondents in order to augment their case have also highlighted the appellant had a tainted past/record and awarded many penalties on account of misconduct. On the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C (Services) 324, it cannot be made a ground for awarding penalty to a government servant. This Tribunal under Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has ample powers to confirm, set aside, vary or modify the order appealed against.

7. Foregoing inview, the impugned order of dismissal dated 11.05.2011 is modified/converted into stoppage of two annual increments for a period of two years. The intervening period may be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
(Not agreed dissenting note is attached)

ANNOUNCED
21.02.2019


20.12.2018

Mr. Muhammad Aslam Tanoli, Advocate for appellant and submitted fresh Wakalatnama as well as rejoinder on behalf of the appellant which are placed on file. Mr. Ziaullah, DDA alongwith Akhlaq Hussain, Inspector (Legal) for the respondents present.

Learned counsel for the appellant requests for adjournment to prepare brief of the case.

Adjourned to 21.02.2019 for arguments before the D.B at camp court, Abbottabad.


Member



Chairman
Camp Court, A/Abad


21.02.2019

Counsel for the appellant present. Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Ikhtlaq Hussain, Inspector (Legal) for the respondents present. Arguments heard and record perused.


The appeal was heard on 21.02.2019, however, after hearing members of the Divisional Bench failed to arrive at a consensus judgment. Separate judgments written by us be placed before the worthy Chairman for appropriate orders.

ANNOUNCED
21.02.2019


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT ABBOTTABAD


(AHMAD HASSAN)
MEMBER
CAMP COURT ABBOTTABAD

Be fixed before a larger bench comprising Chairman and Honble members x/c Muhammad Hamid Inqalab and Hussain Shah.


22/2/19

28.06.2018

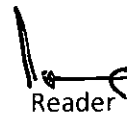
Clerk of counsel for the appellant present. Mr. Haq Nawaz, H.C alongwith Mr. Ziaullah, Deputy District Attorney for respondents present. The above named representative made a request for adjournment. Granted. To come up for written reply/comments on 28.08.2018 before S.B at camp court, Abbottabad.



Chairman
Camp court, A/Abad

28.08.2018

Appellant in person and Nazir PI for the respondents present. Due to summer vacations, the case is adjourned. To come up for the same on 17.10.2018 at camp court Abbottabad.



Reader

17.10.2018

Appellant in person present. Mr. Haq Nawaz, Head Constable alongwith Mr. Usman Ghani, District Attorney for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 20.12.2018 before D.B at Camp Court, Abbottabad.



Member
Camp Court, A/Abad


20.04.2018

Counsel for the appellant present. Preliminary arguments heard. The learned counsel for the appellant argued that the appellant was dismissed on 11.05.2011 due to his involvement in a murder case which was registered against him on 30.3.2011. That the appellant was acquitted by the court of law on 30.07.2015. Against the dismissal order, the appellant filed departmental appeal on 11.09.2015 which was rejected on 27.09.2016 and thereafter, he filed appeal/revision to PPO on 13.10.2016 which was rejected on 21.02.2017 being time barred. The learned counsel for the appellant further argued that appeal of the appellant was not time barred for the reason that the period of limitation would be reckoned from the date of acquittal and not from the date of dismissal.

The ground of appeal as argued by the learned counsel for the appellant is that when the appellant was acquitted by the criminal court then he should have been reinstated in service.

The points raised need consideration. The appeal is admitted to regular hearing subject to determination of the period of limitation and other legal points. The appellant is directed to deposit the security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 28.06.2018 before the S.B at camp court, Abbottabad.

Appellant Deposited
Security & Process Fee


Chairman
Camp Court, A/Abad.

~~_____~~
~~_____~~
~~_____~~

~~_____~~
~~_____~~

19.1.2018

Appellant present in person Seeks adjournment as his counsel is not in attendance. To come up for preliminary hearing on 23.02.2018 at camp court, Abbottabad.


Chairman
Camp Court, A/Abad

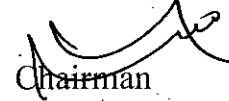
23.02.2018

Appellant in person present and requested for adjournment as his counsel was stated to be busy in the Hon'ble Peshawar High Court. Adjourned. To come up for preliminary hearing on 23.3.2018 before S.B at camp court, Abbottabad.


Chairman
Camp Court, A/Abad

22.03.2018

Junior to counsel for the appellant present. Seeks adjournment as learned senior counsel for the appellant was stated to be busy in the Worthy Peshawar High Court, Abbottabad Bench. Granted. To come up for preliminary hearing on 20.04.2018 before S.B at camp court, Abbottabad.


Chairman
Camp court, A/Abad

**BEFORE THE SERVICE TRIBUNAL
K.P.K. PESHAWAR**

Appeal no. 265/2017

Muhammad Saleem.....Appellant

Versus

District Police Officer, Mansehra and
others.....Respondents

APPEAL

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Dated 15.03.2017

Muhammad Saleem

(Appellant)

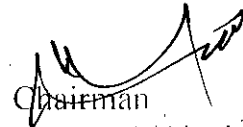
Through:-

SHAD MUHAMMAD KHAN
Advocate Supreme Court of
Pakistan (Mansehra)

4. 22.06.2017 Agent of counsel for the appellant present and requested for adjournment as counsel for the appellant is not present. Adjourned. To come up for preliminary hearing on 21.09.2017 before S.B at camp court, Abbottabad.

21.09.2017

Appellant alongwith counsel present. The learned counsel for the appellant argued preliminarily. This Tribunal put some questions that when the impugned order was passed on 11.05.2011, he filed the departmental appeal on 11.09.2015 which was rejected by the appellate authority on the ground of being time barred. The appeal before the PPO was also rejected on the same ground. The learned counsel for the appellant argued that the main charge against the appellant was his involvement in murder case in which he was acquitted on 30.7.2015 and limitation would start from the date of acquittal. But the learned counsel for the appellant has not been able to cite any law on this point. Adjourned. To come up for further preliminary hearing on 20.10.2017 before S.B at camp court, Abbottabad.


Chairman

Camp court, A/Abad.


Chairman

Camp court, A/Abad.

20.10.2017




Appellant seeks adjournment as his counsel is not in attendance. To come up for preliminary hearing on 19.1.2018 before S.B at camp court, Abbottabad.


Chairman

Camp court, A/Abad.

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 264/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20/03/2017	<p>The appeal of Mr. Muhammad Saleem received today by post through Mr. Shad Muhammad Khan Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">  REGISTRAR 20/3/17 </p>
2	24-3-2017	<p>This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>20-4-2017</u>.</p> <p style="text-align: right;">  CHAIRMAN </p>
20.04.2017		<p>Junior to counsel for the appellant present. Seeks adjournment as learned senior counsel for the appellant has gone to Peshawar. Adjourned for preliminary hearing to 22.06.2017 before S.B at camp court, Abbottabad.</p> <p style="text-align: right;">  Chairman Camp Court, Abbottabad. </p>

P-①

BEFORE THE SERVICE TRIBUNAL
K.P.K. PESHAWAR

Appeal no. 265/2017

Muhammad Saleem (No. 688) son of
Muhammad Akbar, resident of Shahkot,
Tehsil and District Mansehra... **Appellant**

Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 271

Dated 20-3-2017

- 1) District Police officer, Mansehra
- 2) DIG Hazara Range, Abbottabad
- 3) I.G.P. K.P.K. Peshawar.

.....**Respondents**

APPEAL UNDER SECTION 4 OF K.P.K.
SERVICE TRIBUNAL AGAINST THE
ORDER OF DPO MANSEHRA VIDE
WHICH THE APPELLANT WAS
DISMISSED FROM SERVICE.

Respected Sir,

The brief facts of the instant case
are as under: -

- 1) That, the appellant was appointed
as F.C. in the Police of District
Mansehra on 30.03.1995. The
appellant served the Department,
but to his misfortune his two
brothers were shot dead. An
occurrence has taken place vide FIR
No. 49 dated 23.03.2011 under
section 302/324/427/148/149PPC
at PS Phulra, wherein the appellant

Filed to-day
Registrar
20/3/17

was also roped in by the complainant side. The appellant was arrested; was allowed bail and later-on acquitted and the appellant was dismissed from service.

(Copy of order of dismissal is annexed as Annexure "A").

2) That, it is worth-mentioning that the appellant was not served with charge sheet, statement of allegations nor he was associated with the inquiry. The entire proceedings were carried out at the back of appellant and even no final show cause notice was issued to the appellant.

3) That, the appellant was tried in the court of Additional Sessions Judge-II, Mansehra who vide his judgment acquitted the appellant.

(The copy of judgment is annexed as Annexure "B").

4) That, the appellant aggrieved by the order of DPO Mansehra and after earning his acquittal, preferred an appeal before DIG Hazara Range, the DIG Hazara Range Abbottabad dismissed his appeal.

(Copies of order and appeal are annexed as Annexure "C" & "D" respectively).

5) That, the appellant submitted mercy petition before respondent No. 3

on 13.10.2016, but his mercy petition also met the same fate.

(Copies of mercy petition and order are annexed as Annexure "E" & "F" respectively).

That, the appellant seeks setting aside order of dismissal on the following amongst other grounds: -

GROUND: -

- A)** That, the order of dismissal and upholding the order of dismissal by respondent NO. 1 is against the facts and law and is not maintainable in the eye of law.
- B)** That, respondent No. 1 has violated the mandatory provisions of law, failed to communicate the charge sheet either personally or through registered deed and as the such order of respondent No. 1 is against the principle of natural justice.
- C)** That, the allegations set-up against the appellant has been thrashed before the trial court and the appellant was acquitted and so there is no any foundation left behind for proceedings against the appellant.
- D)** That, respondent No. 1 has passed the order of dismissal mechanically

without going to the routes of the
case, so the order is bed in the law.

P-4

- E)** That, before depriving an official from service it is mandatory to provide him all the opportunities/ chances laid down by the law, but in this particular case the appellant has deprived from his constitutional opportunities stipulated by law.

It is, therefore, most humbly prayed that on acceptance of the instant appeal the appellant may kindly be re-instated into service with all back benefits.

Dated 15.03.2017


Muhammad Saleem

(Appellant)

Through:


SHAD MUHAMMAD KHAN

Advocate Supreme Court of
Pakistan (Mansehra)

VERIFICATION

I, MUHAMMAD SALEEM (NO. 688) SON OF MUHAMMAD AKBAR, RESIDENT OF SHAHKOT, TEHSIL AND DISTRICT MANSEHRA DO HEREBY VERIFY THAT THE CONTENTS OF FORE-GOING APPEAL ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.


MUHAMMAD SALEEM
(DEPONENT)

BEFORE THE SERVICE TRIBUNAL
K.P.K. PESHAWAR

Muhammad Saleem.....Appellant

Versus

District Police Officer, Mansehra and
others.....Respondents

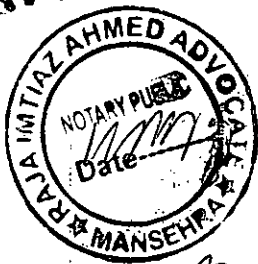
APPEAL

AFFIDAVIT

I, MUHAMMAD SALEEM (NO. 688) SON OF MUHAMMAD AKBAR, RESIDENT OF SHAHKOT, TEHSIL AND DISTRICT MANSEHRA DO HEREBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT NO SUCH SUBJECT MATTER APPEAL HAS EVER BEEN FILED BEFORE THIS HONOURABLE TRIBUNAL NOR PENDING NOR DECIDED. THAT THE CONTENTS OF FORE-GOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.

ATTESTED

MUHAMMAD SALEEM
(DEPONENT)



17-03-17

P-6

BEFORE THE SERVICE TRIBUNAL
K.P.K. PESHAWAR

Muhammad Saleem.....Appellant

Versus

District Police Officer, Mansehra and
others.....Respondents

APPEAL

CORRECT ADDRESSES OF THE PARTIES

Respected Sir,

Correct addresses of the parties are
as under: -

APPELLANT

Muhammad Saleem (No. 688) son of
Muhammad Akbar, resident of Shahkot,
Tehsil and District Mansehra

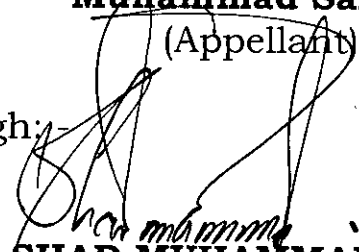
RESPONDENTS

- 1) District Police officer, Mansehra
- 2) DIG Hazara Range, Abbottabad
- 3) I.G.P. K.P.K. Peshawar.

Dated 15.03.2017


Muhammad Saleem
(Appellant)

Through:-

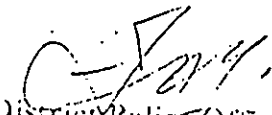

SHAD MUHAMMAD KHAN
Advocate Supreme Court of
Pakistan (Mansehra)

ANNEX = "A"
ORDER P-7

Constable Muhammad Saleem No.688 was proceeded against departmentally with the allegation that while posted at Police Station Kaghan he has involved in a criminal case vide FIR No.49, dated 23-03-2011, U/S 302/324/427/148/149 PPC,P.S Phulra. The constable is absent from duty with effect from 23-02-2011 till date.

The enquiry officer i.e. Mr.Mazhar Hussain Shah Inspector Legal, after conducting proper departmental enquiry against the accused constable has submitted his report and has proved the defaulting constable guilty. The accused constable is a P.O in the above-mentioned case. From such a long period of absence on the part of the constable and his involvement in the criminal case, it revealed that he is not taking interest in his official duty and his retention in Police force does not seem to be useful. I, the District Police Officer Manshra, therefore, order dismissal of constable Saleem No.688 from service under Removal from Service (special power) Ordinance 2000 with effect from 23-02-2011.

Order announced in absentia.


District Police Officer,
Manshra.

OB 91
11-5-2011



7/8

B

ANNEX = B

P-8

IN THE COURT OF MANZOOR QADIR KHAN,
ADDITIONAL SESSIONS JUDGE-II, MANSEHRA

CASE FILE # 80/7 OF 2011.

THE STATE VERSUS

- (i) Badri Zaman s/o Abdur Rehman, aged about 69/70 years;
- (ii) Wazir Mohammad s/o badri Zaman, aged about 38/39 years, both r/o Ghaidar Bai;
- (iii) Tanveer Ahmad s/o Badri Zaman, aged about 40/41 years, r/o Ghora;
- (iv) Mohammad Javed s/o Sher Mohammad, aged about 35/36, r/o Danna Dhamnala;
- (v) Umer Zaman alias Oamar Zaman alias Bhutto s/o Ali Gohar, aged about 46 years, r/o Shahkot;
- (vi) Shamraiz s/o Farid, aged about 26/27 years, r/o Dhara;
- (vii) Mohammad Sajjad s/o Badri Zaman, aged about 24/25 years, r/o Bai;
- (viii) Mohammad Naveed s/o Khan Mohammad aged about 22/23 years, r/o Shahkot;
- (ix) Badri Zaman s/o Qalandar, aged about 75 years, r/o Ghora cum Trappi;
- (x) Mohammad Saleem s/o Mohammad Akbar, aged about 39/40 years, r/o Shahkot, all Tehsil & District Mansehra.
.....(ACCUSED FACING TRIAL).

(Manzoor Qadir Khan)
Addl. District & Sessions Judge-II
Mansehra

[Handwritten signature]

30.07.2015

MANSEHRA

31-8-15

Charged U/S: 302/324/435/427/297/148/149 PPC
 Vide FIR # 49 dated 23.03.2011
 Police Station: Phulra, District Mansehra.

Date of receipt of Chailan: 14.09.2011
 Date of Decision: 30.07.2015

J U D G M E N T:

(1) Muhammad Awaiz (Pw-5) in injured condition reported the matter to the local police on 23.03.2010 at 15.30 hours to the

Attested.
[Signature]
 Shauqat Ali Khan
 Advocate & ... Court
 of Pakistan.

effect that he alongwith his brother Mohammad Anwer, Ali Zaman s/o Faqeer Mohammad (his uncle) and one Naseer, r/o Shahkot were going back from Manshra to their houses in a carry van driven by Habib at 15.00 hours; when reached at a place known as Bagh Khail; where accused Muhammad Saleem son of Ali Akbar resident of Shahkot, Wazir Muhammad, Sheraz sons of Badri Zaman, Badri Zaman son of Faqir Muhammad residents of Bai, Naveed son of Khan Muhammad, Qamar Zaman alias Methu son of Ali Gohar resident of Shahot, Badrizaman son of Qalandar, Tanveer son of Badrizaman residents of Gohra, Shamraiz son of Fareed resident of Dara, Tasawar son of Raj Muhammad resident of Kali Dabbi, Javed son of Sher Muhammad resident of Danna Dhamnala duly armed were standing and on seeing the complainant party; they started indiscriminate firing on the carry van. As a result of which, Ali Zaman (his uncle), Naseer son of Gohar Aman residents of Shahkot got hit and died on the spot while he and his brother Mohammad Anwar received injuries; while driver Habib was also hit with fire shot, fell on the ground and died. The occurrence was stated to be witnessed by the people of the locality. Motive of the occurrence is stated to be previous blood feud, hence the instant FIR (Ex.PA/1) against the accused.

(2) On completion of investigation, complete challan was submitted against the accused Wazir Mohammad, Badri Zaman, Tanveer Ahmad and Mohammad Javed whereas u/s 512 Cr.P.C against the remaining co-accused. Later on, other absconding accused were also arrested, supplementary challan was submitted against them. Provision of section 265-C Cr.P.C were complied with the accused facing trial. Formal charge u/s 302/324/427/435/297/148/149 PPC was framed on 25.11.2013, to which they pleaded not guilty and claimed trial, therefore, prosecution was directed to produce evidence against the accused. Prosecution

ARRESTED

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produced as many as eleven (11) witnesses, where-after, prosecution closed its evidence.

(3) A brief sketch of the prosecution evidence relevant for the disposal of the case are as under:-

(i) Mohammad Ibrar constable No.536 appeared as Pw-1 and stated that on 23.03.2011, he accompanied the dead bodies of Ali Zaman, Naseer and Habib deceased for post mortem examination. He also took Mohammad Anwar and Awaiz (injured) PWs to hospital for medical examination to CH Phulra. After P.M examination, the doctor handed over to him post mortem examination reports of deceased and clothes of deceased Habib and injured. The clothes were consisting of shalwar belonging to Anwar injured and one Qamees sky colour bunian of injured Awaiz. The clothes were blood stained having cut marks. Similarly, the doctor also handed over to him one shalwar of white colour (blood stained) having corresponding cut marks belonging to deceased Habib. He handed over all the garments, post mortem examination reports of deceased, medico legal reports of the injured and he handed over the same to the IO/OII, which were sealed into parcel.

(ii) Pir Baksh Head Constable Incharge Reporting Centre King Abdullah Teaching Hospital Mansehra appeared as Pw-2 and stated that during the days of occurrence, he was posted as MHC in P.S Phulra Mansehra. On receipt of Murasila sent by SHO P.S Phulra through constable Amjid No.880, he incorporated the same into FIR No.49 dated 23.03.2011 u/s 302/324/427/148/149/435/297 PPC. The FIR is correct & correctly bears his signature, which is Ex.PA/1.

(iii) Mohammad Afzal Khan SI Police Line Mansehra appeared as Pw-3 and stated that during the days of occurrence, he was posted as SHO Phulra Mansehra. On 23.3.2011, he received information that cross firing is going on near Bagh Khail, on this information, he alongwith police officials rushed to the spot where Muhammad Awaiz s/o Miskin r/o Khanda Khou at 15.30 in injured conditions alongwith his younger brother Muhammad Anwar met him and reported the matter to him and he recorded his report in the shape of Murasila. He read over the same to the complainant and he signed the same as a token of its correctness. Thereafter, he sent the Murasila to the PS through constable Amjid No.1280

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for registration of the case. The Murasila is Ex.PA, the same is correct and correctly bears his signature. On the basis of Murasila, the instant case vide FIR (Ex.PA/1) was registered. He also prepared the injury sheets of the deceased Habib which is Ex.PW3/1. He prepared inquest report of deceased Habib s/o Yaqoob consisting of two pages which is Ex.PW3/2. He also prepared the injury sheet of the complainant/injured Muhammad Awaiz and he was referred to Civil Hospital Phulra in escort of constable Ibrar. The injury sheet is Ex.PW3/3. Similarly, he also prepared the injury sheet of injured Muhammad Anwar s/o Muhammad Miskin and sent him through the same constable to Civil Hospital Phulra. The injury sheet is Ex.PW3/4. He also prepared the injury sheet of deceased Nasir s/o Gohar Rehman which is Ex.PW3/5. He also prepared the inquest report of deceased Qari Nasir which is Ex.PW3/6 (consisting of two pages). He also prepared injury sheet of deceased Ali Zaman s/o Faqir Muhammad which is Ex.PW3/7 while his inquest report is Ex.PW3/8 (consisting of two pages). All the said exhibits are correct and correctly bear his signature. On completion of investigation, submitted complete challan against the accused on 15.4.2011. Similarly, he also submitted two separate supplementary challan against the accused Umar Zaman on 18.2.2012 and against accused Muhammad Navid, Muhammad Sajjad and Shamraiz on 02.02.2013. Supplementary challan are correct and correctly bear his signature. All the exhibits are correct and correctly bear my signatures.

- (iv) Ali Asghar ASI Police Lines Mansehra appeared as Pw-4 and stated that during the days of occurrence, he was posted as ASI Investigation in PS Phulra Mansehra. SHO PS Phulra arrested the accused Badri Zaman s/o Qalandar on 10.06.2013 and handed over to him for investigation. He issued his card of arrest Ex.PW4/1, recorded his statement u/s 161 Cr.PC. On the following day, he produced him before Illaqa Judicial Magistrate for physical custody though application Ex.PW4/2 and one day police custody was granted. On expiry of custody, again produced the accused through application Ex.PW4/3 for further custody which was turned down and the accused was sent to Judicial lock-up.
- (v) Mohammad Awaiz son of Mohammad Miskeen, r/o Khanda Khoo appeared as Pw-5 and stated that on 23.3.2011 at 15.30 hours, he along with his brother Muhammad Anwar, Ali Zaman, his uncle and one Naseer

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resident of Shah Kot in Carry Van driven by deceased Habib son of Yaqoob resident of Phulra were going back from Mansehra to their house. At about 15.00 hours, they reached near Bagh Khail, where accused Muhammad Saleem, Wazir Muhammad, Sheraz sons of Badrizaman, Badrizaman son of Faqir Muhammad residents of Bai, Navid son of Khan Muhammad, Qamar Zaman alias Bhuto son of Ali Goher resident of Shah Kot, Badrizaman son of Qalandar, Tanveer son of Badrizaman resident of Ghora, Shemraiz son of Farid resident of Darra, Tasawar son of Raj Muhammad resident of Kali Dabi and Javed son of Sher Muhammad resident of Dana Damnala were standing duly armed and on seeing them, they started indiscriminating firing on the Carry Van. In the result of which, his uncle Ali Zaman son of Faqir Muhammad resident of Khanda Khu, Naseer son of Goher Rehman resident of Shah Kot received fire arm injuries and died at the spot. He, his brother Anwar and driver of the Carry Van namely Habib came out of the Carry Van and were running to save themselves. But during that Habib driver of the Carry Van also hit with the firing of the accused and died at the spot. He and his brother also sustained injuries. Occurrence was witnessed by the residents of village Khail. Accused after the occurrence ran away towards the jungle/forests. Due to the firing the Carry Van caught fire. The motive for occurrence was previous blood feud enmities between the parties. He charged all the above named accused for Qatl-e-Amd of all the three deceased, for attempt to commit Qatl-e-Amd of himself and his brother Muhammad Anwar as well as for damage of the Carry Van due to fire. On the arrival of police, he made the report before the SHO P.S Phulra. He drafted his report in the shape of Murasila. The report was read over to him, which is already exhibited as Ex.PA. He signed his report, which correctly bears his signature. Inquest reports of the deceased were prepared by the SHO on the spot. The SHO prepared the injury sheet of his brother as well as mine. Dead bodies of the deceased and the injured were shifted to King Abdullah Hospital under the escort of constable Ibrar No.536. Similarly the Murasila was sent to P.S for registration of the case through constable Ahmad No.880. On his pointation the site plan was also prepared by the IO. He and his brother was medically examined by the doctor.

- (vi) Ali Akbar Khan SI/OII P.S Lissan Nawab appeared as Pw-6 and stated that during the days of occurrence, he

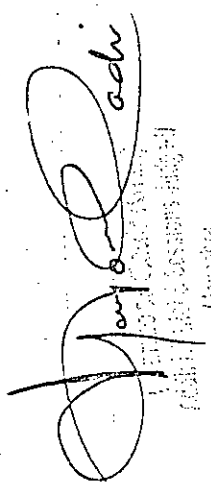
(Manzoor Qadir Khan)
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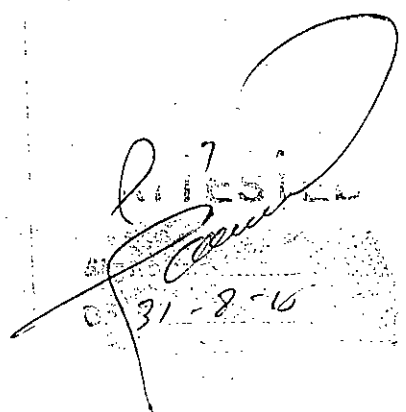
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was posted as SI/ OII in P.S Phulra. On receipt of the information about the occurrence, he alongwith the SHO proceeded to the spot. The SHO drafted the Murasila on the report of Muhammad Awais complainant and the investigation was entrusted to him. He inspected the spot after the preliminary investigation made by the SHO at the spot. As the complainant and his brother were injured and shifted to the hospital, so the site plan was not prepared by him and it was prepared by another IO. During the spot inspection Road leaving Phulra to Trapi near Baghkhal one Carry van bearing No. B-8370/ NWFP white color in burnt condition having corresponding cut marks of the bullets took into his possession. Similarly from the place of injured Muhammad Anwar blood stained earth and sand and piece of cloth blood stained were also taken into possession, blood stained earth and piece of cloth were sealed into parcel No.1. Similarly he also took into his possession blood stained and sand from the place of Habib deceased and sealed the same into parcel No.2. Similarly he also took into his possession 46 empties of 7.62 bore from the place of accused Muhammad Saleem etc giving fresh smell of discharged. He signed the empties with a pointed nail and sealed the same into parcel No.3. He also took into possession 44 empties of 7.62 bore from the place Qamar Zaman alias Bhutto accused, which were in scattered condition, signed the empties with pointed nail and sealed them in parcel No.4. I affixed 4 x 4 stamps of monogram of S.A. He vide memo Ex.PW6/1 during spot inspection took into possession a Carry Daba and blood stained earth of injured Anwar P-1 and a piece of clothes and sealed into parcel No.1. Similarly blood stain from the place of deceased Habib P-2 and sealed into parcel No.2. Similarly he also recovered and took into possession 26 empties of 7.62 bore P-3 from the place of accused Muhammad Saleem which were in scattered condition given smell of discharge and sealed into parcel No.3. The empties were signed with pointed objects. Through the same memo recovered and took into possession 24 empties of 7.62 bore P-4 from the place of Accused Qamar Zaman alias Bhutto the empties were signed by him with pointed object and sealed into parcel No.4 by affixing 4/4 seals having monogram of S.A. He has seen the recovery memo which is correct and correctly bears his signature as well as the signatures of marginal witness namely Muhammad Hameed and Shahzaman. He vide


 Muhammad Hameed

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statement was recorded by the police as well as his statement was recorded before the Magistrate:

(viii) Doctor Mohammad Nawaz, Medical Officer KATH Manshira appeared as Pw-8 and stated that during the days of occurrence, he was posted as Medical Officer in Civil Hospital, Phulra. On 23.03.2011 at 04.30 PM, he conducted autopsy on the dead body of Habib son of Yaqoob caste Tanoli r/o Phulra aged about 30 years District Manshira brought by constable Ibrar No.536 and identified by Muhammad Rashid & Muhammad Hanif residents of Phulra and found the following;

Symptoms observed before death: Already expired when brought.

Information furnished by police: Fire arm injuries.

External appearance.

Not so Stout, no rigor mortis visible, face pale, blood stained clothing.

Injuries:

1. An entry wound on inguinal area, measuring about 1/2 inch in diameter, margin inverted, bleeding seen, no tattooing or smoke visible.
2. An exit wound on back and opposite of the entry wound on left buttock measuring about 3/4 inch in diameter. Margins of wounds everted, More bleeding seen.

Internal Examination. Nil.

Thorax. Nil.

Abdomen. Nil. In stomach region no contents seen.

Muscles, bone joints:

Fracture upper part of left femur. Fracture of left hip bone.

Remarks of the Medical Officer.

In his opinion the cause of death was severe injury to major inguinal blood vessels resulting in severe hemorrhage and shock lead to death.

Probable time that elapsed;

- A. Between injury & death: 1-2 hours approximately.

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On the same date at 05.00PM, he conducted autopsy on the dead body of Naseer son of Goher Rehman caste Tanoli r/o Khanda Khoo Shahkot District Manshehra brought by constable Ibrar No.536 and identified by Nisar Ahmad son of Ghulam Sarwar Awan resident of Jaloo & Arif son of Goher Rehman caste Tanoli resident of Shahkot and found the following;

Symptoms observed before death: Dead body already burnt.

Information furnished by police: Fire arm injuries/ burn.

External appearance.

Mark of ligature on neck and dissection etc. Nil.

Condition of subject. Stout emaciated, decomposed, etc, clothing.

Dead body burnt totally, clothing burn and adherent to the body, feature of body not distinguishable, foul smell due to the burn of whole body.

Wounds, bruises, position, size, nature.

Whole body burnt and became black. On careful examination there are multiple fire arm entry and exit wounds on chest, abdomen and back.

Internal Examination.

Thorax. Totally damaged.

Abdomen. Totally damaged.

Muscles, bone joints:

All muscles and joint deformed due to burn.

Remarks of the Medical Officer.

In his opinion the cause of death was due to severe damage of vital organs e.g heart and lungs lead to shock and death plus burning of whole body.

Probable time that elapsed;

A. Between injury and death: Within no time.

B. Between death & d P.M: 1-3 hours approximately.

The P.M Report consisting of six pages including pictorial, which is Ex.PW7/2. He has also seen the same, which is correct and correctly bears his signature. He has also seen the endorsement on the inquest report which is correct and correctly bears his signature.

Similarly on the same date at 05.45PM, he conducted autopsy on the dead body of Ali Zaman son of Faqir Muhammad caste Tanoli r/o Khanda Khoo

Handwritten signature: *M. Ibrar*
 Date: 30.07.01

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 Date: 31.8.01

District Mansehra brought by constable Ibrar No.536 & identified by Abdur Rashid son of Sikandar resident of Thanda Khoo and Muhammad Farid son of Goher Faqir Muhammad caste Tanoli resident of Thanda Khoo & found the following;

Symptoms observed before death: Already expired and burnt.

Information furnished by police: Fire arm injuries/ burn.

External appearance.

Mark of ligature on neck and dissection etc. Nil.

Condition of subject. Whole body burnt and face distorted, clothing adherent to body, features of body not distinguishable, foul smell due to burning of body.

Wounds, bruises, position, size, nature.

Whole body burnt and became black. On careful examination there are multiple fire arm injuries (holes) on chest, abdomen and back.

Internal Examination.

Cranium and spinal cord. Scalp, skull & vertebrae. Damaged.

Thorax. Totally damaged.

Abdomen. Totally damaged.

Muscles, bone joints:

Whole muscles and joint deformed due to burn.

Remarks of the Medical Officer.

In his opinion the cause of death was due to severe damage of vital organs by fire arm i.e heart and lungs lead to shock and death plus burning of whole body.

Probable time that elapsed;

A. Between injury & death: Within no time.

B. Between death & P.M: 1-3 hrs approximately.

The P.M Report consisting of six pages including pictorial which is Ex.PW7/3. I have seen the same, which is correct and correctly bears my signature. I have also seen the endorsement on the inquest report which is correct and correctly bears my signature.

Similarly he also examined the injured Mohammad Awais s/o Miskin aged 40 years approximately caste Tanoli r/o Khanda Khou who was brought by Ibrar No.536 and found the following:

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Findings:

1. An entry wound below Rt scapula, wound margins inverted measuring about ½ inch in diameter. Bleeding seen, no tattooing or smoke etc visible.
2. Complain of pain at the site of wound.
3. Patient conscious and oriented in space in time.
B.P 105/75. Temperature 98.0 F. Pulse 100 per minute.
Weapon Fire arm.
Duration within past 6 to 12 hours approximately.

Remarks: First aid given and referred to KATH Mansehra for admission treatment and X-ray for any bony lesion and expert opinion.

He has seen today medico legal report which is in his hand writing and is Ex.PW7/4. On the same date i.e. 23.03.2011 at 03.45 hours, he examined Mohammad Anwar s/o Miskin aged 40 years caste Tanoli r/o Khanda Khou brought by constable Ibrar No.536 and found the following:

Findings:

1. An entry wound on interclift of buttock below sacrococcegeal joint, wound margins inverted. Bleeding present. No tattooing or smoke seen measuring about 1 ½ inch in diameter
2. No exit wound found.
3. An entry wound on Lt buttock measuring 1/2 inch diameter. Wounds margins inverted. Bleeding visible. No.smoke or tattooing seen.
4. Patient conscious and originated in space and time.
BP 110/70 MMHG, Temperature 98.4 F. Pulse 100 per unit.
C/O Pain at the site of injuries.
Weapon fire Arm.
Duration past 6 to 12 hours.

Remarks: First Aid given. And patient referred to KATH Mansehra for admission, treatment and investigation i.e. X-ray etc for bony lesion and expert opinion. The medico legal report which is in his hand writing and is Ex.PW7/5.

- (ix) Sawal Khan SI/OII P.S Battal Mansehra appeared as Pw-9 and stated that during the days of occurrence, he was posted in PS Phulra. The investigation of the instant case was entrusted to me. On receipt of copy of FIR,

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proceeded to the spot and prepared site plan Ex.PW9/1. On the pointation of complainant the site plant is in his handwriting and correctly bears his signature with all its foot notes. As the accused were absconding, he drafted application Ex.PW9/2. For attachment of the property accused mentioned, he application Ex.PW9/2. He also drafted application Ex.PW9/3 to DPO Mansehra for attachment of salary of accused Saleem who was government servant. Similarly on 23.09.2011, he vide application Ex.PW9/4 drafted application for attachment of salary of accused Tanvir. As the accused were absconding so, he vide application Ex.PW9/5 applied for warrant u/s 204 Cr.PC. On the same day, he recorded the statements of eye witness namely Muhammad Anwar (injured). On 31.03.2011 accused Javed and Tanvir produced ad-interim bail orders. On 01.04.2011, he recorded the statement of PW Muhammad Ashfaq on the same day. He drafted application Ex.PW9/6 for attachment of salary of accused Wazir Muhammad. On 04.04.2011, vide application Ex.PW9/7 applied for obtaining proclamation u/s 87 Cr.PC. On 07.04.2011, the accused Badri Zaman and Wazir Muhammad were arrested. He issued card of arrest Ex.PW9/8. On 08.04.2011, he vide application Ex.PW9/9 produced accused Badri Zaman and Wazir Muhammad before the court of Illaqa Judicial Magistrate for obtaining seven days police custody and two days custody was granted. On 10.04.2011, vide application Ex.PW9/10 again produced both the accused Badri Zaman and Wazir before the court of Illaqa Judicial Magistrate for further police custody which was refused and sent to Judicial Lockup. On the same day, he recorded the statements of above mentioned accused. He vide application Ex.PW9/11 sought clarifications of time mentioned in injury sheets of injured PW from the doctor. On 11.04.2011 on rejection of ad-interim pre-arrest bail of accused Muhammad Javed and Tanvir Ahmad they have formally arrested. On 12.04.2011, vide application Ex.PW9/12, produced the accused before Illaqa Judicial Magistrate for obtaining their police custody. Two days police custody was granted. He interrogated the accused. He also got recorded the statement of Muhammad Yaqoob and Rasheed father and brother of deceased Habib u/s 164 Cr.P.C. On 14.04.2011, he vide application Ex.PW9/13 produced accused Tanvir Ahmad and Muhammad Javed before Illaqa Judicial Magistrate for obtaining police custody which were turn

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down and accused were remanded to Judicial lockup. On the same day, he recorded the statements of accused mentioned above. He also received the report of chemical examiner which is Ex.PW9/14. The road certificate through which the parcels were sent to FSL is Ex.PW.9/15 and Ex.PW9/16 respectively. He also recorded the statements of Moharrir and Rashid No.73 in this respect. All the documents mentioned above are in his handwriting and bears his signatures. Thereafter, he submitted the case file for onward submission of challan to SHO.

(x) Shabbir Ahmed SI P.S Baffa appeared as Pw-10 and stated that during the days of occurrence, he was posted as SI/OII in Police Station Phulra. On 19.10.2013 on rejection of ad-interim pre-arrest Bail from the court of ASJ-II Mansehra of accused Muhammad Saleem s/o Muhammad Akbar, arrested the accused and card of arrest is ExPW10/1 was prepared by him, which is in his handwriting. On 20.10.2013, vide application Ex.PW10/2 produced the accused for police custody before Illaqa Judicial Magistrate. One day custody was granted. On 21.10.2013 vide application Ex.PW10/3, he again applied for further custody which was refused and accused was sent to jail. He recorded the statement of accused u/s 161 Cr.P.C.

(xi) Abdur Rasheed SI P.S City Mansehra appeared as Pw-11 during the days of occurrence, he was posted as SI/OII in Police Station Phulra. The accused Umar Zaman was arrested in case FIR No.113 dated 10.2.2012 u/s 13 AO from P.S City Haripur and was transferred to Mansehra on 14.2.2012. On the same day the investigation of the case was handed over to him. On 15.2.2012, he vide application Ex.PW11/1 produced the accused Umar Zaman before Illaqa Judicial Magistrate for five days police custody, but two days police custody was granted. On 17.2.2012 on expiry of two days custody, vide application Ex.PW11/2 again produced the accused before Illaqa Judicial Magistrate for three days police custody, which was refused and the accused was sent to Judicial lock-up. He recorded the statement of the accused Umar Zaman u/s 161 Cr.PC. On 29.01.2013 on rejection of pre-arrest bail accused Mohammad Navid, Mohammad Sajjad and Shrmraiz, they were taken into custody and vide application Ex.PW11/3 two days police custody was obtained. On 31.1.2013 vide application Ex.PW11/4, he again produced them before

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the Illaqa Judicial Magistrate for further custody, which was turned down and the accused were sent to Judicial lock-up.

(4) The prosecution thereafter closed its evidence and statement of accused was recorded under section 342 Cr.P.C but all the accused pleaded innocence and false implication in this case. The accused neither produced defence evidence nor got examined themselves on oath u/s 342(2) Cr.P.C.

(5) Learned SPP for the state assisted by Mr. Saeed Ahmad Awan advocate learned private counsel for the deceased Habib argued that the case is based on a promptly lodged FIR wherein the complainant has charged the accused facing trial for the commission of offence and the occurrence had taken place in a broad day light, hence the question of misidentification can not be arise. That true and unbiased ocular account of the occurrence has been furnished by the complainant and eyewitness, whose presence on the spot at the relevant time has been proved. It was further contended that the witnesses happened to be consistent in their deposition though they were subjected to lengthy cross examination by the opposite counsels; that charge against the accused facing trial is supported by medical evidence, recoveries of empties and blood stained earth etc, which corroborated the prosecution version and that motive convincingly being alleged and proved on record. It was also argued that there is no parallel defence story and the deficiencies in the investigation would not cast on prosecution case; that the depositions by PWs have no contradiction on material particulars and that the

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(Maitori / Clerk / Khan)
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recoveries further corroborate the assertion of the prosecution. That though motive of the offence is also proved through prosecution evidence, otherwise absence or weakness of motive is no ground to doubt the genuineness of prosecution case. That there is no delay in lodging the FIR and the abscondance on the part of the accused facing trial are also a strong corroborative evidence and points towards the guilt of the accused facing trial. He further argued that in the incident, three persons have lost their lives in a brutal manner, therefore, deserve capital punishment.

(6) On the other hand Mr. Shad Mohammad Khan & Mr. Arshad Awan advocates, learned counsel for the defence contended that the entire case of the prosecution rest on the testimony of complainant and eyewitnesses, who are related, interested and whose very presence on the spot at the time of occurrence is not only doubtful but seems dubiously procured. That statement of eyewitness PW-5 exonerates all the accused in the commission of offence. That non production of PW Anwer son of Miskeen cast doubts over the prosecution case. That Badri Zaman is not directly charged in the FIR but subsequently in the statement of Mohammad Anwer recorded u/s 161 Cr.P.C after seven days of the occurrence, shows consultation & deliberation on the part of the complainant. That accused Wazir Mohammad has been exonerated by the father and brother of deceased Habib in their statements recorded u/s 164 Cr.P.C, which crumbled the whole prosecution case and shows consultation & deliberation on part of the

Shad Mohammad Khan
 (Advocate) (Manshera)
 Addl. District & Sessions Judge-II
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complainant party. That accused Tanveer Ahmad was present on school duty conducting examination and this fact has been found in an inquiry conducted by the local police. That eleven (11) persons have been charged with no specific role and allegations against the accused facing trial are of general nature. That as per prosecution version, there was indiscriminate firing, however, prosecution has failed to prove that whose fire hit the deceased and injured. Learned counsels for the accused facing trial contended that no independent corroborative evidence is available to lend support to the ocular testimony. That alleged pointation, though not proved, is not admissible in evidence. That the prosecution has not proved the case as alleged in the FIR through cogent and inspiring evidence, therefore, accused facing trial may be acquitted of the charges leveled against them.

(7) I have heard both the learned counsel for the parties and have gone through the record.

(8) The prosecution case here in this trial mainly rests on the ocular account furnished by complainant (PW-05), as this PW has claimed to have been present on the spot alongwith his brother Mohammad Anwer and witnessed the occurrence. Now the points for determination in the instant case are:-

- i. Ocular account
- ii. Circumstantial evidence.
- iii. Medical report.
- iv. Motive.

Adi
 (Manzoor Ahmad Khan)
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v. Abscondance of the accused.

(9) After having thoroughly scrutinizing the prosecution evidence in the shape of the ocular account, medical evidence and the circumstantial evidence, it is observed that the claim of the complainant (PW-05) having seen the accused facing trial fired at the deceased seems to be belied by a host of circumstances and would create suspicion in the mind of a prudent person. It is further observed by this court that not only that the ocular account does not seem to be a true account and confidence inspiring one but even the medical evidence and the circumstantial evidence also negates the eye witnesses account being furnished by the complainant (PW-05). Moreover, if all the events before, during and after the occurrence with regard to the presence of the eyewitnesses are kept in view, it can be observed that the complainant/eye witness has not been able to justify the presence of the accused facing trial on the spot at the relevant time of occurrence. While on the contrary due to the existence of certain infirmities and contradiction made by the same PW and the weak investigation conducted by the concerned I.O material doubts have been created regarding the genuineness of the report lodged by the complainant in the shape of FIR Ex.PA/1, therefore, benefit of doubt must go in favour of the accused facing trial for recording their acquittal in the instant case.

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 (Mansoor Qadir Khan)
 Addl. District & Sessions Judge-II
 Manshehra
 30-07-05

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A. WHETHER THE PROSECUTION CASE IS SUPPORTED BY OCULAR ACCOUNT OR NOT?

Since, direct evidence from primary source contained in statement of PW-05 provide for basis to the prosecution story, it would, therefore, be evaluated first. In order to rely

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on such ocular testimony, its consistency, texture, quality and intrinsic value is of utmost importance. In order to judge any oral testimony on the touch stone of credence, it would be must for the prosecution to prove that the witness was present on the spot at the time of occurrence and that he is truthful. Such facts always manifested from the attending circumstances and independent corroborations.

(10) The complainant Mohammad Awaiz (PW-5) has mentioned himself to be the eyewitness of the occurrence alongwith his brother Mohammad Anwer. As per the contents of the FIR (EX.PA/1) complainant along with his brother Mohammad Anwer, his uncle and deceased Naseer were going from Mansehra to their houses in the carry van driven by Habib at 15.00 hours, when they reached at a place known as Bagh Khail; where Muhammad Saleem s/o Ali Akbar resident of Shahkot, Wazir Muhammad, Sheraz sons of Badri Zaman, Badri Zaman son of Faqir Muhammad residents of Bai, Naveed son of Khan Muhammad, Qamar Zaman alias Methu son of Ali Gohar resident of Shahkot, Badrizaman son of Qalandar, Tanveer son of Badrizaman residents of Gohra, Shamraiz son of Fareed resident of Dara, Tasawar son of Raj Muhammad resident of Kali Dabbi, Javed son of Sher Muhammad resident of Danna Dhamnala duly armed with deadly weapons, started indiscriminate firing, as a result of which, Ali Zaman, Naseer residents of Shahkot got hit and died on the spot while he (complainant) & his brother Anwar sustained injuries while driver Habib also hit with fire shot, fell on the ground and died. The occurrence was stated to

Signature: Awaiz
 (Mohammad Awaiz Khan)
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be witnessed by the people of the locality. Motive for the occurrence is stated to be blood feud enmity between the parties.

(11) It is clear from the record that occurrence took place in broad day light on the main road near Bagh Khail at a distance of 7/8 kilometer from police station and as per FIR and statement of the complainant, the occurrence has stated to be witnessed by the people of the locality, but no independent PW had stepped forward to support the prosecution case. In the circumstances, the statement of Awaiz (PW-5), who is already inimical to the accused, being previous blood feud enmity, has to be examined with extra care and caution in order to believe his statement. When complainant Mohammad Awaiz appeared in the witness box as PW-5, he supported the prosecution case in his examination in chief, however, shattered the prosecution case during his cross examination by stating that:- "It is correct that when we reached at the spot, indiscriminate firing started behind the boulders, bushes and thick jungle all of a sudden. He further admitted that the accused had concealed behind the boulders, bushes and jungle and I could not identify them. He also admitted that we had enmity with the accused, therefore, I charged them on the basis of said ill will/ enmity. He also admitted it correct that I do not charge the accused facing trial any more".

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(Manzoor Qadir Khan)
Addl. District & Sessions Judge-II
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(12) Though, the witness was declared as hostile witness by my learned predecessor on the application of learned counsel Mr. Saeed Ahmad Awan, however, the said order

was set aside in Cr. R.No.1-A of 2014 by Hon'ble Peshawar High Court, Abbottabad Bench vide order dated 26.05.2014, wherein, it is held that the learned trial court without observing the law on the subject wrongly and illegally decaled him hostile. His statement became part of the record of the trial court and consequently, this petition is allowed, order of learned trial court is impugned herein, is declared null & void, as such set aside.

(13) Thus, the statement of the complainant (PW-5) clearly shows that the accused facing trial were not witnessed by the complainant while committing the commission of the offence at the relevant time because as per the statement of the complainant, the accused facing trial were behind the boulders & bushes and he merely on suspicion, charge the accused facing trial for the murder of Naseer, Ali Zaman and driver Habib and this fact is also admitted by the I.O Ali Akbar as PW-6 in the following words. "It is correct that on both sides of the road, there are big stones and trees as well". Admittedly, there are stones, trees and boulders and it is not appelable to prudent mind that accused facing trial would dare to make firing by disclosing their identity while they can easily achieve their targets by firing from behind the boulders, trees and stones. Astonishingly, the prosecution abandoned PW Mohammad Anwer being won over, however, there is nothing on the file to suggest that the PW Mohammad Anwar being won over by the accused facing trial and if, he appeared in the witness box and supported the case of prosecution being eyewitness, the fate of the prosecution case would be

File # 21-8-11

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different. Even otherwise, it is observed by this court in various cases that family members of the deceased without any care, charged so many persons of a family for the commission of the offence despite the fact that some of the accused facing trial even not present on the spot but charged in case FIR as in the instant case where the complainant PW-5 charged eleven (11) persons for the murder of Ali Zaman, Naseer and driver Habib but in the instant case, the case of the prosecution becomes doubtful when the father & brother of deceased Habib in their statements recorded u/s 164 Cr.P.C as well as court statement as PW-7 (Mohammad Yaqoob s/o Rehmatullah, father of deceased Habib) exonerated the accused Wazir Mohammad being present with them in connection with some construction at the relevant time of occurrence. Hence, this is a serious adverse circumstance, which goes against the prosecution case and shows that the complainant reported the matter to the local police with consultation & deliberation regarding the nomination of the accused facing trial for the alleged occurrence and as is admitted by the complainant in his cross examination that we had enmity with the accused facing trial and on the basis of said ill will/enmity, he charged the accused facing trial for the commission of offence.

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(14) Perusal of the statement of the complainant would further reveals that the complainant party has patched up the matter with the accused facing trial as is admitted by the complainant in his cross examination that I do not charge the accused facing trial any more, which means that

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the accused facing trial are innocent and he do not want to prosecute the accused facing trial for the murder of Ali Zaman, Naseer, driver Habib and injuries caused to him and his brother Mohammad Anwer.

(15) Furthermore, eleven (11) persons have been charged with no specific role. Allegations against accused facing trial are general in nature and as per prosecution version, there was indiscriminate firing and prosecution has failed to produce cogent & confidence inspiring evidence through which it could be ascertained that whose fire hit the deceased and caused injuries to the complainant & PW Mohammad Anwer.

(16) It is therefore, while keeping in view the above mentioned reasons, this court holds the view that the deposition being furnished by the complainant (PW-05) is neither trust worthy nor confidence inspiring nor has got its intrinsic value and hence cannot be relied upon for recording conviction of the accused facing trial.

B. WHETHER THE PROSECUTION VERSION IS BEING SUPPORTED BY CIRCUMSTANTIAL EVIDENCE OR NOT?

As per contents of the case FIR and the deposition/ testimony of complainant (PW-05), the accused facing trial have made indiscriminate firing with their respective fire arms upon the deceased. But perusal of record shows that though during spot inspection, the I.O prepared the site plan (Ex.PW9/1) on the instance of complainant/PW-05 and also collected/recovered twenty six (26) empties of 7.62 bore from the place of accused Mohammad Saleem and

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twenty four (24) empties of 7.62 bore from the place of accused Qamar Zaman alias Bhutto alongwith carry van vide recovery memo Ex.PW6/1 and blood stained sand, earth and pieces of clothes vide recovery memo Ex.PW6/2, but through the same pieces of circumstantial evidence, the guilt of the accused facing trial could not be established beyond any doubt. The perusal of the record would also reveals that the I.O during interrogation/investigation in the case in hand, has not recovered any weapon of offence from the possession of the accused facing trial or on the pointation to connect them with the commission of the offence. Furthermore, when the I.O was cross examined by defence counsel on the point of recovery, he stated that:- "vide recovery memo Ex.PW6/1, I recovered twenty six empties of 7.62 bore from the place of accused Mohammad Saleem, which fact was disclosed to me by Mohammad Awaiz complainant. Likewise, the place of accused Qamaer Zman was also pointed out by complainant Awaiz from which twenty four empties of 7.62 bore were recovered".

(17) This statement of the I.O shows that the said recoveries are planted one as nothing has been stated by the I.O that whether the recovered empties were fired from one weapon or from different weapons. Ironically, complainant /PW-5 was injured in the incident, however, as per I.O/PW-6, who collected the empties from the spot through the injured complainant/PW-5, which fact shows negligence on the part of the investigation officer as on one hand I.O stated that PW was injured and he did not prepare the site plan while on the other hand, empties were

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recovered on the pointation of the injured complainant. Even the witnesses of the recovery memo were not produce by the prosecution despite the fact that they were independent witnesses and not police officials. This fact makes the whole recoveries doubtful and planted one. Furthermore, it is on record that after recoveries of empties, same were sent to FSL, but to the utter surprise of this court, expert opinion is not available to show that the same have been fired from one or more weapons. Therefore, from all these facts & circumstances, it becomes well evident that even the prosecution case has not been supported by the circumstantial evidence.

C. WHETHER THE PROSECUTION CASE IS SUPPORTED BY MEDICAL EVIDENCE OR NOT?

As per record, the prosecution in support of its case has produced Dr. Mohammad Nawaz MO KATH Mansehra as PW.08 who has conducted the autopsy on the dead bodies of the deceased Habib, Naseer & Ali Zaman and has prepared the postmortem reports which are EX.PW7/1 to Ex.PW7/3 respectively. Similarly, the medico legal report of the complainant is Ex.PW7/4 while that of Mohammad Anwer is Ex.PW7/5. As per EX.PW7/1, deceased Habib son of Mohammad Yaqoob has received one entry wound. As per Ex.PW7/2, the deceased Naseer son of Gohar Rehman received multiple fire arms entry & exist wounds of firearms, however, PW-8 has failed to mention the number of entries & exist wounds. As per Ex.PW7/3, the deceased Ali Zaman son of Faqeer Mohammad received multiple fire arms entry & exist wounds of firearms, however, PW-8 has failed to mention the number of entries & exist wounds. Similarly, medico legal report of complainant Ex.PW7/4 shows that an entry wound below Rt scapula. The medico legal report of

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Mohammad Anwer son of Miskeen Ex.PW7/5 shows an entry wound on interclift of buttock below sacrococcegeal joint, an entry wound on left buttock. While, according to the contents of case FIR Ex.PA/1 and depositions/testimony of the complainant PW-5, all the accused opened firing with their respective fire arms upon the deceased as well as upon him and injured PW Mohammad Anwer. So, it does not stand to reason that eleven assailants have opened fire upon the complainant party from such a close distance but the deceased Habib has received one fire shot, deceased Naseer & Ali Zaman have received multiple injuries with no specific numbers of entries. Similar is the position of the complainant who received one fire shot while PW Mohammad Anwer received two fire shots while the complainant have charged eleven persons for the same injuries and the I.O recovered 26 & 24 empties from the place of occurrence, which is fatal to the prosecution case because, if every assailant has kalashinkove in his hand and had made firing upon the deceased and injured, then I.O must have collected round about 300 empties from the place of occurrence, which is not so in the case in hand. Hence, it can be easily observed that medical evidence does not support the contents of case FIR, ocular account and the site plan rather the same strongly contradicts the testimony of complainant.

D. WHETHER MOTIVE BEHIND THE OCCURRENCE HAS BEEN ESTABLISHED?

As per contents of the FIR as alleged by the complainant Mohammad Awaiz in his report that motive behind the occurrence was previous blood feud enmity between both the parties. But perusal of record reveals that prosecution has failed to produce any cogent, reliable and independent evidence in support of the same allegations. Moreover, it has been held by the Superior Courts in a number of its judgments that evidence of

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motive always being a weak piece of evidence, can not furnish sufficient corroboration of prosecution case. Furthermore, the prosecution has also failed to establish this allegation by the non production of any witness who could support the version of the complainant and due to above mentioned fact, motive behind the occurrence cannot be attributed to the accused facing trial with the commission of the offence. While, on the contrary it apparently appears from the statement of complainant who stated in his cross examination that, "the accused had concealed behind the boulders, bushes and jungle and I could not identify them but as we had enmity with the accused, therefore, I charge them on the basis of said ill will/enmity." This admission on the part of the complainant, makes it clear that on the basis of suspicion, the accused facing trial were charged for the commission of the offence and though the complainant has stated that they had enmity with the accused party but has failed to mention the details of enmity between the parties. Hence, it is held that there was no direct and strong motive existed for the commission of the offence between the accused facing trial and complainant party/deceased.

(18) Furthermore, the prosecution is not bound to prove the motive in each and every case but once it has alleged a motive then the same must have to be proved through cogent, reliable and sufficient satisfactory evidence. While in the instant case, though the prosecution has alleged that blood feud enmity existed between the parties but has not established the same. Furthermore, it is also well settled principle of administration of criminal justice that motive is not sufficient to connect the accused with the commission of an offence when the prosecution case is not supported by other cogent and satisfactory evidence.

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E. ABDSCONDANCE OF THE ACCUSED FACING TRIAL.

The perusal of record reveals that though the accused facing trial remained fugitive from law for sufficient time after the occurrence but when the prosecution failed to bring home charge without any shadow of doubt through cogent, confidence inspiring and trust worthy direct or indirect evidence, then on the sole ground of abscondance, conviction of the accused can not be legally and safely recorded.

(19) Furthermore, as discussed and held above that the prosecution case suffers from various material infirmities and serious doubts have been created regarding the genuineness of the prosecution case and that the prosecution case is neither supported by ocular account nor even the circumstantial evidence supports the version/story of the prosecution, it is therefore, the accused facing trial could not be held convicted on the sole ground of abscondance. Moreover, the Hon'ble Superior Courts in a number of judgments have held that on the basis of mere abscondance of the accused, conviction can not be recorded, if otherwise, the prosecution case is not being supported by ocular, medical and circumstantial evidence. Reliance is placed and guidance is being taken from the following judgments of the Hon'ble Superior Courts reported in:-

- 1 PLJ-2006 Cr.C [Peshawar]-320 (citation-G)
- 2 PLD 2002 [Peshawar]-36 (citation-E)
- 3 2006 MLD-723 [Peshawar] (citation-D)

(20) To sum up, the prosecution could not produce trustworthy, confidence inspiring and sufficient reliable evidence and evidence of un-impeachable character on the basis of which conviction of the accused facing trial could be recorded and it is not being well established that accused facing trial is responsible for the Qatl-e-And of the deceased and injured. In this regard guidance is being

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(Magistrate (Senior Judge))
Addl. District & Sessions Judge-II
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taken from the case titled "*The state..vs...Shoukatullah and another*" reported in 2006 PCr.LJ--755 wherein their lordships have observed that:-

Citation (a)

"Ss 302,324 and 34-----Conviction----Court, while convicting an accused for an offence, particularly in a case in which capital sentence is provided, has to be fully convinced that the accused facing trial is the only person responsible for committing the offence and that there is not even the slightest doubt about his false implication"

(21) Similarly, it has been held by the august Supreme Court of Pakistan in the case titled "*Muhammad Hussain....Versus.....The State*" Reported in NLR 2008 criminal 295 [Supreme Court].

(22) "In order to sustain capital charge under section 302 PPC, evidence must come from an independent and unimpeachable source. Evidence of tainted and inimical witness without any independent corroboration can not be made basis for recording conviction u/s 302."

(23) Considering all the above mentioned facts and circumstances, the prosecution has failed to prove its case through cogent and strong circumstantial evidence against the accused facing trial while on the sole ground of abscondance, the conviction of the accused facing trial could not be safely recorded. Thus, it is held that the prosecution has miserably failed to prove its case beyond any shadow of doubt against the accused facing trial. Therefore, while extending the benefit of doubt to the accused facing trial, they are acquitted of the charges leveled against them. They are on bail. Their bail bonds stand cancelled and sureties thereof are discharged from the liabilities of such bonds.

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(Mansoor Ghani Khan)

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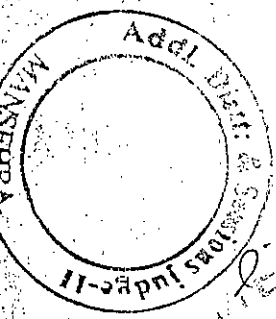
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So far as, accused namely Tasawar son of Raj Mohammad, r/o Kali Dabbi, area of P.S Phulra, Tehsil & District Mansehra is concerned, he has already been declared P.O. A prima facie case exists against the absconding accused, therefore, he is declared as P.O and his name be entered in the relevant register. Perpetual non bailable warrants of arrest be issued against him. Case property, if any be kept intact till arrest and trial of this absconding accused and till decision of appeal or revision whatever; the case may be. File be consigned to the Record Room after its necessary compilation & completion.

Announced:
30.07.2015

(Signature)
(Manzoor Qadir Khan)
Additional Sessions Judge-II,
Mansehra. 30.07.2015



CERTIFICATE

It is certified that my this judgment consists of 29 pages. Each page has been read, signed and corrected by me wherever necessary.

(Signature)
(Manzoor Qadir Khan)
Additional Sessions Judge-II,
Mansehra. 30.07.2015

Attested.

Shan Mohammad Khan
Advocate Supreme Court
of Pakistan.

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ANNEX = "C"
P- (37)


To,

THE HONOURABLE INSPECTOR GENERAL OF POLICE,
KPK Peshawar.

Subject: DEPARTMENTAL APPEAL/REPRESENTATION
AGAINST THE ORDER PASSED BY DISTRICT
POLICE OFFICER, MANSEHRA VIDE WHICH THE
APPELLANT WAS DISMISSED FROM SERVICE
WITH EFFECT FROM 23.02.2011.

Respected Sir,

1. That, the appellant was inducted in the police department 30.03.1995 and the appellant remained in service upto 23.02.2011.
2. That, on 20.02.2011, the appellant was posted at police Station Kaghan where the appellant received telephonic information that two brothers of the appellant were murdered by their opponents. The appellant applied for 03 days emergency leave which was allowed and the appellant left the said police station on 20.02.2011. After reaching the home, the appellant buried the deceased brothers and remained in attendance of the funeral prayers of the deceased brothers, meanwhile, the appellant also sent another application for five days emergency leave which was received by the SHO concerned. This fact is mentioned in the statement of Sudheer

Attested

Shah Muhammad Khan
Advocate Supreme Court
of Pakistan.

Hussain Shah, Moharrir police Station Kaghan which was recorded by the Inspector Legal Mansehra as an Inquiry Officer.

3. That, the case FIR No.30 dated 20.02.2011 under section 302/34 PPC P.S. Phulra was registered against the culprits for murder of the brother of the appellant. The trial of the same is pending in the court of Additional Sessions Judge-II, Mansehra and next date is 17.10.2015. (Copy of FIR is annexed herewith).
4. That, the appellant was in a shocking condition and tension due to the demise of his younger brothers namely Muhammad Siddique and Muhammad Rafique.
5. That, the appellant has three other brothers out of whom two younger brothers were murdered while one elder brother of the appellant namely Khan Muhammad is a disable person and unable to walk, the parents of the appellant are also aged persons. Hence, there was no other person in the house of the appellant to lookafter the affairs of the house.
6. That, on 23.03.2011, the opponents of the appellant got registered an FIR

bearing No.49 dated 23.03.2011 under section 302/324/427/148/149 PPC in P.S. Phulra. In this case, the appellant surrendered before the court of law and remained in Jail for some days and thereafter joined the trial proceedings before the trial court i.e. Additional District Judge-II, Mansehra who ultimately acquitted the appellant and others co-accused vide its judgment dated 30.07.2015, the copy of the same were delivered to the appellant on 31.08.2015. (Copies of the FIR and judgment are annexed herewith).

7. That, the police department conducted a so-called inquiry in the absence of the appellant. No show cause notice has been given to the appellant rather the inquiry proceedings were conducted on the basis of so-called charge sheet and statement of allegation. The appellant has never been heard in that very inquiry as no notice/summon was issued by the inquiry officer in connection with the inquiry. In this way, the so-called inquiry is totally wrong, illegal, against the law and facts and quoram-non-judice which is not binding on the appellant.
8. That, on the basis of that very inquiry, the appellant was dismissed from service

with effect from 23.02.2011 and the dismissal order was communicated to the appellant on 04.09.2015 which was received by the appellant on the same very date hence the departmental appeal/representation of the appellant is well within time. (Copies of the inquiry report, proceedings and dismissal order are annexed herewith).

9. That, the appellant has 16 years service upto 23.02.2011 in the police department and now the length of service of the appellant is about more than 20 years. Appellant has good and un-blemished service record, there is not even a single stigma on the whole service career of the appellant.
10. That, the appellant can never be dismissed from service at this stage without conducting proper and legal inquiry and without affording opportunity of being heard.
11. That, the dismissal order is also against the norms of natural justice that no one should be condemned unheard.
12. That, the absence of the appellant from service is not willful but due to some compelling reasons and circumstances, the appellant could not attend his duty.

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13. That, the appellant is a very poor person and burden of all the family of the appellant including aged parents, disable elder brother and 02 orphans of the deceased brother namely Muhammad Siddique is on the shoulders of the appellant.

It is, therefore, most humbly prayed that on acceptance of this departmental appeal/representation, the impugned order passed by District police Officer, Mansehra may please be set aside and the appellant may please be restored in service with all back benefits.

Dated 11.09.2015

MUHAMMAD SALEEM
Ex-Constable No.688
Police Station the then Kaghan.
.....Appellant

Attest

Shad Muhammad Khan
Advocate Supreme Court
of Pakistan

ORDER

ANNEX = "D"
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This is an order on the representation of *Ex-Constable Muhammad Saleem No: 688* of Manshara District against the order of major punishment i.e. *dismissal from service* awarded by the District Police Officer, Manshara vide his OB No.91 dated 11.05.2011.

Facts leading to punishment awarded to him are that he while posted at Police Station Kaghan he has involved in a criminal case vide FIR No: 49, dated 23.03.2011 u/s 302/324/427/148/149 PPC PS Phulra. He also absented from duty from 23.02.2011 till the date of dismissal. Beside this the DPO Manshara also delineated in his comments asked for on his appeal that he move indulged/involved in following criminal cases:-

1. FIR No: 154 dated 17.07.2001 u/s 302/109/148/149PPC
2. FIR No:121 dated 16.07.2011 u/s 365A - ✓
3. FIR No:77 dated 09.07.2012 u/s 324/34 PPC ✓
4. FIR No:21 dated 24.02.2003 u/s 302/109/34 PPC
5. FIR No: 34 dated 08.03.2003 u/s 324/353/186/148/149 PPC PS Phulra.

Proper departmental enquiry was conducted by *Mr. Mazhar Hussain Shah Inspector Legal*. After conducting a detailed enquiry, the E.O proved him guilty. On the recommendation of E.O, the District Police Officer Manshara awarded him major punishment of *dismissal from service*.

He preferred an appeal to the worthy PPO where after examining his appeal Worthy PPO decided that the appellant should file an appeal to the next appellate authority i.e RPO Hazara vide CPO Letter No: S/1857/16, dated 26.02.2016 on which he was called in OR on 21.09.2016 and heard in person where he offered no cogent reason in his defence to prove his innocence. After thorough probe into the enquiry report and the comments of the DPO Manshara, it came to light that the punishment awarded to him by the DPO Manshara i.e. *dismissal from service* is genuine and from the perusal of above mentioned case he seems to be criminal minded person. His appeal is also time barred hence it is filed.

REGIONAL POLICE OFFICER
Hazara Region Abbottabad

No. 4451 /PA Dated Abbottabad the 27-9-2016.

- Copy to the :-
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar for favour of information w/r to his Office Letter No: S/1857/16 dated 26.02.2016.
 2. District Police Officer, Manshara for necessary action with reference to his Memo: No.20061/SRC, dated 20.09.2016. The Service Record containing enquiry file of the appellant are returned herewith

M. Aslam
Shah Muhammad Khan
Advocate Supreme Court
of Pakistan

REGIONAL POLICE OFFICER
Hazara Region Abbottabad

ANNEX = E,

بھنور جناب انسپکٹر جنرل آف پولیس پشاور P-43

مضمون: درخواست/ اپیل رحم

جناب عالی!

(۱) - سائل مورخہ 30.03.1995 کو محکمہ پولیس میں بھرتی ہوا اور جب تھانہ کاغان ضلع مانسہرہ سال 2011ء میں تعینات تھا کہ مجھے فون پر اطلاع ملی کہ میرے دو بھائی قتل ہو گئے تو میں وہاں سے تین یوم رخصت اتفاقہ پر گھر آیا تو اسی ایمر جنسی کی صورت میں نے 5 یوم رخصت اتفاقہ منظور شدہ درخواست بذریعہ ڈاک ارسال تھانہ کی اور میرے بوڑھے ماں باپ کے علاوہ گھر پر کوئی نہیں تھا دو بھائی تھے جو قتل ہو گئے تھے اور میرے بھائی جن لوگوں نے قتل کیے تھے ان لوگوں نے میرے خلاف بے بنیاد مقدمہ علت نمبر 49 مورخہ 23.03.2011 جرم 302/324 ت، پ تھانہ پھلڑہ میں غلط طور پر درج کروا کر مجھے نامزد کر دیا۔

(۲) - یہ کہ سائل کو مقدمہ میں گرفتار کیا گیا۔ اور بعد ازاں مورخہ 30.07.2015 کو عدالت سے باعزت طور پر بری ہو گیا۔

(۳) - یہ کہ بری ہونے کے بعد علم ہوا کہ سائل کو یکطرفہ انکوائری کر کے بغیر موقع صفائی دیئے بحوالہ حکم نمبری 91 مورخہ 11.05.2011 ڈی۔ پی۔ او صاحب مانسہرہ نے نوکری سے برطرف کر دیا ہے۔ (نقل حکم لف ہے)۔

(۴) - یہ کہ اس حکم کے خلاف مورخہ 11.09.2015 کو جناب کو اپیل دائر کی گئی جو برائے سماعت RPO ہزارہ کو بحوالہ چھٹی نمبری 1857 مورخہ 26.02.2016 کو ارسال کی گئی۔ (نقل حکم لف ہے)۔

(۵) - بحوالہ حکم نمبر 4451 مورخہ 27.09.2016 RPO صاحب نے حقائق اور قانون کو بالائے طاق رکھتے ہوئے اپیل خارج کر دی۔ (نقل حکم لف ہے)۔

Shau Mohammed Khan
Advocate Supreme Court
of Pakistan.

بوجوہات بالا یہ درخواست رحم مندرجہ ذیل حقائق و قانون کی روشنی میں عرض خدمت ہے۔

- (i) یہ کہ سائل کے خلاف بمطابق قانون کوئی انکوائری نہیں کی گئی۔
 - (ii) یہ کہ انکوائری آفیسر نے بغیر مجھے بتلائے، سنے یا شہادت صفائی پیشی کرنے کے یکطرفہ انکوائری رپورٹ تیار کی۔ جو قانون کے منافی ہے۔
 - (iii) یہ کہ قانون طور پر تا تصفیہ مقدمہ فوجداری انکوائری التوا میں رکھی جاتی اور بعد از فیصلہ مقدمہ انکوائری کر کے بمطابق قانون فیصلہ کیا جاتا۔
 - (iv) یہ کہ بوجہ خوف مخالفین بعد از مندرجہ بالا FIR سائل کچھ عرصہ گھر میں چھپا رہا جو بعد ازاں پیش ہو گیا تھا۔ لیکن حیرانگی کی بات ہے کہ 01-1/2 ماہ (ڈیڑھ) کے اندر یکطرفہ انکوائری کر کے سائل کو نوکری سے برطرف کر دیا گیا۔ جو قانون کے منافی ہے۔
- مندرجہ بالا حالات واقعات کی روشنی میں التجا ہے کہ سائل کی درخواست منظور فرماتے ہوئے سائل کو بحال فرمایا جائے۔

المرقوم 13 اکتوبر 2016ء

کانشیبل محمد سلیم نمبری 688 ضلع مانسہرہ

رابطہ نمبر: 0345-4454410

Shad
 Shad Mohammad Khan
 Advocate Supreme Court
 of Pakistan.

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 927 /17, dated Peshawar the 27/02/2017.

ORDER

ANNEX = 1 F 9 P-45

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Muhammad Saleem No. 688. The appellant was dismissal from service w.e.f 23.02.2011 by DPO, Manshra vide OB No. 91, dated 11.05.2011 on the charge that he was involved in a criminal case vide FIR.No 49, dated 23.03.2011 u/s 302/32-I/427/1-18/1-49 PPC PS Phulra and remained absented himself from duty for a period of 02 months and 19 days.

His appeal was rejected / filed by RPO, Hazara vide order Endst: No. 4451 / PA, dated 27.09.2016.

Meeting of Appellate Board was held on 02.02.2017 wherein appellant was called and heard in person. The petitioner contended that his opponents registered a false case against him and he was acquitted by the Court.

Perusal of record reveals that the impugned order of dismissal from service of petitioner was passed vide order dated 11.05.2011 and his appeal was filed by RPO, Hazara vide order dated 27.09.2016. The instant review petition filed on 13.10.2016 is badly time barred. Thus his appeal is rejected on grounds of limitation and merit as well.

This order is issued with the approval by the Competent Authority.

(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 928-35 /17,

Copy of the above is forwarded to the:

1. Regional Police Officer, Hazara Region, Abbottabad.
2. District Police Officer, Manshra.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, CPO.
7. Office Supdt: E-IV CPO Peshawar.
8. Central Registry Cell, CPO.

Shah Muhammad Khan
Advocate Supreme Court
of Pakistan.

وکالت نامہ

P-46

بعدالت جناب چیئر مین صاحب سروس ٹریبونل پاکستان لاہور

محمد سلیم نام DPO وزیرہ
دعوی یا جرم سروس ریپل منجانب اپیلانٹ

باعث تحریر آنکہ

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی بمقام ایڈووکیٹ

شاد محمد خان ایڈووکیٹ سپریم کورٹ آف پاکستان

ایڈووکیٹ شاد محمد خان ایڈووکیٹ سپریم کورٹ آف پاکستان کے پاس
دیکل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر منظر حاضر نہ ہو اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ
میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز دیکل صاحب موصوف صدر مقام پکھری
کے علاوہ کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام
پکھری کے کسی اور جگہ سماعت ہونے پر یا بروز پکھری کے اوقات کے آگے یا پیچھے ہونے پر منظر کو کوئی نقصان پہنچے تو ذمہ دار یا
اس کے واسطے کسی معاوضہ ادا کرنے، اختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ
پرداختہ صاحب مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعوی اور درخواست اجرائے ڈگری و نظر ثانی
اپیل گرائی دائر کرنے، نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر
قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرانے کا ہر قسم بیان دینے اور سپرد دہائی وراثی نامہ و فیصلہ بر خلاف کرنے و
اقبال دعوی کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا بطرف درخواست حکم امتناعی یا ڈگری قبل از فیصلہ
اجرائے ڈگری بھی صاحب موصوف کو بشرط ادا ایلی علیحدہ پیروی اختیار نامہ کرنے کا مجاز ہوگا اور بصورت ضرورت اپیل اور اپیل
کے واسطے کسی دوسرے وکیل یا ہیر مشرک کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل
ہوں گے جیسے صاحب موصوف کو، پوری فیس تاریخ پیشی سے پہلے ادا کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی
پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا اختیار نامہ لکھ دیا ہے کہ سند ہے۔
مضمون اختیار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

المقوم

عبد العبد العبد

ATTESTED & ACCEPTED

SHAD MUHAMMAD KHAN,

Advocate Supreme Court,

of Pakistan.

Shad Mohammad Khan
Advocate Supreme Court
of Pakistan.

Registered

محمد سلیم ولد محمد عبدالرشید شاہ کورٹ مانیٹر

(اپیلانٹ)

[Signature]

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 265/2017.

Muhammad Saleem No. 688Appellant

VERSUS

- 1) District Police Officer, Mansehra.
- 2) Regional Police officer, Hazara Region Abbottabad
- 3) Inspector General of police KPK Peshawar.

..... Respondents

Parawise Comments On Behalf Of Respondents

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTION:-

- a) The appeal is not based on facts and appellant has got no cause of action or locus standi.
- b) That appeal is not maintainable in the present form.
- c) The appeal is bad for non-joinder of necessary and mis-joinder of unnecessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appeal is barred by the law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. The appellant was enrolled in FRP on 1995 and adjusted in this district against the existing vacancy of constable vides dated 30-09-2015. The appellant while posted at PS Kaghan has involved in case FIR No. 49 dated 23-03-2011 under section 302/324/427/148/149 PPC PS Phulra and remained proclaimed offender in the instant case for long period. The appellant also remained involved in number of criminal cases in the past. The detail of which is given below:

Anasheed
District Police Officer
Mansehra

- i. FIR No. 154 dated 17/07/2001 u/s 302/109/148/149 PPC PS Phulra.
- ii. FIR No. 121 dated 16/07/2011 u/s 365-A PPC PS Phulra.
- iii. FIR No. 77 dated 09/07/2012 u/s 324/34 PPC PS Phulra.
- iv. FIR No. 17 dated 08/02/2003 u/s 324/34 PPC PS Phulra.
- v. FIR No. 21 dated 24/02/2003 u/s 302/109/34 PPC PS Phulra.
- vi. FIR No. 34 dated 08/03/2003 u/s 324/353/186/148/149 PPC PS Phulra.

The appellant was an active member of notorious criminal group in the jurisdiction of Police Station Phulra who on account of blood feud committed several murder against their opponents. The appellant was also remained History sheeter of PS Phulra and now his history sheet has been placed into his personal file laying in the police station. Previously the appellant was also "dismissed from service" on account of involvement in case FIR No. 121 dated 16/07/2011 u/s 365-A PPC PS Phulra and reinstated in service in the year 2003. Copies of the FIR and dismissal order are attached as "Annexure A".

2. The appellant after committing crime fled away to the unknown place and remained absented from duty for about 2 and Half years and obtained BBA. On 20/10/2013 he was arrested on cancellation of Bail Before arrest from the court of Additional District & Sessions Judge, Mansehra.

3. The appellant has been acquitted by the Court of Additional District & Session Judge II Mansehra vide order/judgment dated 30/07/2015, however one accused namely Tasawar has been declared as PO by the court and perpetual warant of arrest has been issued against him. However an inquiry was conducted in which the appellant found guilty. (copy of inquiry is "B").

Anashid
District Police Officer
Mansehra

4. The appellant preferred appeal against the order of dismissal after acquittal from Court which was rejected by the appellate authority on the ground of badly time barred case.
5. The appellant filed review/mercy petition before the competent authority which was rejected vide order dated 21/02/2017 on merit as well as being time barred.

The appeal is not maintainable on the following grounds.

GROUNDS

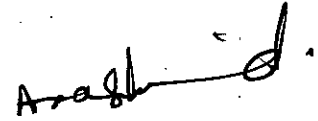
- A. Incorrect. The order of dismissal and rejection of appeal was in accordance with law. The appellant is hardened criminal and after committing crime remained absented for long time due to which he remained absent from duty.
- B. Incorrect. The appellant had hiding himself to an unknown place and after 2 and half years he appeared before the Court and obtained BBA due to which absentia proceedings were initiated against him.
- C. Incorrect. The appellant was involved in murder case and also absented himself from duty due to which he was proceeded against departmentally proceedings.
- D. Incorrect. The order of dismissal was just and lawful the appellant is member of notorious criminal group in the jurisdiction of PS Phulra. Being member of criminal group and involved in member of criminal cases, his relation in service shall create bad image of the whole police department.
- E. Incorrect. The appellant deliberately avoided the departmental proceedings. The absentia proceedings in criminal case is the solid proof of is knowingly not availing

Anand
District Police Officer
Mansehra

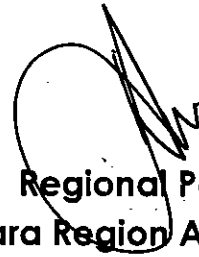
the chance of joining the proceedings initiated against him by the department.

PRAYER:

In view of the above mentioned facts, the appeal in hand may kindly be dismissed being devoid of any legal force and badly time barred case.



**District Police Officer
Mansehra
(Respondent No. 1)**



**Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)**



**Inspector General of Police
KPK Peshawar
(Respondent No. 3)**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 265/2017.

Muhammad Saleem No. 688Appellant

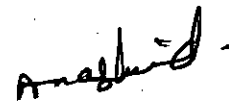
VERSUS

- 4) District Police Officer, Mansehra.
- 5) Regional Police officer, Hazara Region Abbottabad
- 6) Inspector General of police KPK Peshawar.

..... Respondents

AFFIDAVIT

We respondents do solemnly affirm and declare that the contents of the comments are true and correct to our knowledge and belief and that nothing has been concealed from this Honorable tribunal.



**District Police Officer
Mansehra
(Respondent No. 1)**



**Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)**



**Inspector General of Police
KPK Peshawar
(Respondent No. 3)**

کے مکان میں قائم تھا کہ کابریہ الف جیہ پوار متذکرہ بلا المیزان
 وحوالہ حوالہ اورینٹل بکسٹور اور غور بخور سے اللہ تعالیٰ اور اللہ تعالیٰ
 پوربیل حبیباً گفتہ مسائل اورینٹل درج بالا جو کہ لکھنؤ میں سنائی گیا ہے (1313) جس سے
 زمرہ اورینٹل درج اسکی کا دستخط بہتر کیا ملا فہم میں مفروضہ سے باہر آدینا ہے
 بدینہ میں اور ایک ازخم پایا جا کر لکھنؤ میں لکھنؤ میں لکھنؤ میں لکھنؤ میں لکھنؤ میں
 امین 88 لکھنؤ علاج وصالہ، رائے ڈاکٹری میں لکھنؤ میں لکھنؤ میں لکھنؤ میں
 ماسک لکھنؤ کافی مقدمہ بدینہ کیمپبل وفاضل 859 ارسال ہے بدینہ میں
 رشتہ کے نقل برائے لکھنؤ میں لکھنؤ میں لکھنؤ میں لکھنؤ میں لکھنؤ میں
 دستخط ڈاکٹر فری حیدر افضل خان 545 قیام 545 لکھنؤ 7/9 کاروانی 3/12/12
 ماسک صرف بدینہ درج 545 جو اس میں لکھنؤ میں لکھنؤ میں لکھنؤ میں لکھنؤ میں
 درج ماسک لکھنؤ لکھنؤ میں لکھنؤ میں لکھنؤ میں لکھنؤ میں لکھنؤ میں

AP

1112 - 175 Phalera
 1112 - 7 - 2012
 عبدالرشید

دستخط
 عہدہ

اطلاع کے لیے اطلاع دہندہ کا دستخط ہوگا یا اس کی مہر یا نشان لگایا جائے گا۔ اور اگر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف یا ب سرخ روشنائی سے
 ایک ٹوم یا شہر علی الترتیب واسطے باشندگان علاقہ غیر واسطہ ایشیا یا افغانستان جہاں موزوں ہوں لکھتا ہے۔

یہ دست لائن ٹیبلٹ کی 4 اراں نکات ہے۔ قدم اور ڈیڑھ کے افسانہ مایہ
 کو الطبع دی جاوے۔ جس میں صرف نقش ہیں۔ مایہ الطبع میں لکھو
 گزرا رہی ہے۔ دست لائن میں اراں 1100 سے 1200 تک ہے۔
 خانہ آمد مایہ یا قدم مایہ عام ہے۔ کئی مایہ اصل مایہ
 آمد لائن میں نقش نقش مایہ 1100 سے 1200 تک ہے۔
 افسانہ مایہ کو الطبع دی جاوے گی ہے۔ مایہ لکھو میں لکھو گزرا رہی
 ہے۔

M. H. S. Bhatia
 24-2-59

03
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اطا
 ان وقت روٹی چاہا
 رت اختتامی اور
 میں طمان کا چالا
 302
 10933
 112

دستخط _____
 عہدہ _____

اطلاع کے لیے اطلاع دہندہ کا دستخط ہوگا۔ یا اس کی مہر یا نشان لگا یا جانے گا۔ اور افسر تحریر کنندہ ابتدائی اطلاع کا دستخط اور تصدیق ہوگی۔ حرف
 سرخ و شالی سے بالقبائل نام پر ایک نلوم یا شہر علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان جہاں موزوں ہوں۔ لکھنا

نوٹ:

فورا درج کی جائے گی

ص ۴۳ نمبر ۲۲

ابتدائی اطلاعی رپورٹ

قلم نمبر ۲۲-۵ (۱)

اس میں ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ ۱۵۲ مجموعہ ضابطہ فوجداری

۲۶	۲۸	۲۹	۳۰	۳۱	۳۲
۲۶	۲۸	۲۹	۳۰	۳۱	۳۲
۲۶	۲۸	۲۹	۳۰	۳۱	۳۲
۲۶	۲۸	۲۹	۳۰	۳۱	۳۲
۲۶	۲۸	۲۹	۳۰	۳۱	۳۲
۲۶	۲۸	۲۹	۳۰	۳۱	۳۲

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ابتدائی اطلاع نیچے درج کرو گئے

ابتدائی اطلاع کے مطابق... (The following text is a detailed handwritten report in Urdu, describing an investigation. It mentions names like 'محمد رفیق', 'محمد رفیق', and 'محمد رفیق'. It discusses the timeline of events, including a meeting on 15/11/1999 and a subsequent investigation. The text is dense and contains many numbers and dates, likely referring to specific incidents or reports.)

Handwritten notes at the bottom right, possibly a signature or a date.

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No.265/2017

Mohammad Saleem.....V/S.....PPO/IGP & Others
(Appellant) **(Respondents)**

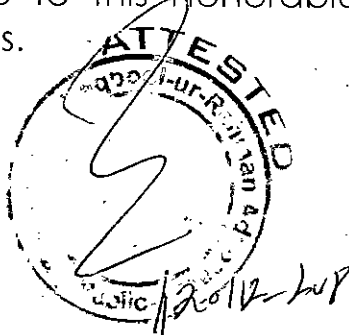
REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

The appellant submits his rejoinder as under:-

Preliminary Objections:

- a) Contents incorrect and misleading, the appellant has illegally been awarded the penalty of dismissal from service; hence he has got every cause of action and locus standi to file the instant appeal.
- b) Contents incorrect and misleading the appellant was dismissed from service illegally thus instant appeal is in accordance with the provisions of law, departmental rules and regulations.
- c) Contents incorrect and misleading, all necessary parties have been arrayed in the instant appeal.
- d) Contents incorrect and misleading, no rule of estoppel is applicable in the instant case.
- e) Contents incorrect and misleading, appellant has filed instant well within prescribed period of time limitation.
- f) Contents incorrect and misleading, the appellant has come to this Honorable Service Tribunal with clean hands.



ON FACTS:

Contents of para No.1 to 05 of the appeal are correct and the reply submitted to these paras by respondents in para-1 to 05 is incorrect and misleading hence denied.

GROUND:

All the grounds "A" to "E" taken in the memo of appeal are legal and will be substantiated at the time of hearing of appeal and reply submitted to these paras by respondents from "A" to "E" are incorrect and misleading hence vehemently denied.

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

THROUGH

APPELLANT

(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT HARIPUR

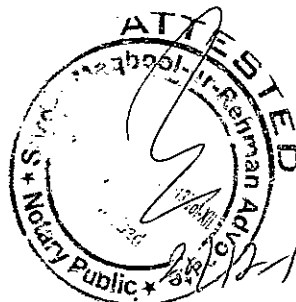
Dated: 20-12-2018

AFFIDAVIT:

I, Mohammad Saleem S/O Mohammad Akbar do hereby solemnly declare that contents of this rejoinder as well as that of titled appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Dated: 20-12-2018

Deponent/Appellant



وکالت نامہ

کورٹ فیس

بعدالت صاحب محمد حسین علی صاحبہ کی طرف سے فراہم کی گئی ہے۔

عنوان: محمد سلیم نام ۲۲۵/۱۹۸

منجانب: محمد سلیم

نوعیت مقدمہ:

باعث تحریر آنکے

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کی کارروائی متعلقہ آل مقام
محمد حسین علی صاحبہ کی طرف سے

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کل اختیار ہوگا نیز وکیل صاحب
موصوف کو کرنے راضی نامہ و تقرر فائٹ و فیصلہ بر طرف دینے اقبال دعویٰ اور بصورت دیگر ذکر کرانے اجراء
وصولی چیک روپیہ و مرضی دعویٰ کی تصدیق اور اس پر دخل کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور
کی کل یا کسی جزوی کارروائی کے لئے کسی اور وکیل یا وکیل صاحب کا کوئی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار
بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور وہی ہی اختیارات ہوں گے اور اس کا ساختہ پر ساختہ مجھ کو منظور
قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔
نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف
پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر غلط مقرر کردہ میں کوئی جزو بھٹایا ہو تو وکیل صاحب موصوف
مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بر ادا تجارت ناش بیخ مفلسی کے دائرہ کرنے اور اس کی
پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

Accepted by
M. Adani

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المقوم:
20-12-2018

بمقام: محمد حسین علی

السلامة والسلامة والسلامة

محمد سلیم

﴿فائینل انکواری رپورٹ ازان کنسٹیبل محمد سلیم نمبر 688 تھانہ کاغان﴾

جناب عالی!

مختصر حالات انکواری ہذا یوں ہیں کہ کنسٹیبل محمد سلیم نمبر 688 تھانہ کاغان جو کہ تھانہ کاغان سے تین یوم رخصت اتفاقیہ پر گھر خود گیا تھا۔ کنسٹیبل متذکرہ اختتام رخصت پر تھانہ کاغان میں حاضر نہیں ہوا۔ جس کی رپورٹ غیر حاضری بحوالہ مد نمبر 12 روز نامہ 30-03-2011 جرم PPC 302/324/427/148/149 تھانہ پھلورہ درج ہوا جس میں کنسٹیبل متذکرہ کے خلاف تین اشخاص کھنڈریو فارنگ قتل کرنے کی دعویداری کی۔ اسی مقدمہ قتل میں مورخہ 24-03-2011 کو معطل کیا گیا۔ اور چارج شیٹ نمبر 741/42 مورخہ 28-03-2011 جاری ہو کر انکواری ہذا مجھے مارک ہوئی۔

کنسٹیبل متذکرہ بعد از تکاب جرم روپوش ہوا جس کے خلاف کارروائی روپوشی عمل میں لائی گئی۔ کنسٹیبل متذکرہ روپوش ہونے کی بناء پر انکواری کے دوران حاضر نہیں ہوا۔ جس کے خلاف ایک طرفہ کارروائی عمل میں لائی جا کر گواہان پیر بخش محرر تھانہ پھلورہ، سدھیر حسین شاہ محرر تھانہ کاغان اور ساول خان سب انسپٹر انچارج انوسٹی گیشن سٹاف تھانہ پھلورہ کے بیانات لیے گئے۔ جو کہ انکواری ہذا کے ساتھ شامل برائے ملاحظہ لے ہیں۔ انکواری کے دوران یہ پایا گیا کہ کنسٹیبل مذکور کے خلاف تین اشخاص کو قتل کرنے کی برائے راست دعویداری ہوئی ہے ان میں سے دو اشخاص سوزو کی کیری میں آگ لگنے کی وجہ سے جل گئے تھے اور ان کی لاشیں کولمہ بن چکی تھیں۔ کنسٹیبل متذکرہ بعد از تکاب جرم روپوش ہے مقامی پولیس نے اس کی گرفتاری کی کوشش کی ہے لیکن یہ ابھی تک گرفتار نہیں ہوا اور روپوشی کی بناء پر اپنی ڈیوٹی سے بھی مورخہ 23-03-2011 سے غیر حاضر ہے۔ جس کا مستقبل قریب میں بھی اس کے پیش ہونے کا امکان نہیں ہے۔ کنسٹیبل متذکرہ کے خلاف مقامی پولیس نے چالان مکمل زیر دفعہ 512 ض ف معزز دیگر ملزمان کے عدالت سیشن جج صاحب مانسہرہ بھجوایا ہے۔ انکواری سے الزام علیہ کنسٹیبل گناہ گار پایا گیا ہے۔

فائینلنگ۔

انکواری ہذا کے دوران گواہان پیر بخش محرر تھانہ پھلورہ، سید سدھیر حسین شاہ محرر تھانہ کاغان، ساول خان سب انسپٹر انچارج انوسٹی گیشن تھانہ پھلورہ کے بیانات کی روشنی میں الزام علیہ کنسٹیبل مقدمہ قتل میں روپوش ہو کر مجرم اشتہاری گردانا گیا ہے۔ اور اپنی ڈیوٹی سے غیر حاضر ہے جس کا فعل قابل مواخذہ ہے۔ کنسٹیبل متذکرہ مقدمہ قتل میں مجرم اشتہاری قرار دیا گیا ہے اور جس کا مستقبل قریب میں پیش ہونے کا امکان نظر نہیں آتا جو کہ اپنی ڈیوٹی سے بدستور غیر حاضر ہے۔ اگر افسران بالا انکواری ہذا سے متفق ہوں تو کنسٹیبل متذکرہ جو کہ (Major punishment) کا حقدار ہے کو مناسب سزا دی جائے۔ انکواری ہذا برائے مزید کارروائی گزارش ہے۔

انسپٹر لیگل مانسہرہ۔

25-4-2011

Off
For in/Action.

DPD - Manselva
27.4.2011

CHARGE SHEET

I, Sohail Khalid, District Police Officer, Mansehra as competent authority hereby charge you **Constable Muhammad Saleem No.688** as follows.

You while posted at PS Kaghan has involved yourself in case FIR No. 49 dated 23-03-2011 U/S 302/324/427/148/149 PPC Police Station Phulra. Hence the charge sheet/statement of allegation for departmental enquiry.

You are therefore, required to submit your written defence within 07 days of the receipt of this charge sheet to the enquiry officer.

Your written defence, if any, should reach the enquiry office within the specified period, failing which it shall be presumed that you have no defence to put in hand and in the case exparte action shall follow against you.

Intimate whether you desire to be heard in person or otherwise.

Statement of allegation is also enclosed.


**District Police Officer,
Mansehra.**

DISCIPLINARY ACTION

I, Sohail Khalid, District Police Officer, Mansehra as competent authority of the opinion that **Constable Muhammad Saleem No.688** has rendered himself liable to be proceeded against as he committed the following act/omissions within the meaning of section 3 of the North West Frontier Province Removal from service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATION

You while posted at PS Kaghan has involved yourself in case FIR No. 49 dated 23-03-2011 U/S 302/324/427/148/149 PPC Police Station Phulra. Hence the charge sheet/statement of allegation for departmental enquiry.

For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above allegations Mr. Mazhar Hussain Shah ^{Gmsp: Legal} is deputed to conduct formal department enquiry against **Constable Muhammad Saleem No.688.**

The Enquiry Officer shall in accordance with the provisions of the ordinance, provide reasonable opportunity of hearing the accused, record findings and make within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

The accused and a well conversant representative of the department shall in the proceedings on the date, time and place fixed by the Enquiry Officer.

**District Police Officer,
Mansehra**

No 741-42 /PA dated Mansehra the 28-03-2011.

➤ **A copy of the above is forwarded to: -**

1. The Enquiry Officer for initiating proceedings against the accused under the provisions of the KPK Removal from service (Special Powers) Ordinance 2000. (copy of FIR No. 49 dated 23-03-2011 U/S 302/324/427/148/149 PPC PS Phulra is enclosed)
2. Constable Muhammad Saleem No.688 with the direction to submit his written statement to the Enquiry Officer within 7 days of the receipt of this charge sheet/statement of allegations and also to appear before the Enquiry Officer on the date, time and place fixed for the purposes of departmental proceedings.

**District Police Officer,
Mansehra.**



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 1575 /ST

Dated: 09/08 /2021

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

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

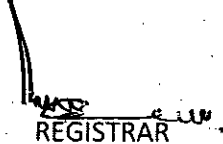
To

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

Subject: JUDGMENT IN APPEAL NO. 265/2017, MR. MUHAMMAD SALEEM.

I am directed to forward herewith a certified copy of Judgement dated 29.07.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

"A"

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

Larger Bench

No.

APPEAL No. *265* of 2017

Muhammad Saleem

Appellant/Petitioner

Versus

Distt Police officer Manshera

RESPONDENT(S)

Notice to Appellant/Petitioner *Muhammad Saleem (No 588)*

*son of Muhammad Akbar Resident of Shahkot
Tehsil and District Manshera*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *11-4-2019* at *8:00 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*Before
Larger Bench*



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

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

No.

APPEAL No..... 265 of 2017

Muhammad Saleem

Appellant/Petitioner

Versus

Distt. Police officer Manjehra

RESPONDENT(S)

Counsel

Notice to Appellant/Petitioner

Shad Muhammad Khan

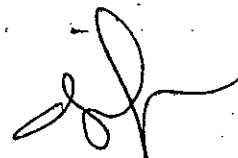
Advocate Supreme court of Pakistan
Manjehra

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 11-11-2017 at

Before

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Before
Larger Bench



Registrar,

[Signature] Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"B"

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

No.

Appeal No. 265 of 2017

Muhammad Saleem Appellant/Petitioner

Versus

Distt. Police officer Manshera Respondent

Respondent No. (1)

Notice to:

- District Police officer Manshera

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 11-4-2019 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.....

Day of April 2019

Before Larger Bench


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. 265 of 2017

Muhammad Saleem Appellant/Petitioner

Versus

Distt Police officer Manshera Respondent

Respondent No. (2)

Notice to: - DIG Hazara Range Abbottabad

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 11-4-2019 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.....(11)

Day of.....April.....2019

Before
Larger Bench



 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.

(L.B)

No.

Appeal No. 265 of 2017

Muhammad Saleem Appellant/Petitioner

Versus

Distt. Police officer Mansher Khan Respondent

Respondent No. (3)

Notice to: — I.G.P. K.P.K Peshawar

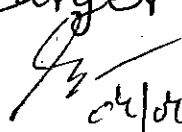
WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 14/2/17 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.....⁽⁴⁾.....

Day of.....April.....20 ..

Before
 Larger Bench



 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.

TB

No.

265

17

Appeal No. of 20

Muhamamad Saleem

Appellant/Petitioner

DPO, ^{Versus} Mansehra

Respondent

Respondent No.

D.I.G. Hazara Range A. Abad

Notice to: —

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....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.

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

24th

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

April 18

(at camp court A. Abad)

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.

TB

Appeal No. of 20

265

17

..... Appellant/Petitioner
Muhammad Saleem

..... Respondent
DP O, Manserwa

Respondent No.
I

Notice to: -

Distt. Police officer, Manserwa

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 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.

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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.....20

(at camp court A. Road)

[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.