

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 2818/2021

Date of Institution ... 02.02.2021

Date of Decision ... 28.06.2022

Muhammad Yousaf Ex-IHC No. 882 of District Police Kohat.

... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa Peshawar and two others.

... (Respondents)

MISS. NAILA JAN,
Advocate

--- For appellant.

MR. RIAZ AHMAD PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Briefly stated the facts necessary for disposal of the instant service appeal are that the appellant was injured complainant in case FIR No. 564 dated 22.04.2019 under sections 302/324/353/427 PPC read with Section-15 AA Police Station City, wherein one Sohail Nawaz S/O Muhammad Nawaz Resident of Muhammad Zai Kohat was done to death, while the appellant alongwith a lady pedestrian sustained injuries with the firing of accused Naveed Ullah, who was arrested on the spot. When the testimony of the appellant was recorded during the trial, deceased's father namely Muhammad Nawaz submitted a complaint against the appellant, alleging therein that he had deliberately tendered contradictory evidence during the trial

for the purpose of giving benefit to the accused namely Naveed Ullah. Departmental action was thus taken against the appellant and on conclusion of the inquiry, he was dismissed from service vide order bearing O.B No. 762 dated 05.11.2020 passed by District Police Officer Kohat. The departmental appeal of the appellant was also rejected vide order dated 30.12.2020, hence the instant service appeal.

2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant was having an unblemished service record and had furnished a true ocular account of the occurrence during trial; that the appellant was himself injured in the occurrence, therefore, it is not possible that he would have extended any deliberate concessions to the accused in his testimony recorded during the trial; that during cross examination, the appellant had stated that accused was arrested in *Purana Larri Adda*, which fact has also been admitted by the respondents in para-4 of their reply by stating that the accused was arrested after a hot pursuit; that disciplinary action was taken against the appellant on the complaint filed by father of deceased Sohail Nawaz, however he was not examined during the inquiry proceedings; that the inquiry officer has not examined any witness in support of the allegations against the appellant but even then the appellant was found guilty of the allegations leveled against him; that the accused Naveed Ullah has been convicted by the court in the concerned criminal case, which also shows that the appellant had not deliberately extended any concession to the accused in his evidence recorded in the trial court; that the appellant was appointed in the Police Department in the year 2001 and in view of his long unblemished service record, the penalty awarded to him is too harsh.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant being

an injured complainant/eye witness of the occurrence had intentionally tendered contradictory evidence during the trial so as to extend benefit to the accused; that the testimony recorded by the appellant in the trial court would show that he was hand in glove with the accused; that a regular inquiry was conducted in the matter and the appellant was afforded opportunity of self defense as well as personal hearing; that the allegations against the appellant stood proved in a regular inquiry, therefore, he has rightly been dismissed from service.

5. We have heard arguments of learned counsel for the parties and have perused the record.


6. A perusal of the record would show that no incriminating material in support of the charge against the appellant was put to him in the shape of evidence during the inquiry. Disciplinary action was taken against the appellant upon the complaint of one Muhammad Nawaz, who is father of the deceased Sohail Nawaz, however the said Muhammad Nawaz was not at all examined by the inquiry officer. Instead of complainant Muhammad Nawaz, statement of his brother namely Muhammad Anwar was recorded during the inquiry proceedings, however the appellant was not provided any opportunity of cross examination of the said witness as well as rest of the witnesses examined during the inquiry proceedings, which has caused prejudice to the appellant. Moreover, the inquiry officer has not recorded any evidence, which could show that the appellant had effected compromise with the accused through an outside settlement but while passing the impugned order dated 05.11.2020, the District Police Officer Kohat has mentioned therein that the record as well as personal hearing of the appellant indicates that the appellant had effected compromise with the accused through an outside court settlement. One of the adverse finding against the appellant recorded by the inquiry officer is that it was mentioned in the FIR that the accused was arrested on the spot but the appellant had mentioned in his testimony recorded during the trial that the accused was




arrested from *Purana Larri Adda*. While going through the comments so submitted by the respondents, it has been mentioned by the respondents in reply to para-4 of the facts that the accused was arrested after hot pursuit. The aforementioned reply of the respondents is supporting the testimony of the appellant to the effect that the accused was not arrested on the spot. Keeping in view the facts and circumstances of the case, conducting of de-novo inquiry in the matter is necessary for reaching a just and right conclusion.

7. In light of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service for the purpose of de-novo inquiry with the directions to the competent Authority to conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.06.2022


(ROZINA REHMAN)
MEMBER (JUDICIAL)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
28.06.2022

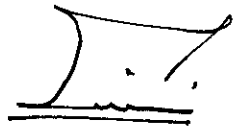
Appellant alongwith his counsel present. Mr. Arif Saleem, Stenographer alongwith Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service for the purpose of de-novo inquiry with the directions to the competent Authority to conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.06.2022



(Rozina Rehman)
Member (Judicial)



(Salah-Ud-Din)
Member (Judicial)

13-5-22

Proper DB not available the case is
adjourned on 29-6-22

H. J. [unclear]
Reuben

IN THE COURT OF AMER ALI,
JUDGE MODEL CRIMINAL TRIAL COURT/ASJ-II, KOHAT.

Sessions Case No. 103 of 2019

Date of institution : 09.10.2019

Date of transfer in : 06.07.2021

Date of decision : 11.10.2021

The State

Versus

Navid Ullah s/o Qareeb Ullah r/o
Muhammad Zai, Kohat

(Accused facing trial)

CHARGED U/SS.302/324/353/427 PPC R/W 15-AA VIDE FIR
NO.564 DATED 22.04.2019, 2019 POLICE STATION CITY, KOHAT

Case argued by:-

- Ms. Shaheen Tabassum, Sr. Public Prosecutor for the State and
- Muhammad Farooq Advocate, for the complainant
- Syed Muzahir Hussain Advocate for the accused

JUDGMENT

Brief facts of the case are, as per the narration of FIR Muhammad Iqbal ASI alongwith Sakhi ur Rehman HC, Muhammad Adeeb LHC and Minhaj LHC while on patrolling was present at Tehsil Gate Chowk when he heard report of fire shots coming from Tanga Chowk and observed TO(Traffic Officer) Muhammad Yousaf HC was scuffling with a person whose name was later on disclosed as Naveed Ullah son of Qareeb Ullah r/o Muhammad Zai. He (Muhammad Iqbal ASI), with the help of constables apprehended and disarmed the said armed person.

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2. At the spot of occurrence TO Muhammad Yousaf then lodged report to Muhammad Iqbal ASI that he was present at the spot for the purpose of traffic control patrolling, when in the meanwhile the arrested accused Naveed Ullah fired with his pistol at another person whose name was disclosed as Sohail Nawaz son of Muhammad Nawaz, r/o Muhammad Zai due to which he was hit and fell down. He (TO Muhammad Yousaf) tried to apprehend the said armed person but he too was fired at by him with murderous intent as result of which he sustained firearm injury on his right shin and his official motorcycle was also damaged. Due to firing of the accused a passerby lady had also been injured. Report of Muhammad Yousaf HC was reduced in the form of Murasila Ex.PA/1 and sent to the Police Station on the basis of which instant case FIR Ex.PA was registered.

3. After completion of investigation, accused was sent up to face trial vide final report u/s 173 Cr.P.C., the accused were summoned and after compliance of provisions of section 265(c) Cr.P.C, formal charge was framed against him to which they pleaded not guilty and claimed trial.

4. The prosecution in order to prove the guilt of the accused, produced and examined 17-witnesses. Brief account of the statements so recorded before the Court is as under:

- I. PW-1, Dr. Khalid Noor on 22.04.2019 at about 09:38 AM conducted autopsy on the dead body of deceased Sohail Nawaz and submitted his post mortem report Ex.PM and endorsement on injury sheet Ex.PM/1.
- II. PW-2, Muhammad Iqbal ASI is the reporting officer who on 22.04.2019, alongwith Sakhi ur Rehman HC, Muhammad Adeeb 998 LHC, Minhaj 358 were present on gasht at Tehsil Gate Chowk. In the meanwhile, voice of firing heard from Tanga Chowk and the people were running here and there. They arrived at the spot and the TO Muhammad Yousuf who was present on duty, got injured

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Khalid

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due to the firing of the accused and in injured condition reported the matter to him, which he incorporated in shape of Murasila No. PA/1. The death document of Sohail and injury sheet of injured women Mst. Kainab was prepared by Umar Khaliq ASI, while the injury sheet of the injured complainant Muhammad Yousaf was prepared by him Ex.PW.2/1 and was handed over to Constable Muhammad Adeeb which was sent to the hospital. He also recovered the weapon of offence .30 bore pistol bearing No.1265 with fixed empty charger which was freshly fired sealed into parcel No.1 as Ex P-1 vide recovery memo Ex PC. The Murasila was prepared and was sent to the Police Station Cantt through constable Sakhi ur Rehman HC for registration of case.

- III. PW-03 Mst. Kainab Jan wife of Gul Ahmad Khan alongwith his son Hamid Mehmood were going to their relative house towards Mustafa Bazaar. When reached the place of occurrence, a young man opened firing on another person due to which he got hit and died on the spot. She also sustained injuries on his left hip. Later on, she came to know that the person who had fired at the deceased and upon her is Naveed Ullah (accused facing trial).
- IV. PW-4, Muhammad Yousuf TO / Traffic Warden on 22.04.2019, at about 09.00 am, he was present on patrolling duty at Tanga Chowk near *Shaheed* Medical Store having official motorcycle Traffic Control, in the meanwhile, a person opened fire on another young man with his pistol with intention to kill him. He got hit and fell down, he tried to catch the armed person but he also fired upon him with the intention to kill him due to which he got hit on right shank of leg and sustained injuries. In the meanwhile, the police party in the supervision of Muhammad Iqbal ASI arrived on the spot who caught hold of the accused and disarmed him. The accused disclosed his name as Naveed Ullah r/o Muhammad Zai, Kohat, due to the firing of accused Naveed Ullah one women

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also got hit and sustained injuries. The injured Sohail Nawaz s/o Muhammad Nawaz died on the spot. His official motorcycle also got hit and was damaged. His report was reduced into writing in shape of Murasila. The site plan was prepared on his pointation.

- V. PW-5, Dr. Arshad Sohail on 21.04.2019 examined the injured TO Muhammad Yousuf HC and submitted his report Ex.PW-5/1.
- VI. PW-6, Arshad Mehmood OII Stated that on the transfer of Inspector Muhammad Raghieb OII, the further investigation was entrusted to him on 25.04.2019. He vide his application produced the Muhammad Nawaz before the Illaqa Magistrate vide his application Ex.PW-6/1, the statement of Muhammad Nawaz recorded under section 164 Cr.P.C before the Court Ex.PW-6/1. During interrogation the accused Naveed Ullah was ready to point out the place of occurrence and vide pointation memo Ex PW-6/3 the accused rightly pointed out the place of occurrence. As the accused confessed his guilt before him, therefore, he vide his application Ex.PW-6/4, he produced him before the Illaqa Magistrate for recording his confessional statement but he refused to confess his guilt and was sent to the judicial lockup. He also attached the list of legal heirs of deceased Ex.PW-6/5.
- VII. PW-7, Dr. Shumaila through video link recorded her statement stated that during the days of occurrence she was posted at KDA hospital. On 22.04.2019 she examined the injured Mst. Kinab Jan wife of Ahmad Khan aged about 45/46 years r/o Manda Khel Shadi Khel, Kohat and submitted her report Ex.PW-7/1.
- VIII. PW-08, Sakhi ur Rehman HC is the marginal witness to the recovery memo vide which the ASI Iqbal recovered the weapon of offence Pistol 30 bore No.1265 with fixed empty charger which was freshly fired which was sealed by the ASI Iqbal into parcel No.1 Ex P-1 by affixing 03/03 seals in the name of AK.

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K. Khat

IX. PW-09 Aqeel Hussain IHC is the marginal witness to the recovery memo Ex.PW- 9/1 vide which the IO took into possession during spot inspection from the place of deceased Sohail Nawaz some blood through cotton which was sealed into parcel No.2 Ex P-2. Similarly, some blood through cotton from the place of injured Mst. Kainab Jan which was sealed into parcel No.3 Ex P-3. Similarly, the IO also took into possession from the point No.3 near to the place of accused 11 empties of 30 bore which was in scattered condition freshly discharged which was sealed into parcel No.4 and one blood stained sock which was produced by the Yousaf HC/TO the IO having corresponding cut marks and sealed into parcel No.5 Ex P-5. The IO also took into possession one motorcycle bearing number police traffic Kohat from point No.4 which was damaged with two fire shots as Ex.P-6, another motorcycle Honda 125 bearing No.7143 model 1982 engine No.CG125E/1387584 chassis No. PTO 1077 Ex P-7, which were taken into possession on recovery memo by the IO in his presence as well as other marginal witness Nadeem Haider HC/ KBI. Similarly, he is also marginal witness to the recovery memo Ex.PW- 9/2 vide which the IO took into possession blood stained garments of deceased Sohail Nawaz consisting of Qamees, shalwar, one banyan white in color which was sent by the doctor through constable Fawad Ali 957, which were sealed into parcel No.6 Ex P-8 in his presence as well as other co-marginal witness Musawir Shah IHC / KBI. He is also marginal witness to the pointation memo Ex.PW-6/3 vide which the accused rightly pointed out the place of occurrence.

X. PW-10 Muhammad Raghbir SHO NAB Peshawar is the investigating officer of the instant case who proceeded to the spot and prepared the site plan Ex.PB on the pointation of complainant. He produced the accused before the Illaqa

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Magistrate for obtaining police custody vide his application Ex.PW- 10/1, upon which 04 days police custody was granted. Vide recovery memo vide which he took into possession during spot inspection from the place of deceased Sohail Nawaz some blood through cotton which was sealed into parcel No.2 Ex P-2. Similarly, some blood through cotton from the place of injured Mst. Kainab Jan which was sealed into parcel No.3 Ex P-3. Similarly, he also took into possession from the point No.3 near to the place of accused 11 empties of 30 bore which was in scattered condition freshly discharged which was sealed into parcel No.4 P-4 and one blood stained sock which was produced by the Yousaf HC/TO to him having corresponding cut marks and sealed into parcel No.5 Ex P-5. He also took into possession one motorcycle bearing number police traffic Kohat from point No.4 which was damaged with two fire shots Ex.P-6, another motorcycle Honda 125 bearing No.7143 model 1982 engine No.CG125E/1387584 chassis No.PTO 1077 Ex P-7, which were taken into possession on recovery memo by him in his presence marginal witnesses. Similarly, vide recovery memo vide which he took into possession blood stained garments of deceased Sohail Nawaz consisting of Qamees, shalwar, one banyan white in color which was sent by the doctor through constable Fawad Ali 957, which were sealed into parcel No.6 Ex P-8 in the presence of marginal witnesses. He also took into possession vide recovery memo Ex.PW- 10/1 the blood stained garments consisting of shalwar silver in colour belonging to injured Kainab Jana produced by constable Menhaj 358 and sent by the doctor and sealed into parcel No.7 as Ex P-9 in the presence of marginal witnesses. On 22.04.2019, to the FSL in respect of parcel No.2,3, 5,6, 7 which is Ex.PW-10/2, He also drafted an application to the Arms expert in respect of weapon of offence and empties which is Ex.PW- 10/3. The FSL report

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M. Ishaq

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Ex PW.10/4. I placed on file the MVE report which is Ex PW 10/5. The FSL report in respect of blood stained articles is Ex.PW- 10/6. The photos four in number during pointation by the accused are Ex.PW-10/7 consisting of 04. Thereafter, he was transferred from the Police Station and the remaining investigation was conducted by another IO.

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XI. PW-11, Mian Nizam Gul ASI CTD incorporated the contents of Murasila in shape of FIR.

XII. PW-12, Musawir Shah IHC is the marginal witness to the recovery memo vide which the IO took into possession blood stained garments of the injured Kainab Jana consists of Shalwar silver in color sent by the doctor through constable Menhaj 358 and sealed into parcel No.7 Ex P-9 in his presence as well as other marginal witness Nadeem Haider. Likewise, he is also marginal witness to the recovery memo Ex.PW-9/2 vide which the IO took into possession blood stained garments of deceased Sohail Nawaz consisting of Qamees, shalwar, one banyan white in color which was sent by the doctor through constable Fawad Ali 957, which were sealed into parcel No.6 Ex P-8 in his presence as well as other co-marginal witness Aqeel Hussain IHC. He is also marginal witness to the pointation memo Ex.PW-6/3 vide which the accused rightly pointed out the place of occurrence. The pointation memo was prepared in his presence as well as in the presence of other marginal witness Aqeel Hussain IHC.

M. Khalid

XIII. PW-13 Yousuf Jameel No.35 stated that on 24.04.2019 the IO handed over to him 07 (seven) parcels alongwith applications to FSL and road certificate Ex.PW-13/1 of the instant case which he took to the FSL and handed over the same to the FSL authorities wherein the road certificate (Ex.PW-13/1) was endorsed and he returned back to the Police Station where he handed over the same to the IO.

XIV. PW-14 Badi us Zaman MVE had examined official motorcycle police official and submitted his report.

XV. PW-14, Ayat Ullah, SI, submitted complete challan against the accused.

XVI. PW-15, Muhammad Nawaz s/o Haq Anwar is the father of deceased Sohail Nawaz. On 22.04.2019, accused facing trial Naveed Ullah murdered his son Sohail Nawaz in Tanga Alda Chowk. On 25.04.2019, he recorded his statement before the Magistrate u/s 164 Cr.P.C. wherein he has charged accused facing trial for the commission of offence. Motive behind the occurrence was blood feud between their relatives and the accused. He charged the accused facing trial for the commission of offence.

XVII. PW-16, Wajid Zaman s/o Arshad Zaman is the co-villager of deceased Sohail Nawaz who identified the dead body of deceased before the police and doctor in the hospital.

XVIII. PW-17, Umar Khaliq, ASI, prepared injury sheet, Ex.PW.17/1 of Mst. Kinab Jan and injury sheet, Ex.PW.17/2 and inquest report, Ex.PW.17/3 of deceased Sohail Nawaz.

5. The evidence produced by the prosecution shall be discussed in detail alongwith its implication on the fate of the case in the relevant paras of the judgment.

6. After closing of prosecution evidence statement of the accused was recorded under section 342 Cr.P.C. He denied the allegations, claimed innocence and contended to have been falsely charged. He did not opt to be examined on oath nor produced defense evidence.

7. Arguments of learned Sr. PP for the State assisted by private counsel for the complainant and defence counsel with reference to the evidence brought on the file have been heard and perused the record.

8. Learned Sr. PP for the State and learned private counsel of father of deceased have argued that the accused facing trial was not just

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h.t. Ullah

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directly charged in the FIR but was also arrested red handed from the spot of occurrence alongwith the weapon of offence. Muhammad Iqbal AS who was present in the vicinity of spot of occurrence arrested the accused immediately after the occurrence and recovered from his possession the crime weapon, he has given consistent and trustworthy evidence regarding the mode and manner in which the accused was arrested which is in line with the version put forth in the FIR. The weapon of offence i.e. .30 bore pistol recovered from the immediate possession of the accused matched with crime empties recovered from the spot. Complainant Muhammad Yousaf TO had fully supported the prosecution case in his examination in chief and stated the same version as narrated in the FIR, however, during cross-examination he extended certain concessions to the accused by contradicting the mode, manner and place of arrest of the accused which was result of extraneous considerations thus he was declared hostile and during cross examination by the prosecution he has again admitted that the report was lodged by him and he had signed the Murasila after the same was read over to him. The complainant had never disowned the report lodged by him nor he had made any statement before the IO that the accused was not arrested in the mode and manner as stated in the FIR. The passerby lady who sustained firearm injuries though has not charged anybody for the commission of offence however her testimony does corroborate the version of prosecution to the extent of venue where the occurrence took place. Father of the deceased though not an eyewitness has nevertheless charged the accused and stated the motive behind the occurrence to be blood feud between his relatives and the accused. The medico-legal evidence in the form of post mortem report of the deceased and the MLRs of the injured corroborates the prosecution case.

9. On the other hand, learned defence counsel has argued that the accused facing trial has been falsely implicated in the case merely on the basis of suspicion and was infact not at all arrested from the spot which the complainant who is the star witness has admitted during his cross-

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M. Iqbal

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examination and has reiterated in his cross-examination subsequent to the re-examination by the prosecution that infact the actual culprit had escaped from the spot and the accused facing trial was arrested from a place far away from the spot of occurrence. The complainant has categorically stated in his subsequent cross-examination that he was pressurized by ASI Iqbal to sign the Murasila against his will. Since the complainant was not willing to falsely depose on Oath therefore he while being examined under Oath has brought forth the true facts before the Court. Presence of ASI Iqbal who allegedly apprehended the accused is doubtful as no daily diary showing his departure from the police station/police post has been brought on record and his stance of having arrested the accused at the spot of occurrence is contradicted by the complainant as well as the injured bystander lady who has stated that no arrest was made at the spot in her presence. The IO during spot inspection recovered a motorcycle on which the deceased at the time of occurrence was riding but neither in the FIR nor in the testimony of any of the witnesses it is mentioned that the deceased was riding a motorcycle at the time of occurrence which also belies the version set forth in the FIR. The occurrence allegedly took place on a busy road during rush hours, there is no evidence that the spot was secured by the police after the occurrence thus it is impossible that the crime empties would have remained lying on the spot despite the rush of people and traffic. The pistol shown recovered from the accused was infact planted against him which is evident from the fact that though the recoveries were shown effected on 22.04.2019 but the pistol and empties were received in the FSL on 22.04.2019, no entries regarding the same were made in register no.19 as the same has not been exhibited in evidence nor placed on record by the IO nor there is any evidence available to show in whose custody the same remained in the intervening period. Site plan also negates the prosecution story as the deceased and injured lady at the time of occurrence were shown present in front of a medical store which was supposedly having a glass front but neither its glass front is shown damaged nor any bullet marks were

observed on the nearby walls. Despite the occurrence having taken place in a public place and a busy road no private person was examined by the I.O nor produced during the trial to prove the guilt of the accused.

10. Accused facing trial is alleged to have committed murder of deceased Sohail Nawaz son of Muhammad Nawaz r/o Muhammad Zai in the vicinity of Tonga Chowk in front of Al-Shaheed Medical Store, by firing at him with his .30bore pistol. A bystander lady(PW3 Mst. Kainab) was also injured due to firing of the accused. PW4 Traffic Officer Yousaf HC present nearby at the time of occurrence allegedly attempted to apprehend the accused who tried to thwart his attempt by firing at him and injuring him on the left leg. Accused was allegedly arrested at the spot alongwith the crime weapon .30 bore pistol (Exp-1) by PW2 Iqbal ASI who scribed the report made to him by the complainant/PW4 which was reduced in the form of Murasila Ex.PA/1.

11. PW.4 Yousaf TO/Warden in his examination in chief has reiterated the contents of his report ad-verbatim and has narrated the entire occurrence as it took place by stating how he witnessed a person whose name was later disclosed as Naveedullah (accused facing trial) fire at another young person whose name was later disclosed as Sohail Nawaz, with his pistol who got hit and fell down, how he tried to catch the said armed person but was also fired at resulting in firearm injuries and that in the meanwhile Iqbal ASI(PW2) arrived at the spot who apprehended and disarmed the accused. He has also vividly reiterated the other details regarding the occurrence as mentioned in his report such as injuries caused to a woman due to firing of accused and damage caused to his official motorcycle. He has also stated that the report was lodged by him which was reduced in form of Murasila, it was read over to him and he then signed it. He also testified that the site plan was prepared at his pointation.

12. During cross-examination the PW4 took an about turn by denying the mode and manner of arrest of the accused as stated in his report. Relevant portion of his cross-examination is reproduced as under:

"It is correct that I have arrested the accused facing trial from the Purana Lari Adda Kohat on the pointation of other people."

Thus he has completely denied his report to the extent of the accused having been arrested at the spot by Iqbal ASI. The PW 2 during his cross-examination has stated that after the occurrence, the accused had decamped from the spot whom he chased firstly on foot, then took lift on the motorcycle of somebody and went to *Purana Lari Adda*. The PW 1 also admitted that he was not an eyewitness of occurrence as he had not seen the accused while he was firing on the spot

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13. As the complainant/PW4 had stated a different version in his report Ex.PA/1 which was purportedly signed by him and had reiterated the same in his examination chief and had endorsed it which he contradicted in his cross-examination, therefore on application moved by the prosecution he was declared hostile and the prosecution was allowed to cross-examine him.

Iqbal

14. During cross-examination by the prosecution he admitted that the report lodged by him was read over to him and after admitting it as correct he signed it. He also admitted that he was given reward of Rs.50,000/- by his department for catching hold of accused of the instant case and for showing bravery. He has also admitted that he had been terminated from service as result of inquiry conducted against him in respect of his statement in the present trial. He admitted that being police official he was bound to follow the law and was not bound to follow illegal orders of his superior officers.

15. After cross-examination by the prosecution, the accused was also allowed to cross-examine the witness and during cross-examination by the accused he stated that his examination in chief was recorded in the absence of counsel for the accused and same was dictated by the public prosecutor in English which he does not know thus he was ignorant of what was being

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dictated. He admitted that first he had refused to sign the Murasila ... by Iqbal ASI but he was pressurized into doing so by Iqbal ASI. He also admitted that in the departmental inquiry proceedings against him he had stated that Iqbal ASI had twisted the actual facts regarding mode and manner of arrest of the accused.

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16. The complainant of the case(PW4) though in his cross-examination has resiled from his report reduced in the form of Murasila Ex.PA/1 to the extent of arrest of accused at the spot of occurrence and the complainant during cross-examination has also denied that he had witnessed accused firing at the spot of occurrence. However he during his examination in chief had narrated the occurrence as it is mentioned in the Murasila and also stated that the Murasila was signed by him after the same was read over to him. As regards his admission during his cross-examination by the accused after the prosecution was allowed to cross-examine him, that his examination in chief was recorded in absence of defense counsel and he did not know what was being dictated, his examination in chief and cross-examination were recorded on the same date i.e. 22.07.2020 but the learned defense counsel on the said date did not raise any objection nor any questioned the witness during cross-examination that his examination in chief was recorded in the absence of the counsel for the accused. The accused at no stage of the trial has raised any objection that the examination in chief of witness was recorded in the absence of counsel for the accused. Thus the contention of the witness that his examination in chief was recorded in absence of counsel for the accused is repelled from the record. Similarly the judicial proceedings have presumption of truth¹, hence it is to be presumed that the statement recorded by the PW4 on 22.07.2020 was read over to him which he admitted as correct.(RO&AC which means read over and admitted as correct is mentioned at the end of statement). Neither on the date of recording of statement of the PW4 nor on any subsequent date did the

L. Iqbal

¹ Article 91 of Qanun-e-Shahadat

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PW4 or the accused raise any objection that the examination in chief of the witness as shown recorded were infact not the utterances of the witness.

17. The PW4 has been termed as a hostile witness by the prosecution and declared as such by the Court thus allowing the prosecution to cross-examine hence his testimony requires scrutiny with an extra degree of care.² To see which of the versions put forth by the witness is true, his examination in chief, cross-examination by the accused, cross-examination by the prosecution and subsequent cross-examination by the accused all need to be taken into account and kept in juxtaposition with other circumstances of the case.

18. In his examination in chief the witness has reiterated the same facts as mentioned in the Murasila which he has admitted was signed by him. During cross-examination by the accused he has made certain statements favourable to the accused i.e. the accused was not arrested at the spot and that he has not actually seen the accused firing at the spot of occurrence. The statements favourable to the accused were made by the witness not in answer to a searching question or in continuation of a searching cross-examination rather he has simply affirmed the suggestions put to him by the accused. Relevant portions of his cross-examination favourable to the accused are reproduced;

"It is correct that I have arrested the accused facing trial from the Purana Lari Adda Kohat on the pointation of other people."

"It is correct that I have not seen the accused facing trial while he was firing on the spot."

"It is correct that after the occurrence when I came to the Purana Lari Adda and back to the spot it took 30-35 minutes."

² 1983 SCMR 513, 1972 SCMR 597

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19. The manner in which the answers favourable to accused were elicited by way of positive suggestions points towards the probability of prior connivance between the accused and the witness and a strong probability exists that the answers given by the witness were result of pre-planning that's why he in his examination in chief has supported his earlier version as narrated in his report so that he may avoid being cross-examination by the prosecution and from being declared as hostile witness as he supported prosecution version in his examination in chief and obliged the accused in his cross-examination by affirming the suggestions put to him by the defense. The conduct of PW.4 is also very much relevant as admittedly he received a sum of Rs.50,000/- as reward for catching the accused red handed despite having sustained injury thus he was rewarded by his department for showing bravery. The conscious of the witness did not wake up when he was taking the reward nor he disclosed to his department at the time when he was being rewarded that the accused was not arrested in the mode and manner as alleged in the report/FIR rather whole heartedly accepted the reward. The witness during cross-examination by the prosecution has admitted that he was not bound to obey any illegal order of his superior officer(s) but was bound to follow the law, hence, his contention that he was pressurized by Iqbal ASI to sign the Murasila does not appeal to logic.

20. Till the date he was examined in the Court, the PW4 did not move any written application nor approached his high ups or the Court that the version narrated in the FIR was false. Similarly, the accused has also at no stage of investigation moved any application to the IO or even to the Court nor sought any re-investigation by pleading that he was not arrested from the spot as alleged in the FIR. In the circumstances, it is apparent that the version of PW.4 as recorded in the Murasila Ex.PA/I and as narrated by him in his examination in chief is the true version of the events and the statements favourable to the accused made by him during cross-examinations by the accused were result of malafide

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intention on his part to extend benefit to the accused for which he has been admittedly penalized by his department in the form of dismissal from service.

21. The PW.4 is the star witness as he is the only eyewitness to the extent of accused having fired at the spot of occurrence, though he has turned hostile to the extent of mode, manner and place of arrest of the accused, nevertheless, he has stated that the accused facing trial was arrested in the proximity of time of the occurrence. However, having turned hostile, his testimony required corroboration which in the instant case is in the form of testimony of PW.2 Iqbal ASI who scribed the report of the PW.4 in the form of Murasila Ex.PA/1, apprehended the accused at the spot of occurrence and recovered from his possession the crime weapon in the shape of .30 bore pistol Ex.P-1 vide recovery memo Ex.PC which as per the FSL report Ex.PW.10/4 matched with the crime-empties recovered from the spot.

22. The PW.2 in his examination in chief stated that while he was present on patrolling duty at Tehsil Gate Chowk, in the meanwhile, he heard report of firing from Tanga Chowk, he arrived at the spot where he found T.O Muhammad Yousaf who had been injured due to firing of accused and who in injured condition reported the matter to him, which he incorporated in the form of Murasila Ex.PA/1, the report was read over to the PO Muhammad Yousaf who after accepting it as correct he signed the report. He further testified that he arrested the accused vide card of arrest Ex.PW.2/2 and also recovered the weapon of offence i.e. .30 bore pistol No.1265 which was freshly fired and sealed into parcel No.1 Ex.P-1 vide recovery memo Ex.PC. The PW.2 in his examination in chief did not mention an important detail i.e. that when he arrived at the spot the accused and the complainant (PW.4), however, in his cross-examination did state that when he arrived that he had arrested the accused when he was scuffling with the complainant. Relevant portion of his cross-examination is reproduced as under;

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"The accused was not handed over to me by the complainant Yousaf rather I have arrested him on the spot at the time when he was scuffling with the T.O Muhammad Yousaf."

23. Cross-examination is a part of the statement of a witness and the statement of the witness is to be taken into consideration in its entirety i.e. the examination in chief coupled with the cross-examination. Hence, from the examination in chief as well as cross-examination of the PW.2 it is evident that the accused facing trial was apprehended at the spot of occurrence by the PW.2 alongwith weapon of offence while he was scuffling with the complainant TO Muhammad Yousaf HC.

24. The accused facing trial has failed to point out even a single cogent reason during the trial as to why the PW.2 would falsely implicate him and concoct a story against him. The occurrence took place at 0900 hours the FIR was chalked out on the basis of Murasila at 0930 hours (time of report is mentioned as 0903 hours in the Murasila) as per the MLR of T.O Muhammad Yousaf (Ex.PW.5/1) he was examined at KDA hospital at 0930 hours, the MLR in respect of injured lady is Ex.PM/1 mentions no time of her examination, however, the PW.7 Dr. Shumaila Usman who examined her during cross-examination stated that though she did not remember the exact time of the examination, however, it was between 0915 hours to 1000 hours. All these facts taken together leave no room for considering that the report may have been lodged after deliberation and consultation especially when none of the legal heirs of the deceased were present at the time of lodging of report.

25. The injured lady Mst. Kainab who was examined as PW.3 was a bystander and sustained injuries during the occurrence. During cross-examination she had stated that the name of the accused was disclosed to her by the police. As per her version, no arrest was made in her presence at the spot, however, she has also stated that she left for the hospital in a Rickshaw on her own after having remained at the spot for

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just three minutes. Since the lady had remained at the spot for just a few minutes and as per her statement left for the hospital, then it is obvious that she would not be much aware of what was taking place around her. The lady is a rustic villager who has no relationship with either party, hence, she is not expected to narrate all the details regarding the occurrence and the omissions in her statement in the peculiar circumstances of the instant case are not fatal to the prosecution case. Similarly, her statement that she reached at the spot of occurrence at 1000 hours can be attributed to her being a rustic villager who is not supposed to keep accurate count of time and in any case her said statement regarding her reaching the spot of occurrence at 1000 hours is belied by other documentary evidence thus the same can be ignored easily without causing prejudice to the prosecution.

26. Another important aspect of the case pertains to motive behind the occurrence PW.15 Muhammad Nawaz father of the deceased has stated that there was blood feud between their relatives and the accused. During cross-examination no question or suggestion was put to him that there did not exist any blood feud between his relatives and the accused. In this respect, copy of FIR No.563 dated 29.08.2018 u/s 302/324/34 PPC of PS Cantt is available on file wherein the accused facing trial is mentioned as the complainant and Aziz Ullah, Arshad and Qalandar are mentioned as the accused. The accused in his statement u/s 342 Cr.P.C. was confronted with the said FIR which he admitted to have been lodged by him but denied that the said accused nominated by him are the relatives of deceased of the instant case, however, the father of the deceased who has charged him was never questioned on this aspect. Hence, why of all the people present at the spot of occurrence or its vicinity, the accused facing trial was implicated is answered *inter-alia* by the blood feud between him and the relatives of the deceased. The accused has not brought on record any other enmity of the deceased with any other party, neither the I.O nor the father of the deceased were questioned

regarding enmity of the deceased or his family with anyone else than the accused facing trial.

27. The prosecution through cogent and reliable evidence has thus proved its case against the accused to the extent of murder of deceased Sohail Nawaz, firing at the complainant Muhammad Yousaf then T.O with intent to cause his murder due to which he sustained grazing wound on lateral aspect of right leg and resisting his lawful arrest by use of criminal force, causing firearm injury to Mst. Kainab Bibi due to which firearm injury on left hip. The accused is also found guilty of offence of causing damage to the official motorcycle of T.O Muhammad Yousaf which was damaged due to bullets fired by the accused. Similarly, the accused is also found guilty of having in his possession .30 bore pistol No.1265 in respect of which he did not have any license and which was used by him for the commission of offence. The accused had no intention of committing murder of Mst. Kainab Bibi who was caught in the firing intended by the accused at the deceased therefore allegation of attempting the murder of Mst. Kainab Bibi has not been proved.

28. AS regards the quantum of sentence, the accused at the time of occurrence had just attained the age of majority and was between 18 to 19 years old, moreover, there are certain discrepancies in the evidence as discussed earlier which though do not warrant outright acquittal of the accused, nevertheless, the same are taken as mitigating circumstance for award of lesser punishment.

29. Accordingly, the accused is hereby convicted and sentenced as under:

Imprisonment for life as *Tazir* u/s 302 (b) PPC for committing Qatl-i-amd of deceased Sohail Nawaz with payment of compensation of Rs.4,00,000/- (Rupees four lacs only) of the deceased U/S 544-A Cr.P.C, recoverable as arrears of land revenue or in default to undergo simple imprisonment for a period of six months, the compensation if recovered

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shall be distributed amongst the legal heirs of the deceased as per their *shari share*. The accused facing trial is also convicted u/s 324 PPC for attempting at the life of Muhammad Yousaf (then HC Traffic Officer) and sentenced to undergo R.I for three years and payment of fine of Rs.20,000/- or to suffer 03 months S.I in default thereof. The accused is convicted u/s 337-F(iii) for causing firearm injury on the lateral aspect of right leg of injured/complainant Muhammad Yousaf and sentenced to R.I of one year and payment of *Daman* to the tune of Rs.10,000/-, the accused is convicted u/s 337-F(iii) for causing firearm injury to Mst. Kainab Jan on left hip and sentenced to R.I of one year and payment of *Daman* to the tune of Rs.20,000/-. The accused is convicted u/s 427 PPC for causing damage to official motorcycle which was in the custody of TO Muhammad Yousaf and sentenced to R.I of one year and payment of fine to the tune of Rs.20,000/- or to suffer simple imprisonment of one month in default thereof. The accused is convicted u/s 353 PPC for assaulting and using criminal force to prevent his lawful arrest and sentenced to R.I of two years and payment of fine to the tune of Rs.20,000/- or to suffer simple imprisonment of one month in default thereof. The accused is further convicted u/s 15 KPK Arms Act for having in his possession unlicensed .30 bore pistol No.1265 which was used by him for the commission of offence and sentenced to R.I of three months and payment of fine to the tune of Rs.10,000/- or to suffer simple imprisonment of one month in default thereof. The convict is given the benefit of section 382-B of the Code of Criminal Procedure. All the sentences shall run concurrently.

30. The accused facing trial is produced in custody, he is sent back to the prison to undergo the sentence. Copy handed over to the convict in the Court free of cost and in this respect, his thumb impression is obtained on the margin of order sheet. Copy of this Judgment be supplied to the office of DPP U/S.373 of Cr.P.C. Conviction warrant be sent to the Superintendent Jail for execution of the sentence forthwith.

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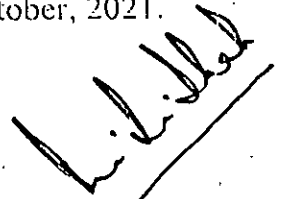
[Handwritten signature]

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Case property be dealt in accordance with law after expiry period of appeal/revision.

31. File be consigned to the Sessions record room after its necessary completion and compilation.

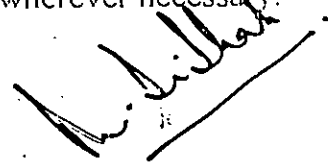
Pronounced in open Court at Kohat and given under my hand and the seal of the Court on this 11th day of October, 2021.



AMER ALI
Judge Model Criminal Trial
Court/ASJ-II, Kohat

CERTIFICATE

Certified that this judgment of mine consisting of 21 pages, each of which has been read, signed and corrected by me wherever necessary.



AMER ALI
Judge Model Criminal Trial
Court/ASJ-II, Kohat

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بیان محمد یوسف ۱۹۵۰

بیان کرنا ہوتا ہے میں نے عبدالرحمن سے

Examination in chief دہلی اور میں نے صحیح بیان

حکیم کو اقبال نے اصل واقعات کو فرود کر کے بیان

امدادی طور پر اقبال کو نہ ہو ورنہ میں بتا رہا تھا اس

کو دستخط کرنا سے پہلے میں ان کا کیا مقام کہہ کر کہہ رہا

اہل واقعات نہیں ہے۔ مگر مجھے اقبال کو نہ دیا

میں لکھ رہا تھا کہ اس طرف سے حکم دیا گیا تھا

کہ جو حکم میں عاقبت تھا اور دیا گیا ہے اس میں

دستخط کرنا ہے یہ ہے بیان

سوال 8 = اس مقدم میں آپ کو کوئی لکھام یا سند

ح - جی ہاں 50,000 روپے اس سرٹیفکیٹ
اب سچ ہے

سوال 9 کہ مزید خبر گیری کے لیے
آپ نے اس وقت سچ کیا تھا یا نہیں عدالت میں

سچا ہونا سچ کیا ہے ؟

ج - میں نے وائس چیمبر کی طرف سے سچ بولا ہے عدالت میں
سچ لکھا ہے اس میں تو سچ لکھا ہے

سوال 10 = کیا آپ نے ملزمان کی طرف سے دیا یا ان کے ذریعے
آپ نے ایسا بیان تو تبدیل نہیں کیا ہے ؟

ج - جی نہیں

7

میان ازیں سخی ارضیں Hc اخراج جو کی

اس تحریر حذاتی رو سے میان کرنا بیوں سے
صفحہ 22⁵⁴/₁₉ کو میں سے اخراج حذاتی لکھتے

خان Asi کیا ہے مگر نام مانگے جو کہ کو وہاں سے
جور پور Asi ضامیت کے لئے سر ایل محمد

محمد لونسف کے تحریر کیا ہے اور موقع پر علم کی گرفتار
ایجنڈا کی رپورٹ لکھی ہے دست ہے اور لکھی ہے

سر ایل Hc کو حوالہ کر کے جو میں نے قضاہ کر
قضاہ میں جو وجود ڈیوٹی آفسر کو لکھنے والی FIR

حوالہ کی یہ سر ایل ہے

Dhawan

44 PP 5 Bala

11 81 30

① (س) کیا ہے کی جو دہی میں 50 محمد لونسف نے خوف پر
جو رپورٹ کیا۔ اقبال خان نے شعل مرام اپنے ہاتھوں

مقام ارسال کیا۔ وہ محمد لونسف کا پورٹ تھا یا وہ نہیں

② (س) اقبال خان نے اپنی سرہن کی رپورٹ لکھی یا
محمد لونسف خان نے جو خوف سے رپورٹ کیا وہ لکھا

یاں (ج) 1

② (ج) لونسف نے موقع پر رپورٹ لکھی وہی لکھا ہے

بیان اذان ضیاح الدین $\frac{LHC}{DFC}$ جوئی محفل اہلسنت

میں اس خبر کو سنا کر ہرگز نہ سمجھا کہ ہرگز وقوع میں اقبال خان اسی کے ساتھ علاقہ نشتر پر موجود تھے کہ اس دوران مارٹرنگ کی آواز بطرف ٹائلڈ اڈہ سے سنی تھی۔ ٹوٹوں کا کھانا دوڑ دیکھ کر بطرف ٹائلڈ اڈہ جا کر ہمراہ انکا راج اقبال خان اسی کے ساتھ موقع پر TP یوسف خان ہمراہ ادیب LHC سے سی الرضی HC نے اپنی آدمی کو ہمراہ سنبول فالو کیا ہوا تھا۔ جگہ جگہ میں ناؤید اللہ معلوم ہوا۔ اقبال خان اسی کے پوچھنے پر TP یوسف خان نے بیان کیا کہ میرے سامنے نذیر نوید اللہ نے سنبول نواز ماما بندے کو قتل کیا اور ترسناری سے بچنے کی خاطر اس نذیر نے مجھ پر مارٹرنگ کی جیسے ہیں پاؤں پیرنگ کر رہی ہو انہوں اور میں نے وجود

سنبولوں ٹوٹوں نے بھی اس بات کی تائید کی۔ ہمہ بیان $\frac{LHC}{DFC}$

~~M. A. H.~~
DFC } TP
07-08-2020

سوال ① یہ آپ اس وقت کیا کیفیت تھی؟
ج میں اقبال خان اسی راج جوئی محفل گئے کیا تو محفل گزر کیفیات تھا

سوال ② یہ آپ نے کیا دیکھا؟
ج میں ہمراہ اقبال اسی موقع پر چلے گئے۔ TP یوسف خان ہمراہ ادیب LHC سے سی الرضی HC نے اپنی شخص کو
P.T.O

ح لیتوں قالو کیا تھا اور سالی کے کہیں سے کون کون سے لوگوں نے
 بڑے مقول سہیل نوار پر فائرنگ کر کے قتل کیا اور کس میں
 گرفتاری سے بچنے کیلئے جو لوگ آؤ گے اور پھر ارادہ قتل
 فائرنگ کر کے نکلے گا پھر سے میں نے نہ کر رہی ہوں
 سوال 3) ہیں وہ جہاں کیا محسوس کیا ہے To محمد یوسف جو
 بول رہا ہے یا سچ ؟

ج = موقع پر خود سینٹروں لوگ وقوع کی تائید کر رہے
 تھے

سوال 4) کیا FIR صفحہ نمبر 564 مورخہ 22/04/2019
 427-15AA-302-304-353 کے فائرنگی پر حریصیت تو
 یوسف To حقیقت پر مبنی ہے ؟

ج = جی ہاں مہری جو ہوگی میں محمد یوسف نے اپنے اہل خانہ
 کو راجوڑ کیا تھا

مکان ائین محمد نور خان ولد حق النور سید محمد زئی

۱۹۹۱-۹۲ ۱۹۹۱-۹۲ ۱۹۹۱-۹۲

اس شہر حیدرآباد کی رو سے یہ بیان کرتا ہوں کہ میں نے
یہاں محمد نور خان جو شہر میں در خواست ہے آ کر پوسٹ کے
صلاحت پورے پورے کو دیا ہے جو نام ذرا یہاں FC
میں قلمزدار ہے صبراً وہیں ^{آباد} ملوٹی کرنا ہے وہ اس میں
کہا میں حاضر ہوا ہوں درخواست میں جو کچھ تحریر ہے
حقیقت پر مبنی ہے میں اس کی تائید کرتا ہوں یہ
عبدالرحمن ہے

محمد نور خان

سوال 1) آپ اس وقت کیا کہیں گے؟
ع میں سوال جان ASI اجازت قبل فرمایا گیا
محبت کٹر کہیں گے۔

سوال 2) آپ نے کیا دیکھا؟
میں ہمہ اہ سوال ASI سوچتا ہوں کہ آج لوہے
میں کیا لوہے میں آج ہی آج ہی وہ کہیں گے
میں کہوں گا کہ آج ہی آج ہی آج ہی آج ہی
لوہے میں آج ہی آج ہی آج ہی آج ہی
میں کہوں گا کہ آج ہی آج ہی آج ہی آج ہی
میں کہوں گا کہ آج ہی آج ہی آج ہی آج ہی

سوال 3) آپ نے موقع کہاں کہاں لوہے؟
جو کہیں کہاں کہاں کہاں کہاں
ج۔ موقع میں جو کہیں کہاں کہاں کہاں

سوال 4) آپ کی FIR کتنی ہے؟
میں کہوں گا کہ آج ہی آج ہی آج ہی آج ہی
ج۔ میں کہوں گا کہ آج ہی آج ہی آج ہی آج ہی

بیان ارشد محمد اویہ خان سی حال SHO ڈھانہ ننگل

بیان کیا کہ مقدمہ عدالت 564 مورخہ 22/4/2019 بم 302-324
353-427/158A ڈھانہ سی

اندرونی نشین رائف حال الیکٹرک اے بی ڈھانہ سی نے کی تھی جو رقم 19
کو تبادلہ پر بھیجے حوالہ ہوئی۔ مقتول کے والد ارشد نواز کا بیان 164/161
تلمذ کیا گیا۔ ملزم نوید اللہ خراساں پولیس میں موجود تھا۔ دوران انٹاروگیشن
مذکورہ نے وقوعہ کا اقرار کیا۔ جبکہ موقع پر لے جا کر موقع کی نشاندہی کرائی
ملزم کا اقبالی بیان زیر دفعہ 161/ص و قلمبند کیا دیگر گواہان شہادت لکھن
نشاندہی موقع سیشن مستحضر PSI کے بیانات 161/ص و بھی میں لے قلمبند
کئے تھے۔ ملزم ملیندری بیان 164/384 CRP کے لئے پیش عدالت کر کے مذکورہ
موت کو صحت بدل میں جمع کیا تھا۔ بعد میں کرنے نشین مثل مقدمہ حوالہ
5140 ماہیا کیا تھا۔ یہ میرا بیان ہے۔

SHO. JK.
1-9-20

سے تر جو لیزول ملزم سے پیرا پیرا تھا وہ آلم قتل
جاء ہاں

س ۲۔ تر آب کو جو لفتیش حوالہ پیرا تھا لو عام حیدر ملو بیار کیا تھا
ج۔ عام حیدر ملو بیار لو لیکہ کے صف میں تھے بلکہ سو سٹل مندر
پیر لو لیکہ زندہ ماد کے لکھے تھے

س ۳۔ کیا آب نے لا لکتف گھرانے بیانات لایے یا نہیں ؟
ج۔ اسٹیڈی لفتیش الیکٹرک لکٹ خان نے کیا تھا جب لفتیش صبر
نام مارا کی بیڑی تھی تو ملزم کسٹڈی میں تھا۔ ملزم کا بیان
۱۹۱۱ء میں عدالت نے قلمبند کیا تھا جس نے وقوع کیم لیا تھا
اور موقع کئی لکنا دیسی میں کرائی تھی

س ۴۔ کیا تا محمد یوسف نے آب کو کوئی شکایت کیا تھا کہ اہمال
نے صبر اور لوور ملکر لیا ہے ؟

۵۱۱
۵۱۵
۹
۲۰

ج۔ نہیں

س ۵۔ لفتیش موقع کس کی لکنا دیسی پیرا کیا ہے ؟
ج۔ لفتیش موقع الیکٹرک لکٹ خان نے صورت کیا تھا

س ۶۔ بحیثیت لفتیشی آصر آب کے خیال میں موقع صحیح رہتا ہے یا نہیں
ج۔ جی ہاں صحیح رہتا ہے

س ۷۔ تا محمد یوسف ان چھوٹی پولوں پر با آس وقت چھوٹی پول
رہا تھا ؟

(2)

ج ۲ To محمد کوسو عدالت میں سولہ روپے عدالت میں عدالت میں عدالت میں

~~Handwritten signature~~

SHO JK
1.9.20

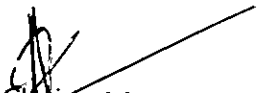
M/10/100

11.08.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration Subject to all just and legal objections including that of limitation to be determined during full hearing, this appeal is admitted for full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 16.12.2021 before the D B.

Appellant Directed
Security & Process Fee
- 11/8/21


Chairman

16.12.2021

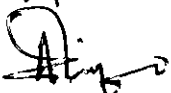
Appellant in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Arif Saleem, Steno for respondents present.

Written reply/comments on behalf of respondents submitted which is placed on file. A copy of the same is also handed over to the appellant. Adjourned. To come up for arguments on 30.03.2022 before D.B


(MIAN MUHAMMAD)
MEMBER (E)

30-3-2022

Proper DB not available the case is adjourned to come up for the same as before on 13-5-2022.





Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 2818 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/02/2021	<p>The appeal of Mr. Muhammad Yousaf resubmitted today by Naila Jan 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 16/2/2021</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/04/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
23.04.2021		<p>Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 11.08.2021 for the same as before.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mr. Muhammad Yousaf Ex-IHC No 882 of District Police Kohat received today i.e. on 02/02/2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of impugned order dated 06.11.2020 and departmental appeal against it are not attached with the appeal which may be placed on it.
- 2- Copy of rejection order of departmental appeal dated 05.01.2021 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Appeal has not been annexed/marked annexures' marks.
- 5- Annexures of the appeal may be attested.
- 6- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 251 /S.T,

Dt. 02/02/2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Advocate, Pesh.

*Removed all
the objections and
resubmitted by
Naila Jan
16/2/2020*

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A _____/2021

Muhammad Yousaf

VERSUS

IGP Khyber Pakhtunkhwa & Others

INDEX

<i>S#</i>	<i>Description of Documents</i>	<i>Annex</i>	<i>Pages</i>
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4.	Copy of Charge Sheet along with statement of allegation	"A"	9
5.	Reply to the Charge Sheet	"B"	10
6.	Copy of Inquiry Report	"C"	10-12
7.	Copy of the Dismissal Order dated 04/11/2020	"D"	13
8.	Copy of Departmental Appeal and Appellate order	"E & F"	14-20
9.	Wakalatnama		20

Dated : 16/02/2021


Appellant

Through


Naila Jan

Advocate, High Court,
Peshawar.

BEFORE The KHYBER PUKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 2818/2021

Diary No. 2255

Dated 02/02/2021

Muhammad Yousaf (Ex: IHC No. 882 Of District Police Kohat.

(Appellant)

VERSUS

1. Inspector General of Police Khyber Pukhtunkhwa Peshawar.
2. Regional Police Officer Kohat Region.
3. District Police Officer Kohat.

(Respondents)

Filed to-day
[Signature]
02/02/2021
Registrar

APPEAL UNDER SECTION 4 OF THE KHYBER
PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 6/11/2020
OF RESPONDENT NO 1 WHEREBY THE APPELLANT
WAS DISMISSED FROM HIS SERVICE AND
APPELLATE ORDER DATED 05/01/2021 WHEREBY
DEPARTMENTAL APPEAL OF THE APPELLANT WAS
REJECTED FOR NO GOOD GROUND BY
RESPONDENT NO 2 FOR NO GOOD GROUND AND
NON DECIDING REVISION PETITION OF THE

Re-submitted to -day
and filed.

[Signature]
Registrar
16/2/2021

n/af

**APPELLANT UNDER 11-A OF THE POLICE RULES
1975 DESPITE EXPIRY OF STATUTORY PERIOD
UNDER THE IBID RULES**

Prayers:

**On acceptance of the instant appeal the
impugned order dated 06/11/2020 and
Appellate Order dated 05/01/2021 may kindly
be declared illegal, void ab-initio, set aside the
same and the appellant may be reinstated into
service with all back benefits.**

**Any other benefits not specifically prayed
for may kindly be awarded as this Hon'ble
Tribunal deems fit.**

Respectfully Sheweth:

1. That the appellant was enlisted in the police department in 2001 and since his appointment, the appellant performed his duty with great zeal and zest and to the entire satisfaction of the high-ups.
2. That due to his satisfactory and efficient performance of his duties, the appellant was awarded a number of cash awards.
3. That the appellant was transferred to traffic police in the year 2017 where the high-ups of the appellant were satisfied from his meritorious services.

3

4. That unfortunately upon the appellant charge sheet and the statement of allegations were served wherein it was alleged that being complainant, injured and eye witness of the case FIR No: 564 dated 22/04/2019 U/s 302, 324, 353, 427, 15-AA, PS: City got recorded contradictory statement before the trial court having connivance with the accused in order to extend benefit to him and thus violating the prosecution case intentionally. (Copy of Charge Sheet along with statement of allegation is Annexure "A")
5. That the appellant within time submitted reply to the charge sheet and submitted to the inquiry officer wherein the appellant denied the charge leveled against him and claimed innocence. (Reply to the Charge Sheet is Annexure "B")
6. That inspite of denial of the charge, departmental inquiry was initiated against the appellant and the inquiry officer without recording statement of allegation or providing opportunity of defense, conducted the inquiry in slip shot manner in violation of Police Rules 1975 recommended appellant for punishment. (Copy of Inquiry Report is annexure "C")
7. That the appellant was awarded major punishment of dismissal from service vide order dated 04/11/2020 without providing opportunity of personal hearing in violation of law. (Copy of the Dismissal Order is annexure "D")
8. That feeling aggrieved from the dismissal order, the appellant filed a Departmental Appeal before

2

Respondent No:2, however, the same was rejected through a non-speaking orders dated 05/01/2012. (Copy of Departmental Appeal and Appellate order are Annexure "E & F")

9. That feeling aggrieved from both the impugned orders, the appellant has no other adequate remedy, hence filing the instant appeal within the statutory period on the following grounds:-

GROUND:

A. That the impugned orders are against law, rules, principles of natural justice, void ab-initio, hence liable to be set aside.

B. That no charge sheet along with statement of allegation has been served/ issued before conducting the so called ex-parte inquiry in violation of the Khyber Pakhtunkhwa Police Rules 1975.

C. That no opportunity of personal hearing/ defense has been provided to the appellant at any stage of the disciplinary proceedings.

D. That the appellant has been proceeded for involvement in criminal case, however the legal heirs of the deceased declared the appellant

5

innocent which is evident from the judgment of ATC Court.

- E. That no regular inquiry has been conducted in accordance with Khyber Pakhtunkhwa Police Rules 1975 as no opportunity of defense has been provided or nor did associated the appellant with proceedings.
- F. That the inquiry officer failed to bring any iota of evidence against the appellant.
- G. That no charge of absence mentioned in the charge sheet along with statement of allegation nor the same was inquired by the IO, however, the appellant was punished for the same.
- H. That the so called absence was not willful as the appellant was in the illegal custody of the respondents.
- I. That right of fair trial has not been provided to the appellant as guaranteed by Article 10-A of the Constitution.



6

J. That no statement of any witness has been recorded nor did opportunity of cross-examination have been provided to the appellant.

K. That the Departmental Appeal was rejected through a non-speaking order.

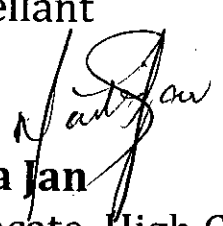
L. That the appellant seeks permission of this Hon'ble Tribunal to adduce other grounds during final hearing.

It is, therefore, requested that the instant service appeal may kindly be accepted as prayed for.

Dated: 02/02/2021


Appellant

Through


Naila Jan
Advocate, High Court,
Peshawar.

NS

2

BEFORE The KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO...../2021

Muhammad Yousaf

VERSUS

IGP KPK and Others

AFFIDAVIT

I, Muhammad Yousaf (Ex: IHC No. 882 Of District Police Kohat, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.


DEPONENT

Identified By :

NAILA JAN

Advocate High Court

Peshawar.



8

BEFORE The KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO...../2021

Muhammad Yousaf

VERSUS

IGP KPK and Others

ADDRESSES OF PARTIES

APPELLANT.

Muhammad Yousaf (Ex: IHC No. 882 Of District Police Kohat.

ADDRESSES OF RESPONDENTS

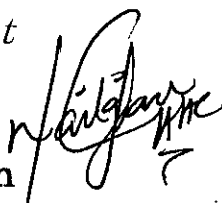
1. Inspector General of Police Khyber Pukhtunkhwa Peshawar.
2. Regional Police Officer Kohat Region.
3. District Police Officer Kohat.

Dated: 02/02/2021



Appellant

Through



Naila Jan
Advocate High Court
Peshawar.



No 3138-39/PA

Office of the
District Police Officer,
Kohat

Dated 29-7-2020

CHARGE SHEET

I, **MR. JAVED IQBAL, DISTRICT POLICE OFFICER, KOHAT,**
as competent authority under Khyber Pakhtunkhwa Police Rules
(amendments 2014) 1975, am of the opinion that you **HC Muhammad Yousaf
No. 882** rendered yourself liable to be proceeded against, as you have omitted
the following act/omissions within the meaning of Rule 3 of the Police Rules
1975.

- i. *That you are injured complainant in case FIR No. 564 dated 22.04.2019 u/ss 302,324,353,427, 15 AA PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai which was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arms injury as well.*
- ii. *That as complained by father of deceased Naveed you being complainant, injured and eye of witness of the case got recorded contradictory statement before the trial court have connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally.*

2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Rules ibid and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of the Rules ibid.

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

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

4. A statement of allegation is enclosed.

DISTRICT POLICE OFFICER,
KOHAT 29/7

10

Amir
B

BEFORE THE DISTRICT POLICE OFFICER, KOHAT

Subject: REPLY OF THE CHARGE SHEET

Sir,

Kindly with reference to the charge sheet bearing No. 3138-39/PA dated 29-07-2020, It is submitted that the apprehension expressed by father of the deceased is premature because of the fact that the case in question is still pending trail before the court of law, which shall be decided after the prosecution evidence is closed. Moreover, the prosecution has not declared me as hostile witness during the trail.

I have narrated the true and actual facts during the course of my examination in court whereas SI Iqbal in order to shown his efficiency, had twisted the actual facts. I had initially refused to sign the murasla report drafted by SI Iqbal as it was not based on actual facts. My signature on the murasla report was obtained by SI Iqbal putting me under pressure by telling me that the senior police officers wanted me to sign the same. I being subordinate had signed the murasla report after being pressurized by SI Iqbal.

In addition to the above, it is further stated that neither the deceased nor the accused were previously known to me nor I have connived with the accused to extend him any benefit.

In view of the above submission, it is prayed that either the proceeding against me may kindly be dropped or kept pending till the decision of the case in question by the court of law.

Yours Obediently

Dated: 11-08-2020

11.8.2020
Muhammad Yousaf IHC
No. 882 Naib Court
District & Session Judge Kohat

12/8

FINDING**IN DEPARTMENTAL ENQUIRY AGAINST HC MUHAMMAD YOUSAF
NO.882**

This finding would dispose off the departmental enquiry against HC Muhammad Yousaf No.882 who was charge sheeted for the allegations:-

- i. That he is injured complainant in case FIR No. 564 dated 22.04.2019 U/Ss 302/324/353/427-PPC/15-AA PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai Kohat which was murdered and one lady pedestrian was hit by accused Naveed and sustained fire arms injury as well.
- ii. That as complained by father of deceased Naveed he being complainant/ injured and eye witness of the case got recorded contradictory statement before the trail court have connivance with accused in order to extend benefit to him and thus violated the prosecution case intentionally.

On these allegations he was issued charge sheet along with statement of allegations and the undersigned was appointed as enquiry officer to conduct enquiry into the matter.

On receipt of papers, necessary departmental enquiry proceedings were initiated. Summoned the defaulter HC Muhammad Yousaf, heard in person and recorded his statement.

During the course of inquiry he was given complete legitimate opportunity to defend himself according to the law, rules and regulation.

The delinquent official disclosed that the apprehension expressed by father of the deceased is pre-mature because of the fact that the case in question is still under trial before the court of law, which shall be decided after the prosecution evidence. Moreover, the prosecution has not declared him as hostile witness during trial. He further narrated the true and actual facts during the course of his examination in court whereas ASI Iqbal in order to show his efficiency had twisted the actual facts. He had initially refused to sign the Murasila report drafted by ASI Iqbal as it was not based on actual facts. His signature on the Murasila report was obtained by ASI Iqbal putting him under pressure by telling him that the senior Police officers wanted him to sign the same. He being subordinate had signed the Murasila report after being pressurized by ASI Iqbal.

He further stated that neither the deceased nor the accused were previously known to him nor he has connived with the accused to extend him any benefit.

In this connection ASI Iqbal stated that on 22.04.2019 he alongwith HC Sakhi ur Rehman, Muhammad Adeeb 998/LHC, Minhaj 358/LHC were present on gusht at tehsil gate chowk. Meanwhile, firing heard from Tanga stand, rushed towards the spot where HC Muhammad Yousaf was present on duty. He got injured due to the firing of the accused and in injured condition reported the matter to him which he incorporated in shape of Murasila. The report was read over to him and after accepting it correct, he signed the Murasila report.

12

Statements of SI Arshad Mehmood SHO Jungle khel the then OII PS City, HC SaKhi ur Rehman and LHC Minhaj ud Din also support the version of FIR.

Ground Check

- In FIR the accused was shown to be arrested from the spot while in court the said HC recorded contradictory statement that the accused was arrested from Purana Lari Adda.
- In initial stage the said HC did not report the actual facts to high ups.
- All the Police personnel present on the spot supported the version of FIR.
- The incident occurred at 09:00 AM and after 03 minutes he reported the same but in court he stated the incident took place at 09:30/35 AM.
- The incident took place in front of HC Yousaf, got injured and was the eyewitness / complainant of the case but he recorded the statement in court that 'He has not seen the accused facing trail while he was firing'.

Conclusion

Keeping in view the above circumstances and available record and from the preliminary enquiry conducted SDPO City, I came to the conclusion that being the complainant of case vide FIR No. 564, dated 22.04.2019 u/s 302,324,353,427/15-AA PS City recorded contradictory statement before the trail court in order to extend benefit to the accused. The charges leveled against him are proved beyond any shadow of doubt hence, found guilty.

Submitted please.


SUPERINTENDENT OF POLICE,
OPERATIONS, KOHAT





12 13

Amir

OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

ORDER

This order will dispose of departmental enquiry conducted against IHC Muhammad Yousaf No. 882, (hereinafter called **accused official**) under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

ii. Short facts of the case are that the accused was complainant of case FIR No. 564 dated 22.04.2019 u/ss 302,324,353,427 PPC, 15 AA, PS City, wherein, one Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai was killed, the accused official on duty and one lady pedestrian were also got injured by accused Naveed Ullah. Accused Naveed Ullah was arrested on the spot by Police.

iii. On completion of investigation case was challaned to court for trial and PWs were examined. The accused official was also examined as PW by the trial court. During trial, Muhammad Nawaz father of deceased filed a complaint against the accused official wherein he alleged that the complainant of FIR (**accused official**) in connivance with accused deliberately contradicted his statement in the court, vitiated the prosecution case and extended benefit to the charged accused.

iv. For the reasons, the accused official was served with Charge Sheet & Statement of Allegations and SP Operations Kohat was appointed as enquiry officer to scrutinize conducted of the accused official. The enquiry officer after fulfilling the coddle formalities held the accused official guilty of the charge as he recorded contradictory statement and extended benefit to the accused.

v. On perusal of enquiry file, Final Show Cause Notice was issued and served upon the accused official, to which he filed reply and found unsatisfactory. Therefore, the accused official was heard in person in orderly room held on 04.11.2020, wherein he was afforded ample opportunity of hearing and defense, but failed to submit any plausible explanation to his professional misconduct.

vi. Record gone through, which indicates that the accused official was complainant and primary eyewitness of the incident, who contradicted his statement in order to extend undue benefit to the charged accused. Record and personal hearing of the accused official indicates that the accused official had joined hands with the charged accused and effected compromise out of the court. From the above, I reached to the conclusion that the accused official has recorded contradicted statement before the trial court and vitiated the prosecution case. Hence, the charges / allegations framed against the accused official are established and he is held guilty of the charges. Therefore, in exercise of powers conferred upon me under the rules *ibid* I, Javed Iqbal, District Police Officer, Kohat, impose a major punishment of dismissal from service with immediate effect, on the accused official kit etc be collected and report.

Announced
04.11.2020

DISTRICT POLICE OFFICER,
KOHAT

OB No. 762

Dated 05-11-2020

No. 5547-50 / PA dated Kohat the 06-11-2020.

- Copy of above is submitted for favour of information to the:-
1. Regional Police Officer, Kohat please
 2. Reader/R./ LO/Pay officer/SRC/OHC for necessary action.

(17)

Amro E

**THE HONOURABLE DEPUTY INSPECTOR GENERAL OF
POLICE KOHAT REGION KOHAT**

**APPEAL UNDER RULE 11 OF THE POLICE
RULES 1975 (AMENDED 2014) AGAINST
THE ORDER OF THE DISTRICT POLICE
OFFICER KOHAT DATED 05-11-2020 VIDE
WHICH THE APPELLANT WAS DISMISSED
FROM SERVICE WITHOUT LAWFUL
JUSTIFICATION.**

Respected Sir,

With great respect and veneration the appellant may kindly be allowed to submit the following for your kind and sympathetic consideration.


FACTS OF THE CASE:

1. That the appellant was enrolled as constable in the year 2001.
2. That after qualifying the basic recruit course, the appellant started his official performance.
3. That due to the efficient and lawful performance, the senior officers put their confidence in the appellant and in recognition of his service the appellant was awarded a number of cash rewards and commendation certificates.
4. That due to the efficient and meritorious services, the appellant with the passage of time qualified A1 & B1 exams and thereafter also qualified Lower and Intermediate courses from the Police Training College Hangu.

15

5. That at the time of dismissal the appellant was a "D list Head Constable and in ripe for further promotion as Assistant Sub Inspector.
6. That the appellant in the year 2017 was transferred to the Traffic Staff Kohat. Here too he performed up to the mark and officers were quite satisfied from his official performance.
7. That unfortunately upon the appellant charge sheet and the statement of allegations were served wherein it was alleged that being complainant, injured and eye witness of the case FIR No. 564 dated 22-04-2019 U/S 302, 324, 353, 427, 15AA P.S City got recorded contradictory statement before the trial court having connivance with the accused in order to extend benefit to him and thus violation the prosecution case intentionally.
8. That the appellant within time submitted reply to the charge sheet and submitted to the enquiry officer wherein, the appellant denied the charge leveled against him and claimed innocence.
9. That inspite of denial of the charge, departmental enquiry was initiated against the appellant.
10. That ultimately, enquiry against the appellants ended in punishment.
11. That vide order dated 05-11-2020 OB No. 762, the worthy competent authority awarded punishment of dismissal from service to the appellant.
12. That the appellant has legal and factual reservations upon the impugned punishment, hence following are some of the grounds of appeal among the others:-

GROUND OF APPEAL:

- ⑤
- A) That the order of the worthy competent authority is not in accordance with law and facts thus the impugned order of punishment deserves to be set aside.
- B) That during enquiry, the appellant delivered his reply to the show cause notice to the worthy enquiry officer however, subsequently throughout the enquiry proceedings, the appellant was not asked / directed to attend the rest of the enquiry proceedings.
- C) That during enquiry, the enquiry officer recorded statement of Muhammad Iqbal ASI, Arshad Mehmood SI (OII) now SHO Jungle Khel, Sakhi-ur-Rehman HC and Minhaj-ud-Din LHC at the back of the appellant.
- D) That being defaulter official, the appellant was having an inherent legal right to be present throughout the enquiry proceedings in order to defend himself but by denying presence of the appellant the enquiry officer has acted against the law / rules and thus legally vitiated all the proceedings against the appellant.
- E) That not only law / rules have recognized the right of fair trial enquiry against the accused / defaulter official but Art 10-A of the Constitution of Islamic Republic of Pakistan has ensured fair trial to the accused / defaulter officials and termed it is a "Fundamental Right" of the accused / defaulter officials. By not involving the appellant in the enquiry proceedings, the fundamental right of the appellant besides other laws / rules have not been adhered / complied. Thus the entire enquiry has become legally defective and it cannot sustain in the eyes of law.
- F) That cross examination of a witness is a material sources from which the adjudicative authority can separate chaff from the grain and truth from the lie.
- G) That in the case of the appellant, the worthy competent authority has been shown one sided picture and thus the worthy competent authority was misled which resulted in miscarriage of justice.
- H) That even in reply to the show cause notice, the appellant had mentioned that the facts mentioned in the Murasila / FIR on the part of the appellant were not true. The appellant has mentioned that he did not identify the accused because at the time of occurrence there was a rush of people at the place of the incident. Among large number of people, it is naturally difficult to identify a culprit. The appellant in the reply to the
- 

(17) (B)

show cause notice has stated that the culprit was apprehended by the people and that he identified the culprit through the people.

- I) That in reply to the show cause notice the appellant has mentioned that Muhammad Iqbal ASI brought a ready made murasila to the appellant for signature. Upon reading the appellant found that the facts were twisted because Muhammad Iqbal ASI wanted to get benefit and appreciation from his seniors. When the appellant refused to sign the murasila, Muhammad Iqbal threatened the appellant of the dire consequences. As such the appellant under pressure and force was compelled to sign the murasila. Muhammad Iqbal was a senior officer, hence the appellant being a junior rank officer came under his pressure and had put signature on the murasila.
- J) That in order to ascertain the real facts examination of Muhammad Iqbal in presence of the appellant was necessary but unfortunately this important aspect was ignored and he was preferred to be examined at the back of the appellant by worthy enquiry officer for the reason best known to him.
- K) That during trial of the case, the appellant instead of recording contradictory statement had recorded a statement which is based on facts.
- L) That for trial of a case, the Criminal Procedure Code has envisaged a proper procedure. Under the said law if the appellant would have recorded a contradictory statement, then definitely the learned trial court would have declared the appellant as "Hostile" but no such request was made by the prosecution which leads a prudent person to the result that the appellant had recorded his statement quite under the four corners of law and he did not deviate from the true facts which were in knowledge of the appellant.
- M) That leaving the question of declaring the appellant as hostile on a side, if the statement as stated by the competent worthy authority was contradictory then the relevant public prosecutor would have sent some complaint to the worthy DPO Kohat but no such complaint has been sent by the public prosecutor regarding the statement recorded by the appellant during trial of the case before the trial court.
- N) That the charge sheet, final show cause notice and the impugned order of punishment indicate that the enquiry against the appellant was initiated on the complaint of the father of the deceased. In view of the matter of the fact, father

of the deceased is a material witness but unfortunately, neither father of the deceased was examined by the worthy inquiry officer nor complaint was confronted before the appellant, hence the enquiry has been inconclusive on one hand and punishment on such an inconclusive enquiry is unwarranted on the other.

- O) That if the above stated legal and factual lacunas were of no importance to the worthy police authorities then at least they should have kept the enquiry against the appellant pending till the conclusion of trial. If the trial judge would have passed some negative remarks against the appellant in or the judgment of the case would have said anything about the alleged contradictory statement of the appellant, then the worthy authority could pass punishment to the appellant but unluckily the worthy competent authority was in so hurry that without waiting for result of the trial, the appellant was awarded one of the harshest punishment which is not in conformity with the established law and rules of codal and natural justice.
- P) That in case of the appellant the well established laws, principles of natural and codal justice and inherent fundamental rights enshrined in the Constitution of Pakistan were neither adhered nor complied with in letter and spirit. As such material miscarriage of justice has taken place which has made the impugned order of punishment as a legally defective order which is neither sustainable in the eyes of law nor it has got any legal effect on the rights of the appellant.
- Q) That the appellant is a member of the law enforcing agency. Being in such capacity, he (the appellant) is mindful of the fact that his primary duty is to prevent and detect crime. The appellant even cannot imagine or think to deviate from his duty and neither earlier nor subsequently will involve himself in such like unlawful and unethical activities.
- R) That from the whole episode it appears that the worthy competent authority has proceeded against the appellant under some misunderstanding which the appellant is ready to remove whenever directed by the worthy competent authority.
- S) That the appellant belongs to a respectable family. He worked strictly under the law and rules. At this score the appellant throughout his service career has never been awarded major or minor punishment.

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T)

That the appellant is a poor person, at the stage of this price like he is supporting a large family. If the punishment is implemented, it will be difficult for the appellant and his family to keep their bodies and souls together. Such a legally unwarranted punishment may be disastrous for the appellant and his family. The appellant requests your honour, to protect and save the appellant and his family from irreparable loss.

U)

That the impugned punishment order does not fulfill the ends of justice, hence it is liable to be set aside.

V)

That the appellant is absolutely innocent and the punishment awarded to him is not legally justified.

W)

That the impugned order of punishment is unilateral, one sided arbitrary in nature, fanciful, capricious and being not in accordance with law is liable to be set aside.

X)

That the appellant can furnish any surety to the satisfaction of your honour regarding innocence of the appellant.

PRAYER:

In view of the above facts, it is very respectfully prayed that the impugned order of punishment being harsh, one sided, unlawful and not satisfying the ends of justice may very graciously be set aside and the appellant may kindly be reinstated in service with effect from the date of punishment with al back benefits. The appellant will pray fro your long life and prosperity thought his life.

Dated 16-11-2020

Yours Obediently



Muhammad Yousaf
Ex. IHC
R/o Kaghazai, Kohat
Mobile # 0333-9625595



EC
16/11

Encl:

1. Charge Sheet
2. Reply to the charge sheet
3. Order of Punishment

ORDER.

90 79

Auto F

This order will dispose of a departmental appeal, moved by Ex-IC M. I Yousaf No. 882 of Operation Staff Kohat against the punishment order, passed by DPO Kohat vide OB No. 762, dated 05.11.2020 whereby he was awarded major punishment of **dismissal from service** on the following allegations:-


On 22.04.2019, an armed person opened firing, resultantly one person named Sohail Nawaz s/o Muhammad Nawaz r/o Muhammad Zai got hit and died. One pedestrian lady and the appellant present on duty at the spot were also got hit and sustained firearm injuries. The accused was arrested after hot pursued by Police and recovered weapon of offense. A case vide FIR No. 564, dated 22.04.2018 u/ss 302, 324, 353, 427 PPC, 15-AA PS City was registered on the report of appellant. The appellant was complainant and eyewitness of the case. During commencement of trial, father of the deceased Sohail Nawaz filed a complaint against the appellant and alleged that the appellant recorded contradictory statement during trial. Therefore, proper departmental proceedings were initiated against the appellant.

He preferred an appeal to the undersigned upon which comments were obtained from DPO Kohat and his service record was perused. He was also heard in person in Orderly Room, held on 30.12.2020. During hearing, he did not advance any plausible explanation in his defense.

I have gone through the available record and came to the conclusion that the punishment order passed by DPO Kohat is justified. The appellant has given contradictory statement before the court of law and the allegations were also established by the E.O in his findings. Therefore, His appeal being devoid of merits is **hereby rejected.**

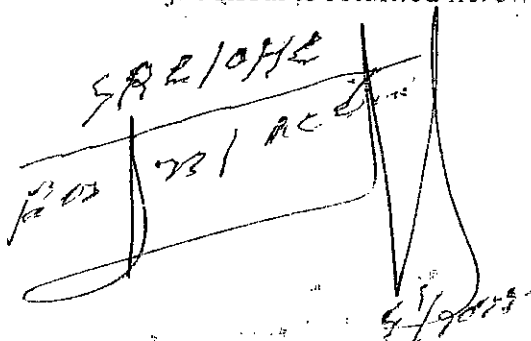
Order Announced
30.12.2020


81
5/1/2021


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

No. 155 /EC, dated Kohat the 05-01-2021.

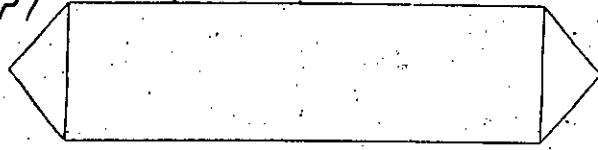
Copy to District Police Officer, Kohat for information and necessary action w/r to his office Memo: No. 17637/LB. dated 17.12.2020. His Service Roll & Fauji Missal is returned herewith.


SAR/0/HK
2021/12/1
4/1/2021


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.
31/12

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بعدالت ضد ۱۵ کروسیں سپریمونل مقام



۲۰۲۱ء منجانب ایملانٹ
محمد یوسف بنام درسی

مورخہ
مقدمہ
دعویٰ
جرم

بابت تحریر آنکہ

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

آن مقام بنامہ کیلئے مائل صاحب

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

محمد یوسف (ایملانٹ)
Wajah

المرقوم ۰۲ ماہ فروری ۲۰۲۱ء

العہد گواہ العہد کے لئے منظور ہے۔

شہادہ
Accepted
Accepted
Accepted