

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.1398/2019

Date of Institution ... 16.10.2019

Date of Decision ... 14.07.2022

Mr. Arsalan, Ex-Constable No.488, Police Line Kohat.

... (Appellant)

**VERSUS**

The Inspector General of Police Khyber Pakhtunkhwa, Peshawar  
and two others.

... (Respondents)

Miss. Uzma Syed,  
Advocate

... For appellant.

Muhammad Riaz Khan Paindakhel,  
Assistant Advocate General

... For respondents.

Salah Ud Din

... Member (J)

Rozina Rehman

... Member (J)

**JUDGMENT**

Rozina Rehman, Member(J):The appellant has invoked the jurisdiction  
of this Tribunal through above titled appeal with the prayer as copied  
below:

**“On acceptance of this appeal the impugned order  
dated 08.02.2019 may very kindly be set aside and the  
appellant be reinstated into service with all back  
benefits.”**

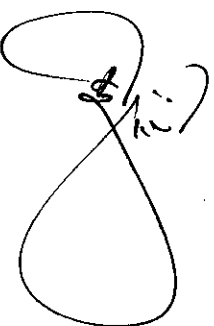
2. Brief facts of the case are that appellant was appointed as  
Constable in the Police Department. A criminal case vide FIR No.713  
dated 04.12.2014 was registered against the appellant U/S 302/34 PPC  
at PS City District Kohat. He was arrested and was later on acquitted  
by the competent court of Law. In the meanwhile, he was dismissed  
from service on 13.04.2015. Feeling aggrieved from the said order, he

filed departmental appeal followed by Service Appeal No.773/2016 before this tribunal. The Tribunal by accepting the said appeal, directed the respondents to conduct de-novo inquiry. The respondents conducted de-novo inquiry, wherein, he was again dismissed from service vide order dated 08.02.2019. Later on, he filed departmental appeal which was rejected. He also filed revision petition before the respondent No.1 which was not responded to, hence, the present service appeal.

3. We have heard Miss Uzma Syed Advocate, learned counsel for appellant and Muhammad Riaz Khan Paindakhel, learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Miss Uzma Syed Advocate, learned counsel for appellant inter-alia argued that the impugned order is against law, facts and norms of justice as the appellant was not treated according to law and rules and the respondents violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. She submitted that the respondents have acted in arbitrary manner while issuing the orders dated 08.02.2019 and 20.06.2019 which are not tenable in the eyes of law; that no charge sheet alongwith statement of allegations were served upon the appellant before issuing the impugned order and no chance of personal hearing was provided to the appellant. Lastly, she submitted that the appellant has been acquitted by the learned Trial Court, therefore, he is entitled to reinstatement in service with all back benefits.

5. Conversely, learned AAG submitted that the appellant was charged in a murder case vide FIR No.713 dated 04.12.2014 U/S 302, PPC/ 15 AA PS City Kohat; that he had committed a heinous crime as well as



gross misconduct, therefore, he was rightly proceeded against departmentally. He submitted that in compliance of the judgment of this Tribunal, de-novo inquiry was conducted and departmental proceedings were initiated against the appellant; that de-novo inquiry was conducted purely on merits and the respondent No.3 passed the order based on facts, evidence, merit and in accordance with rules. He submitted that the appellant was proceeded departmentally for his own act under the relevant rules and no fundamental right of the appellant was violated. Further submitted that after observing all codal formalities in shape of issuance of charge sheet alongwith statement of allegations, conducting proper inquiry and opportunity of hearing, the impugned order was passed.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant was appointed as Constable in the Police Department on 26.05.2008. He was charged in a criminal case vide FIR No.713 dated 04.12.2014 registered at Police Station City District Kohat U/S 302 PPC. He was arrested in the above-mentioned case in the murder of a transgender and was proceeded against departmentally which resulted into his dismissal from service vide order dated 13.04.2015. As per judgment of this Tribunal, case was accepted with direction to the respondents to conduct de-novo inquiry. In compliance with the directions of Service Tribunal, charge sheet alongwith statement of allegations were issued and SP Investigation Kohat was appointed as Inquiry Officer. The inquiry report is available on file which shows that Jehanzeb Khan Superintendent of Police Investigation, Kohat relied upon the opinion/finding of the then



Inquiry Officer i.e. DSP Legal Kohat who conducted inquiry in the first round of litigation and which inquiry and orders of the competent authority were already set aside by this Tribunal and case was sent to competent authority to conduct de-novo inquiry. It is astonishing that the Inquiry Officer relied upon the opinion of the then Inquiry Officer. The District Police Officer before awarding major punishment failed to go through the inquiry report of Jehanzeb Khan, who had relied upon the inquiry report which had already been rejected. No doubt, the present appellant alongwith one Ihsan Ullah were charged for the murder of a transgender. Complainant of case was one Kamran who did not charge the present appellant directly by name for the murder of one Javid, Kamran and Taimur were two direct witnesses of the occurrence. Both the present appellant and Ihsan Ullah were acquitted from charges in case FIR No.713 by the learned Additional Sessions Judge-IV Kohat on 09.03.2016.

7. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Nomination/Involvement of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

8. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought



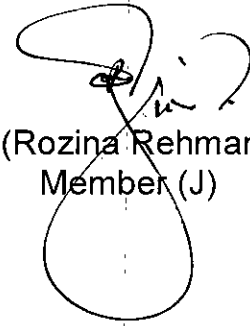
guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. For what has been discussed above, this appeal is accepted and the impugned orders are set aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.  
14.07.2022



(Salah Ud Din)  
Member (J)



(Rozina Rehman)  
Member (J)

**ORDER**  
14.07.2022

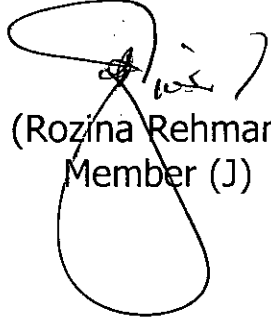
Miss Uzma Syed, Advocate for appellant present.

Muhammad Riaz Khan Paindakheil, learned Assistant  
Advocate General for respondents present.

Vide our detailed judgment of today, of this Tribunal  
placed on file, instant service is accepted as prayed for.  
Parties are left to bear their own costs. File be consigned to  
the record room.

**ANNOUNCED.**  
14.07.2022

  
(Salah Ud Din)  
Member (J)

  
(Rozina Rehman)  
Member (J)

عنوان: Denovo حکمانہ انکوائری برخلاف کنسٹیبل ارسلان نمبر 366

جارج بمقہ مدعت 713 مورخہ 04.12.2014 جرم PPC 302 تھانہ شی

پوساٹ: SHO تھانہ شی

بکار سرکار تحریر ہے کہ ذیل اشخاص کی حاضری بغرض معلومات / تلمیذی بیانات بروز بدھ مورخہ 02.01.2019 بت

09:30 بجے دفتر ہذا حاضر آجائے پروانہ ہذا کی تئیل بذات خود کرے۔

1- کامران ولد واجد سکنہ کاشنگ مردان حال ہنگو پھانگ

2- تیمور ولد ایب سکنہ ایبٹ آباد حال ہنگو پھانگ

3- عارف ولد درویش سکنہ رازہ تحصیل ضلع پشاور سرائے خیر بازار بازار کوہاٹ

4- احمد یار ولد سید رحمن سکنہ حال ہنگو پھانگ

5- ثناء اللہ ولد عمران (خواجہ سراہ) سکنہ خیرا بازار کوہاٹ

6- عارف ولد درویش سکنہ ہنگو پھانگ نزد بیوان اڈہ

0332-5879849

(جہان زیب خان)

سپرٹنڈنٹ آف پولیس انوسٹی گیشن ڈیگ کوہاٹ

1/PA  
01-01-019

نہجی

5140 city

2-1-19

بیان از ان عارف عرف کشش ولد درویش کا  
حال خاتم سراوں صنگو بھاٹک

نے دریافت بیان کیا کہ میں عمر 18 سال سے  
پیر سائیس بڈ پڑھوں، خاتم سراوں جاوید  
عرف میرا کو پی جانتا ہوں، اور سائیس  
بھائی بڈ پڑھا تھا، سال 2014ء میں قتل ہوا  
تھا، اس وقت میں اپنے گھر واقع گاؤں  
رہڑ صلح چارندہ گیا ہوا تھا، میں فرمان اللہ  
عرف تناء ولد علام حسین سکنہ سینہ ڈری لہارہ  
حال صنگو بھاٹک کے سوبائیل اطلاع پر حاضر ہوا  
کہ جاوید عرف میرا سکنہ لہارہ کی قتل ہو چکی  
ہے، میں پیر میں گاؤں سے کراچی آ گیا  
کامراں عرف خالینت ولد واحد سکنہ کائنگ  
مردان جو نوم بیماری (پیرقان) نقصان الہی  
وفات ہو چکا ہے جسکی تصدیق کرتے ہیں

Attested  
E.O/SP/Quilt

الرفاع  
0332-5979849

ہم خاتم سراوں صراں عرف بزرگ اور فرمان اللہ عرف تناء  
مذکورہ بالا بیان کی تصدیق کرتے ہیں جو حقوق پر مبنی ہے

الرفاع  
فرمان اللہ عرف تناء  
ولد علام حسین سکنہ سینہ ڈری لہارہ  
حال صنگو بھاٹک  
0332-9213063

بھرا  
الرفاع  
عبد القیاس سکنہ بکرہ  
حال صنگو بھاٹک  
0334-8306136



بیان اذان گل راہم کی از کتابت و ضلع و

ما علی (م) قدامت 713 عزم  $4 \frac{12}{15}$  ضم 34-302

راج احقر سوز نقش من اہ کے و ام سوزی  
دوران نقش عقول حاسد کی دعواری ارسلان  
در عند المناہ اہم گرہی سلطان اور اللہ دوسرے  
سابقہ نام احسان اللہ لہوئی - حسب دعواری  
مقدم ہوا میں دونوں سلطان حسب حالہ گرفتار  
ہوئے ہیں لہذا نقش کے مقدم لوزن پلان

540 و و ام کی کنگی تھی - آخر ارسلان کے صندوق  
حاضرین و باگی تھا اور نقش کے کار پائی گئی  
گل راہم کی از کتابت و

*[Handwritten signature]*

Attested

E. O. / SP / P. M. R. -

قاریہ

13646-47/PA

میرا نام ہے محمد علی اور میرا پتہ ہے گورنمنٹ ہائی اسکول، کراچی۔  
میرا پتہ ہے گورنمنٹ ہائی اسکول، کراچی۔

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میرا پتہ ہے گورنمنٹ ہائی اسکول، کراچی۔

Attested  
E. @/SP/PA

2017

مورخہ 7 جنوری

میرا نام ہے محمد علی اور میرا پتہ ہے گورنمنٹ ہائی اسکول، کراچی۔  
میرا پتہ ہے گورنمنٹ ہائی اسکول، کراچی۔

ان ارآن احسان اللہ ولد ایمان اللہ سکندر

(57 26 9672-9333) 1-529-6316-1430-1430 NIC No

بدریافت بیان کیا کہ میں سال 2014ء میں ایک شہرہ لبر  
فردوری چلڈن بقا۔ ارسلان کیشل سے ارشدہ دار  
سال 2014ء حراج سران جاوید عرف سید افضل  
بہو اتقا۔ جن دعوہ بیماری لہو کیشل ارسلان پر  
کیگی۔ میں رزرو حق سے کیشل ارسلان کے ساتھ  
وجود نہیں تھا۔ غلط بیان سے حجم لارہے



ال نشان اہل و عیال

احسان اللہ ولد ایمان اللہ  
07-01-2019

Attested

E.O/SP/Amirul

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16  
ک  
و  
ل  
و  
ک

مشرف لائٹ

مہلج کھی بار

تعمیر کا روزنامہ 29/12/18

عد 6 حافظی 40/45 اس وقت صبح 09:00 بجے درج 2 ٹینک بحوالہ اڈور

نمبر 13841-45 کنٹینر آرڈر نمبر 488 سرورس پر  
27-12-18

محل ہو چکا ہے۔ سامان بھی لائٹ تھا حاملہ ہے

حافظی درج روزنامہ ہو کر تعمیر پورے اطلاع دینی و

الارٹ کرے کنٹینر نمبر دستہ جناب DPO صاحب

ارڈر دہشت ہے۔

ضابطہ عالی 1

2.

تقریباً عطا ہو رہا ہے۔

M A B

mm. Line 121  
29-12-18

1998 S C M R 1993

Acquitted

Appellant

[Supreme Court of Pakistan]

Present: Saiduzzaman Siddiqui, Raja Afrasiab Khan and Wajihuddin Ahmed, JJ

Dr. MUHAMMAD ISLAM---Appellant

versus

GOVERNMENT OF N.-W.F.P. through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others---Respondents

Civil Appeal No. 568 of 1995, decided on 2nd June, 1998.

(On appeal from the N.-W.F.P. Service Tribunal, Peshawar dated 24-8-1994 passed in Appeal No. 202 of 1993).

**(a) Fundamental Rules---**

--- F.R. 54---Civil service---Civil servant was involved in a case under S.302/34, P.P.C. for a murder---No evidence could be brought against the accused civil servant on charge of murder; thus proving that allegations levelled against him were baseless---Acquittal of civil servant from the criminal case--civil servant in case of acquittal was to be considered to have committed no offence because the competent Criminal Court had freed/cleared him from an accusation of charge of crime---Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of murder case against him.

Government of West Pakistan through the Secretary, P.W.D., Lahon, v. Mian Muhammad Hayat  
PLD 1976 SC 202 distinguished.

**(b) Criminal Procedure Code (V of 1898)---**

---S. 497---Bail---Observations of Court in bail granting order are tentative in nature.

The observation of the Criminal Court in the bail granting order is wholly immaterial for the purpose of acquittal or conviction of the accused. The observations in the orders passed in bail applications are always tentative in nature and as such, cannot be used by the parties for conviction or acquittal of the accused.

**(c) Criminal trial---**

--- Benefit of doubt---Doubt itself destroys the very basis of the prosecution case---Where the benefit of doubt has been given to the accused, it cannot be said that charge has been established by the prosecution---Accused has to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the commission of crime and as such deserves to be convicted to meet the ends of justice---Even where benefit of doubt has been extended to accused, he shall be deemed to have been honourably acquitted.

**(d) Criminal trial---**

--- Acquittal ---All acquittals are "honourable" and there can be no acquittals which may be said to be "dishonourable".

All acquittals, even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals" All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.

That term "acquittal" has -not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service.

Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another 1994 PLC (C.S.) 693 ref.

Government of West Pakistan through the Secretary, P.W.D., Lahore v. Mian Muhammad Hayat PLD 1976 SC 202; Government of N.-W.F.P. v. I.A. Sherwani and another PLD 1994 SC 72 and Dictionary by Macmillan,

William D. Halsey/Editorial Director, Macmillan Publishing Co., Inc. New York, Collier Macmillan Publishers London" rel.

**(c) Words and phrases---**

--- Word "acquittal "---Connotation.

Abdul Kadir Khattak, Advocate Supreme Court with Muhammad Zahoor Qureshi Azad, Advocate-on-Record for Appellant.

Hafiz Awan, Advocate Supreme Court with Muhammad Zahoor Qureshi Azad, Advocate-on-Record (absent) for Respondents Nos. 1 and 2.

Respondent No. 3: Ex parte

Date of hearing: 2nd June, 1998.

**JUDGMENT**

**RAJA AFRASIAB KHAN, J---**On 21st of August, 1989 at 4-40 p.m. a case under section 302/34, P.P.C. was registered against Dr. Muhammad Islam and Fazal Haqqani on the statement of Muhammad Rahim with Police Station. Katlang District Mardan for the murder of Sher Zamin. An Additional Sessions Judge, Mardan, after recording the statement of the complainant, Muhammad Rahim passed the following order on 9-6-1992:--

"Statement of the complainant has already been recorded and placed on file. He does not charge the accused for the commission of the offence. In view of his statement, the learned S.P.P. also gave statement that he wants to withdraw from the prosecution against the accused.

In view of the above statements, no case stands against the accused, therefore, no charge is framed against them and they are discharged/acquitted from the charge levelled against them in the present case. They are on bail, their bail bonds stand cancelled and sureties discharged. Case property, if any, be disposed of in accordance with law. File be consigned after completion."

It is evident that the accused have been acquitted in the case. At the time of incident, the appellant was posted as Veterinary Officer (Health) (B-17), Incharge Veterinary Dispensary, Katlang District Mardan. He was suspended from service with effect from 22nd of August, 1989 vide order dated 17-1-1990 because of his involvement in the aforesaid murder case. Nevertheless as pointed out above, he was acquitted of the murder charge by the trial Judge on 9th of June, 1992. On the strength of this order, the appellant moved an application on 29-6-1992 for his reinstatement in service. On 7-4-1993, the competent Authority accepted the application of the appellant and in consequence thereof, reinstated him in service with effect from 22nd of August, 1989. The period from 22nd of August, 1989 to the date of his assumption of duty i.e. 18-4-1993 was treated as extraordinary leave without pay. On 2nd of May, 1993, the appellant filed representation against the order dated 7-4-1993 which was rejected by Secretary Food, Agriculture, Livestock and Cooperative Department, Peshawar on 19th of June, 1993. The appellant then filed appeal before the N.-W.F.P. Service Tribunal praying for the payment of salary and allowances to him for the said period. This claim of the appellant was contested by the Government on the ground that the acquittal of the appellant was based on a compromise between the parties. This being the position, acquittal of the appellant cannot be held to be honourable so as to entitle him to full pay and allowances for the said period. The Tribunal vide its decision, dated 24th of August, 1994 dismissed the appeal observing:--

"The expression 'honourably acquitted' has not been defined in rules anywhere else. There is no reference in the Code of Criminal Procedure, to the term 'honourably acquittal'. In the ordinary sense 'honourable acquittal' would imply that the person concerned had been accused of the offence maliciously and falsely and that after his acquittal no blemish whatsoever, attaches to him. In cases where the benefit of doubt is given to him or where he is acquitted because the parties have compromised or because the parties on account of some extraneous influence have resiled from their statements then as held by the learned Division Bench of the erstwhile High Court of West Pakistan Lahore Seat in case reported as Sardar Ali Bhatti v. Pakistan (PLD 1961 Lah. 664) in spite of the acquittal of the person concerned, cannot be declared to have been 'honourably acquitted.' This decision has been upheld by the Hon'ble, Supreme Court of Pakistan in case reported as Government of West Pakistan through the Secretary, P.W.D. (Irrigation Branch), Lahore v. Mian Muhammad Hayat (PLD 1976 SC 202). The appellant having been acquitted on the basis of compromise with the complainant his acquittal cannot therefore be treated as honourable. (Emphasis supplied underlined).

It is for the revising authority or appellate authority to form its opinion on the material placed before it, whether such a person has been honourably acquitted or not. It is left to the absolute subjective discretion of the authority. This Tribunal, therefore, dismiss the appeal. Parties are left to bear their own costs. File be consigned to the record."

Leave to, appeal was granted by this Court on 14th of May, 1995.

2. Learned counsel appearing on behalf of the appellant submitted that the appellant was acquitted and as such, was entitled to be given the pay alongwith allowances for the period he remained under suspension. This position was contested by the respondents by saying that as a matter of fact, there was a compromise between the appellant and the complainant. It could not

be said that the appellant had been honourably acquitted. The learned Law Officer drew our attention to the bail granting order, dated 16th of January, 1992 saying that an affidavit was given by the son of the complainant that the parties had entered into a compromise.

3. After hearing the learned counsel for the parties and perusing the record, we are inclined to hold that this is a case of acquittal pure and simple. The observation of the Criminal Court in the aforesaid bail granting order is wholly immaterial for the purposes of acquittal or conviction of the appellant. It has time and again been said that the observations in the orders passed in bail applications are always tentative in nature and as such, cannot be used by the parties for conviction or acquittal of the accused. In fact, these bail orders are always treated to be non-existent for the purposes of trial of the accused. The above order in the bail application has, therefore, to be ignored for all intents and purposes. The argument is thus repelled. The trial Judge in his order referred to above has unequivocally stated that the appellant has been acquitted of the charge. Needless to state that in all criminal matters, it is the bounden duty of the prosecution to establish its cases against the accused on the basis of reliable and credible evidence. In the case in hand, the prosecution failed to produce any evidence against the appellant. The testimony of the star witness namely the complainant did not involve him in the commission of the crime. This was, undoubtedly, a case of no evidence on the face of it. The Law Officer is unable to show that the parties have entered into a compromise. His simple word of mouth was not enough to hold that the parties had entered into compromise. Even in the case where benefit of doubt has been given to the accused, it cannot be said that the charge has been established by the prosecution. The accused are to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the Commission of the crime and as such, deserve to be convicted to meet the ends of justice. The doubt itself shall destroy the very basis of the prosecution case. In this view of the matter, the accused shall be deemed to have honourably been acquitted even where the benefit of doubt has been extended to them. In case of Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another (1994 PLC (C.S.) 693), following observations were made:--

"There is hardly any ambiguity in these provisions and they do not present any difficulty. We are in no doubt that the provisions of clause (a) are attracted by the facts on the ground that the appellant was acquitted of the charge against him. Although, the department claims that this was the result of benefit of doubt, we would hold that the acquittal is honourable within the meaning of this rule. As a matter of fact, all acquittals are honourable and the expression 'honourable acquittals' occurring in clause (a) seems to be superfluous and redundant. It is one of the most valuable principles of criminal jurisprudence that for a judgment of conviction it is the duty of the prosecution to establish its case beyond all reasonable doubt. If it fails to do so, the accused will be entitled to acquittal and such acquittal will be honourable, even if it is the result of a benefit of doubt. The expression ~ benefit of doubt' is only suggestive. of the fact that the prosecution has failed to exonerate itself of the duty of proving its case beyond all reasonable doubt.

In the present case, therefore, the appellant's acquittal of the charge of misconduct and his consequential reinstatement in service entitled him to full pay and remuneration of the entire period from 6-10-1980 to 12-2-1986 under F.R. 54(a) of the Rules. We hold that the provisions of F.R. 54(b) are not relevant and that they could not have been pressed into service by the Department in deciding the matter."

We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may



Appellant**P L D 2010 Supreme Court 695****Present: Tassaduq Hussain Jilani and Asif Saeed Khan Khosa, JJ****CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another---Appellants****Versus****MUMTAZ KHAN---Respondent**

Civil Appeal No.589 of 2002, decided on 8th April, 2010.

(On appeal from the judgment dated 3-7-2000 of the Federal Service Tribunal Islamabad passed in Appeal No.81(P) of 1999).

**(a) Service Tribunals Act (LXX of 1973)---**

---S. 4---Penal Code (XLV of 1860), S.53---Constitution of Pakistan (1973), Art. 212 (3)---Leave to appeal was granted by Supreme Court to consider; whether appeal before Service Tribunal was not time barred; whether convicted person, who was released after payment of Diyat amount could be said or could be declared as a person acquitted honourably and in that eventuality could such person, who was released on payment of Diyat, was liable to be reinstated into service; whether payment of Diyat could absolve a person from accusation of murder; and whether respondent was an acquitted person or was a convicted person-even after payment of Diyat.

**(b) Penal Code (XLV of 1860)---**

---Ss. 309 & 310-Criminal Procedure Code (V of 1898), Ss.249-A & 265-K--- Islamic law---Crime and punishment---Acquittal---Scope---Benefit of doubt---Prior to introduction of Islamic provisions in Penal Code, 1860, acquittal of an accused person could be recorded when prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring prosecution and the other favouring defence, Court decided to extend benefit of doubt to accused person--Acquittal could also be recorded under S.249-A, Cr. P. C. or S.265-K, Cr. P. C., when charge against accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence---After introduction of Islamic provisions in Penal Code, 1860, it has now also become possible for accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under S.309 P.P.C. or on the basis of compounding/Sulk under S. 310 P.P.C.---In case of waiver/Afw acquittal can be earned without any monetary payment to the heirs of deceased but in case of compounding/Sulh an acquittal may be obtained upon acceptance Badal-i-Sulh by the heirs of deceased from the accused person.

**(c) Penal Code (XLV of 1860)---**

---Ss. 53, 299(e), 310(5) & 323---Diyat' and 'Badal-i-Sulh'---Distinction---Concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as provisions of S.310(5), P.P.C. and the Explanation attached therewith show that Badal-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them---Diyat, under S. 53, P.P.C. is punishment and provisions of S.299(e), P.P.C. and S. 323, P.P.C. manifest that amount of Diyat is to be fixed by Court.

**(d) Penal Code (XLV of 1860)---**

---S. 310 (5)---Criminal Procedure Code (V of 1898), S.345---Compounding of offence of murder---Payment of Badal-i-Sulh---Effect---Compounding of offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is form of punishment and that such compounding of offence leads to nothing but an acquittal of accused person.

Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 rel.

**(e) Penal Code (XLV of 1860)---**

---S. 310(5)---Criminal Procedure Code (V of 1898), S.345---Compounding of offence of murder---Admission of guilt---Scope---It is not always that a compromise is entered into by accused person on the basis of admission of guilt by him---In many cases of false implication or spreading net wide by complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battle---Compounding of an offence does not amount to admission of guilt on the part of accused person or that an acquittal earned through such compounding of an offence may not have ramification regarding all spheres of activity of acquitted person's life, including his service or employment, beyond criminal case against him.

**(f) Criminal Procedure Code (V of 1898)---**

---S. 403---Constitution of Pakistan (1973), Art. 13(a)---Acquittal---Maxim autrefois acquit---Principle of Afw---Scope---Ultimate acquittal in a criminal case exonerates accused person completely for all future purposes vis-a-vis the criminal charge against him---Concept of autrefois acquit embodied in S. 403, Cr.P.C., protection guaranteed by Art.13(a) of the Constitution, Afw (waiver) or Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime.

**(g) Service Tribunals Act (LXX of 1973)---**

---S. 4---Penal Code (XLV of 1860), Ss.302 & 310 (5)---Criminal Procedure Code (V of 1898), S.345---Reinstatement in service---Acquittal by compounding offence of murder---Payment of Badal-i-Sulk---Respondent was employee of a Bank and was convicted on the charge of murder but later on offence was compounded between the parties and respondent was acquitted after payment of Badal-i-Sulh---After the respondent was convicted under the charge of murder, Bank proceeded against him and removed him from service---Bank declined to reinstate him in service, after he was acquitted of the charge but Service Tribunal allowed the appeal and reinstated him in service---Validity---No allegation was levelled against respondent regarding any illegality, irregularity or impropriety committed by him in relation to his service and acquittal in the case of murder had removed the only blemish cast upon him---Conviction of respondent in murder was the only ground on which he had been removed from service and that ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service---Even order of removal of respondent from service had provided that his case would be considered by competent authority for his reinstatement in service in case he was acquitted of the criminal charge---Respondent was justified in claiming his reinstatement in service upon earning acquittal from the competent criminal court---Supreme Court declined to interfere in the judgment passed by Service Tribunal, whereby respondent was reinstated in service---

Appeal was dismissed.

Shehzad Ahmad alias Mithu and another v. The State 2005 PCr.LJ 1316 and Muhammad Siddique v. The State PLD 2002 Lah. 444 ref.

**(h) Service Tribunals Act (LXX of 1973)---**

---S.4---Appeal---Limitation---Civil servant sought reinstatement in service, after he was acquitted from murder case---Service Tribunal allowed the appeal filed by civil servant and reinstated him in service---Plea raised by employer/bank was that appeal was barred by limitation---Validity---Civil servant was acquitted in criminal case on 22-9-1998 and he filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in criminal case---It would have been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service---Appeal before Service Tribunal was not barred by limitation.

The Chairman P.I.A.C. and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513 distinguished.

Raja Aleem Abbasi, Advocate Supreme Court for Appellants.

Shakeel Ahmad, Advocate Supreme Court for Respondent.

Mudassar Khalid Abbasi, D.A.G. (On Court notice).

Date of hearing: 8th April, 2010.

**JUDGMENT**

**ASIF SAEED KHAN KHOSA, J.**---The appeal in hand throws up an issue which has never been brought up before this Court earlier and, thus, the case in hand is a case of first impression. The facts leading to filing of this appeal are quite simple and admit of no ambiguity but the question raised before the Court is novel and, therefore, the same has been attended to by us with acute consideration.

2. Mumtaz Khan respondent was a Mobile Credit Officer serving with the Agricultural Development Bank of Pakistan when he was implicated in a case of murder through F.I.R. No.327 registered at Police Station Naurang, District Lakki Marwat on 8-9-1991 in respect of an offence under section 302, P.P.C. read with section 34, P.P.C. As a result of trial of that criminal case the respondent was convicted by the learned Sessions Judge, Lakki Marwat for an offence under section 302(b), P.P.C. read with section 34, P.P.C. vide judgment dated 15-11-1995 and was sentenced to imprisonment for life and a fine of Rs.40,000 or in default of payment whereof to undergo simple imprisonment for five years. The respondent preferred an appeal in that regard but his appeal was dismissed by the Peshawar High Court, Dera Ismail Khan Bench vide judgment handed down on 1-4-1998. We have been informed that the respondent had not challenged his conviction and sentence any further and after a few months of the decision of his appeal an application had been submitted by him before the learned Sessions Judge, Lakki Marwat seeking his acquittal on the basis of a compromise arrived at between him and the heirs of the deceased. That application submitted by the respondent was allowed by the learned Sessions Judge, Lakki Marwat on

22-9-1998 and the respondent was acquitted of the charge on the basis of compromise. On the departmental side, the respondent was served with a show cause notice on 22-1-1996 as by then he had already been convicted and sentenced by the criminal Court on the charge of murder and the respondent submitted a reply thereto on 28-1-1996. In view of the respondent's already recorded conviction on the charge of murder by the criminal Court the respondent was removed from service on 3-3-1996. After earning his acquittal from the criminal Court on the basis of compromise the respondent filed a departmental appeal on 12-10-1998 seeking his reinstatement in service with all the back benefits but that appeal was dismissed by the competent authority on 26-2-1999. Thereafter the respondent preferred an appeal before the Federal Service Tribunal, Islamabad in that regard which appeal was allowed by a majority of two against one by the Federal Service Tribunal, Islamabad vide judgment dated 3-7-2000 and the respondent was ordered to be reinstated in service with all the back benefits. That judgment rendered by the Federal Service Tribunal, Islamabad had been assailed by the appellants before this Court through C.P.L.A. No.1391 of 2000 wherein leave to appeal was granted on 14-2-2002 to consider the following points:-

- "(a) Whether the appeal before the Federal Service Tribunal was not time barred?
- (b) Whether a convicted person, who is released after payment of Diyat amount, could be said or could be declared as a person acquitted honourably and in that eventuality, could such a person, who is released on payment of Diyat, was liable to be reinstated into service?
- (c) Whether the payment of Diyat absolves a person from the accusation of murder? and
- (d) Whether the respondent was an acquitted person or was a convicted person even after the payment of Diyat?"

Hence, the present appeal before this Court.

3. We have heard the learned counsel for the parties at some length and have gone through the record of this case with their assistance.

4. It has been argued by the learned counsel for the appellants that the judgment passed by this Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 and relied upon by the Federal Service Tribunal, Islamabad in the impugned judgment was not relevant to the facts of this case as the said precedent case did not pertain to an acquittal in a criminal case on the basis of compromise. It has also been argued by him that by virtue of the provisions of section 53, P.P.C. Diyat is a form of punishment and it was also held so in the case of Shehzad Ahmad alias Mithu and another v. The State 2005 PCr.LJ 1316 and, thus, acquittal earned by the respondent in the case of murder by payment of Diyat to the heirs of the deceased had not washed away the blemish of the respondent regarding his being a punished person and such blemish had rendered him incapable of pressing into service his acquittal for the purpose of seeking reinstatement in service. It has further been argued by him that the compromise entered into by the respondent on the charge of murder amounted to admission of guilt on his part, as held in the case of Muhammad Siddique v. The State PLD 2002 Lahore 444, and, thus, it even otherwise offends against public policy to reinstate a person in service who is a self-condemned murderer. The learned counsel for the appellants has lastly argued that the departmental appeal filed by the respondent was barred by time and, therefore, the Federal Service Tribunal, Islamabad ought to have dismissed his appeal on this score. In support of this submission the learned counsel for the appellants has placed reliance upon the cases of The Chairman P.I.A. C. and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513.

5. As against that the learned counsel for the respondent has maintained that the entire controversy presented before the Federal Service Tribunal, Islamabad and also before this Court regarding acquittal of the respondent on the basis of paying Diyat to the heirs of the deceased is misconceived because the respondent had earned his acquittal after paying Badal-i-Sulh to the heirs of the deceased under section 310, P.P.C. and not upon payment of Diyat. He has elaborated that Diyat may be a punishment contemplated by the provisions of section 53, P.P.C. but Badal-i-Sulh is surely not a punishment mentioned in that section. He has also argued that the respondent's appeal before the Federal Service Tribunal, Islamabad had been filed well within the period of limitation and in the comments submitted by the appellants before the Federal Service Tribunal, Islamabad no objection had been raised by them regarding the appeals filed by the respondent before the Service Tribunal or before the departmental authority being barred by time. He has further maintained in this respect that there is nothing available on the record of this case to establish that the respondent's appeal filed before the departmental authority was barred by time or any objection had ever been raised before the departmental authority in that regard or that the said appeal had been dismissed on the ground of limitation. The learned counsel for the respondent has gone on to submit that no allegation had ever been levelled against the respondent regarding commission of any illegality, irregularity or impropriety by him in his service and the blemish upon the respondent on the basis of his conviction in a case of murder stood washed away on the basis of his acquittal in that criminal case and, thus, there was no impediment in his reinstatement in service with all the back benefits. The learned counsel for the respondent has highlighted that even in the order passed on 3-3-1996 regarding the respondent's removal from service it had specifically been mentioned that the said removal from service was conditional and was reversible in case of his acquittal in the relevant criminal case. With these submissions the learned counsel for the respondent has supported the majority verdict rendered through the impugned judgment handed down by the Federal Service Tribunal, Islamabad.

6. The learned Deputy Attorney-General appearing on the Court's notice has also maintained before us that the respondent had earned his acquittal in the relevant case of murder not on the basis of payment of Diyat to the heirs of the deceased but upon payment of Badal-i-Sulh to them and, therefore, his acquittal was without any blemish and the same warranted his reinstatement in service with all the back benefits. The learned Deputy Attorney-General has also supported the majority opinion recorded by the Federal Service Tribunal, Islamabad through the impugned judgment rendered by it on 3-7-2000.

7. After hearing the learned counsel for the parties and going through the record of this case with their assistance and after perusing the precedent cases cited before us we, have entertained no manner of doubt that the majority verdict delivered by the Federal Service Tribunal, Islamabad reinstating the respondent in service with all the back benefits was quite justified both on facts and in law. We may observe that prior to introduction of the Islamic provisions in the Pakistan Penal Code, 1860 an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring the prosecution and the other favouring the defence, the Court decided to extend the benefit of doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence. After introduction of the Islamic provisions in the Pakistan Penal Code, 1860 it has now also become possible for an accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under section 309, P.P.C. or on the basis of compounding/Sulh under section 310, P.P.C. In the case of waiver/Afw an acquittal can be earned without any monetary payment to the heirs of the deceased but in the case of compounding/Sulh an acquittal may be obtained upon acceptance of Badal-i-Sulh by the heirs of the deceased from the accused person. In the present case the respondent had been acquitted of the charge of murder by the learned Sessions Judge, Lakki

Marwat as a result of compounding of the offence and such compounding had come about on the basis of acceptance of Badal-i-Sulh by the heirs of the deceased from the respondent. It is true that Diyat is one of the forms of punishment specified in section 53, P.P.C. but any discussion about Diyat has been found by us to be totally irrelevant to the case in hand because the respondent had not paid any Diyat to the heirs of the deceased but he had in fact paid Badal-i-Sulh to them for the purpose of compounding of the offence. It goes without saying that the concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as the provisions of subsection (5) of section 310, P.P.C. and the Explanation attached therewith show that Badl-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them whereas under section 53, P.P.C. C Diyat is a punishment and the provisions of section 299(e), P.P.C. and section 323, P.P.C. manifest that the amount of Diyat is to be fixed by the Court. The whole edifice of his arguments built by the learned counsel for the appellants upon Diyat being a form of punishment has, thus, appeared to us to be utterly misconceived.

8. The provisions of the first proviso to subsection (1) of section 338-E, P.P.C. clearly contemplate acquittal of an accused person on the basis of compounding of an offence by invoking the provisions of section 310, P.P.C. and the effect of such compounding has also been clarified in most explicit terms by the provisions of subsection (6) of section 345, Cr.P.C. in the following words:--

"The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

9. The legal provision mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is a form of punishment and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this Court in the case of *Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department Peshawar 1998 SCMR 1993* as follows:--

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are Honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal Court and this Court had declared that an acquittal had no shades and there was no concept of Honourable or dishonourable acquittals. It had specifically been noted by this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". If that be the case then the respondent in the present case could not be stigmatized or penalized on account of his acquittal on the basis of compromise. In view of the discussion made above and also in view of the novel situation presented by this case the precedent cases cited by the learned counsel for the appellants have been found by us to be missing the mark, if not irrelevant to the controversy in hand.

10. As regards the submission made by the learned counsel for the appellants based upon the

issue of propriety of reinstating in service a person who, by virtue of compounding of an offence of murder, is a self-condemned murderer we may observe that we have pondered over the said issue from diverse angles and have not felt persuaded to agree with the learned counsel for the appellants. Experience shows that it is not always that a compromise is entered into by an accused person on the basis of admission of guilt by him and in many cases of false implication or spreading the net wide by the complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battles. Even in the present case the respondent and his brother were accused of launching a joint assault upon the deceased upon the bidding and command of their father and before the learned trial Court the respondent's brother had maintained in unequivocal terms that he alone had murdered the deceased and the respondent and their father had falsely been implicated in this case. Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis-a-vis the criminal charge against him as is evident from the concept of *autrefois acquit* embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, *Afw* (waiver) of *Sulh* (compounding) in respect of an offence has the effect of purging the offender of the crime. In this backdrop we have found it difficult as well as imprudent to lay it down as a general rule that compounding of an offence invariably amounts to admission of guilt on the part of the accused person or that an acquittal earned through such compounding may have ramifications qua all spheres of activity of the acquitted person's life, including his service or employment, beyond the criminal case against him. We may reiterate that in the case of Dr. Muhammad Islam (*supra*) this Court had categorically observed that "All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals". The sway of those observations made by this Court would surely also encompass an acquittal obtained on the basis of compounding of the offence. It is admitted at all hands that no allegation had been levelled against the respondent in the present case regarding any illegality, irregularity or impropriety committed by him in relation to his service and his acquittal in the case of murder had removed the only blemish cast upon him. His conviction in the case of murder was the only ground on which he had been removed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service.

11. It may not be out of place to mention here that even the order of removal of the respondent from service passed on 3-3-1996 had expressly provided that the respondent's case would be considered by the competent authority for his reinstatement in service in case he was acquitted of the criminal charge. Thus, on this score as well we have found the respondent to be quite justified in claiming his reinstatement in service upon earning an acquittal from the competent criminal Court.

12. As far as the submission made by the learned counsel for the appellants regarding the respondent's appeal being barred by time is concerned suffice it to observe in this context that admittedly the respondent's appeal before the Federal Service Tribunal, Islamabad was preferred within the requisite period of limitation. There is no material available before us to conclude or hold that the respondent's departmental appeal was barred by time and, if so, whether the delay in the respect, if any, had been condoned or not and on what basis the said appeal had been dismissed. The order of dismissal of the respondent's appeal by the departmental authority did not mention that his appeal had been filed beyond the period of limitation or that the same was dismissed on the ground. We have further noticed that no such objection had been raised by the appellants before the Federal Service Tribunal, Islamabad. As the assertion of the learned counsel for the appellants regarding the respondent's departmental appeal being barred by time does not find support from any document produced before us, therefore, it is not possible for us to follow the principle laid down in the cases

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Saiyed Saeed Ashhad, JJ

**HABIB BANK LIMITED---Petitioner**

Versus

**GHULAM MUSTAFA KHAIRATI----Respondent**

Civil Petition No.411-K of 2004, decided on 10th October, 2005.

(On appeal from the order, dated 12-3-2004 passed by Federal Service Tribunal at Karachi in Appeal No.1472(K) of 1998).

**(a) Service Tribunals Act (LXX of 1973)---**

---Ss. 2-A & 4---Employee of Nationalized Institution---Privatization of such Institution during pendency of appeal by its employee before Service Tribunal---Effect---Such subsequent development would neither deprive such employee of his status as civil servant nor oust jurisdiction of Service Tribunal to proceed with pending appeal---Principles.

Mere fact of privatization of Nationalized Institution by way of transfer/sale of its controlling share by the Federal Government to a private party would not be sufficient to oust the jurisdiction of the Service Tribunal to proceed with the case of an employee of such institution as at the time of filing of the appeal before the Tribunal he was a civil servant as provided by section 2-A of Service Tribunals Act, 1973 and a subsequent development would not deprive or strip such employee of his status as civil servant would have no adverse effect on the pending appeal.

**(b) First Information Report---**

---Registration of F.I.R. against a person---Effect---Mere allegation of commission of an offence and registration of F.I.R. against a person would not ipso facto make him guilty, rather he would be presumed to be innocent until convicted by a competent Court---Principles.

Mere allegation of commission of an offence against a person and registration of F.I.R. in respect of a certain offence or more than one offence against such person would not ipso facto make him guilty of commission of such offence and he would continue to enjoy the presumption of innocence until convicted by a Court of competent jurisdiction after a proper trial with opportunity to defend himself on the allegations levelled against him.

**(c) Habib Bank Limited (Staff) Service Rules, 1981---**



---R. 15---Termination of service in lieu of pay for notice period---Senior Executive Vice-President---Non-performance of duties by employee due to his arrest in a criminal case---Imposition of such penalty by Authority for having lost faith and confidence in employee and for not keeping such post vacant for indefinite period-Validity-Mere registration of criminal case against employee would not ipso facto make him guilty of commission of offence---Employee would continue to enjoy presumption of innocence until convicted by competent Court after trial---Authority could have posted another officer on such post till decision of criminal case---Employee on conviction in criminal case would have lost his job---Authority during pendency of criminal case could institute departmental proceedings against employee for his alleged criminal acts found to be false subsequently---Simpliciter termination of service of employee under R.15 of Habib Bank Limited (Service) Rules, 1981 for having lost trust and confidence of competent authority was an illegal order.

**(d) Civil service---**

---Initiation of departmental proceedings against civil servant before or after his acquittal in criminal case---Principal.

Before the quashment of F.I.R. and the pendency of criminal case the authority can initiate departmental proceedings as the criminal and departmental proceedings are entirely different not being co-extensive nor inter-connected. Even after acquittal of civil servant in criminal trial, departmental proceedings could have been instituted as these are concerned with the service discipline, good conduct, integrity and efficiency of civil servant.

Syed Muhammad Iqbal Jafri v. Registrar, Lahore High Court 2004 PLC (C.S.) 809 rel.

**(e) Civil service---**

---Removal/dismissal/termination of services of an employee of nationalized Bank having no statutory rules---Validity---Such penalty could not be imposed on employee without issuing him show-cause notice calling upon his explanation and holding of an inquiry, if required, into allegations---Mere fact that existing Service Rules of Bank did not have statutory backing would not give unlimited, unfettered and absolute power to competent authority to ignore same and deprive employee of his right of access to natural justice.

Arshad Jamal v. N.-W.F.P. Forest Development Corporation and others 2004 PLC (C.S.) 802; The Managing Director, Sui Southern Gas Co. Ltd. v. Saleem Mustafa Shaikh and others PLD 2001 SC 176; Managing Director, Sui Southern Gas Company Limited, Karachi v. Ghulam Abbas and others 2003 PLC (C.S.) 796; Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145 and Anisa Rehman v. P.I.A.C. 1994 SCMR 2232 rel.

**(f) Service Tribunals Act (LXX of 1973)---**

---S. 4---Appeal---Time-barred appeal---Condonation of delay---Validity---Discretion of condoning delay in filing appeal, if legally, judiciously and properly exercised would not be interfered with.

Managing Director, Sui Southern Gas Company Limited Karachi v. Ghulam Abbas and others 2003 PLC (C.S.) 796 and Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145 rel.

Shahid Anwar Bajwa, Advocate Supreme Court and Ahmedullah Faruqi, Advocate-on-Record for Petitioner.

Suleman Habibullah, Advocate-on-Record for Respondent.

## ORDER

**SAIYED SAEED ASHHAD, J.**--- This petition for leave to appeal has been filed by petitioner-Bank assailing the judgment dated 12-3-2004 of the Federal Service Tribunal (hereinafter referred to as the "Tribunal") in Appeal No.1472(K) of 1998 whereby the Tribunal has set aside the order of termination of the respondent and reinstated him in service with full monetary and other consequential benefits.

2. Facts requisite for disposal of this petition are that respondent was employed as Senior Executive Vice-President in Habib Bank Limited. He was involved in some criminal charges for which an F.I.R. was registered and he was arrested therein. As a result of his arrest which prolonged on account of dismissal of his bail application, he could not perform his duties on the post held by him. The petitioner Bank after observing that the post could not be kept vacant for an indefinite period as it was not known when he would be enlarged on bail or released from the charges levelled against him and further that on account of his involvement in criminal acts they had lost faith and confidence in him, thus constraints on the part of the management from allowing to occupy a very senior and confidential position terminated his services with immediate effect in pursuance of Clause 15 of the Habib Bank Limited (Staff) Service Rules, 1981 on three months pay in lieu of notice.

3. The respondent submitted his representations, legal notices etc. but the petitioner-Bank did not redress the grievance of the respondent on the ground that his termination was simpliciter and further that his service with the bank was governed by the principle of master and servant which gave ample power to the petitioner-Bank to remove/terminate an employee after serving of notice or pay in lieu thereof and there was no requirement of providing opportunity of personal hearing.

4. As the petitioner-Bank failed to redress his grievance the respondent approached High Court of Sindh by filing Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan. This petition was dismissed after incorporation of section 2-A in the Service Tribunals Act, 1973 (hereinafter referred as the "Act"). It will be advantageous to reproduce the observations of the High Court regarding condonation of delay in filing appeal before the Tribunal as under:

"The petitioner apart from the available pleas, would be free to apply for condonation of delay under section 5 of the Limitation Act for the reason that the petitioner has been pursuing his petition diligently and in good faith."

5. The order of the High Court was challenged by respondent before this Court by way of C.P.L.A. No.52 of 1998. The C.P.L.A. was dismissed vide order dated 4-6-1998 upholding the order of the

High Court to the effect that the Tribunal would have the sole jurisdiction to proceed with the case of the respondent after incorporation of section 2-A in the Act. Consequently respondent filed appeal under section 6 of the Act on 4-4-1998.

6. The petitioner objected to the maintainability of appeal before the Tribunal on the ground of limitation. The Tribunal after minute and thorough examination of the provisions of section 5 of the Limitation Act and taking into consideration the facts and circumstances of the case condoned the delay by placing reliance on the pronouncements of this Court laying down the principle for condonation of delay.

7. Feeling aggrieved and dissatisfied with the impugned judgment the petitioner-Bank filed this petition for leave to appeal.

8. We have heard the arguments of Mr. Shahid Anwar Bajwa learned Advocate Supreme Court on behalf of petitioner and Mr. Suleman Habibullah learned Advocate-on-Record for respondent.

9. Mr. Shahid Anwar Bajwa in support of the petition raised the following three contentions:---

(i) That on 12-3-2004 when the judgment was announced, the Tribunal had ceased to have jurisdiction to proceed with the case of the respondent inasmuch as by that date the petitioner-Bank after completion of privatization process had been handed over to Agha Khan Foundation as they had acquired 51% interest in the petitioner-Bank whereafter it could not be said that the Bank was being run, controlled and managed by the Federal Government thus depriving the respondent of the status of civil servants as per section 2-A of the Act.

(ii) That the petitioner on account of his involvement in criminal acts and offences of serious nature for which F.I.R. No.98 of 1994 dated 26-12-1994 was registered by F.I.A. under sections 161/162 P.P.C. read with section 5(2) of Prevention of Corruption Act (II of 1947) was found to be dishonest, unreliable, unscrupulous and tricky person becoming unfit for employment in an institution like a Bank where utmost trust, respect, credibility and honesty is required leaving no option with the Bank but to terminate his services; and

(iii) That the Tribunal had erred in condoning the delay in filing the appeal by the respondent as no cogent, plausible and satisfactory ground had been advanced by the respondent for the delay in filing the appeal and the Tribunal had acted in an arbitrary and fanciful manner in condoning the delay.

10. Mr. Suleman Habibullah, learned Advocate-on-Record appearing on behalf of respondent on the other hand supported the judgment of the Tribunal and submitted that the Tribunal had considered each and every aspect of the case in condoning the delay and minutely examined all the contentions of the counsel for the parties as well as relevant provisions of the law applicable to the facts and circumstances of the case relating to the rights, liabilities and obligations of the parties.

11. Relative to the first contention raised by Mr. Shahid Anwar Bajwa it is to be observed that this contention was not available to the petitioner at the time when the appeal was argued before the Tribunal, therefore, the Tribunal could not have considered and dilated upon the contention which has

been raised for the first time today. The petitioner did not even raise this ground in their petition for leave to appeal filed by them in this Court. Even otherwise raising of this plea or ground before us would be of no help to the petitioner in view of the judgment of a larger Bench of this Court in Civil Petitions Nos.204 to 240, 247, 248-K of 2004 and 199-K of 2005 (Manzoor Ali and others v. United Bank Ltd. and another) holding that mere fact of privatization of Nationalized Institution by way of transfer/sale of its controlling share by the Federal Government to a private party would not be sufficient to oust the jurisdiction of the Service Tribunal to proceed with the case of an employee of such institution as at the time of filing of the appeal before the Tribunal he was a civil servant as provided by section 2-A of the Act and a subsequent development would not deprive or strip such civil servant of his status as civil servant would have no adverse effect on the pending appeal. This contention is therefore decided against the petitioner.

12. Taking into consideration the second contention advanced by Mr. Shahid Bajwa it may be observed that it is a settled principle of law B that mere allegation of commission of an offence against a person and registration of F.I.R. in respect of a certain offence or more than one offence against such person would not ipso facto make him guilty of commission of such offence and he would continue to enjoy the presumption of innocence until convicted by a Court of competent jurisdiction after a proper trial with opportunity to defend himself on the allegations levelled against him. In the present case the petitioner had acted with utmost hurry and hot haste for which no plausible explanation was provided by them either before the Tribunal or by Mr. Shahid Bajwa while arguing this petition in this Court. What was stated in support of removal/termination was that the post occupied by the respondent was of Senior Executive Vice-President which could not be kept vacant for a long period and that on account of the criminal act/offence committed by him he had lost faith, confidence and trust of the competent authority for holding such a senior appointment. Both the grounds advanced by Mr. Shahid Bajwa do not appear to carry weight. As regards the contention that the post could not be kept vacant for long period, it may be observed that it could have been filled in by posting another officer or additional charge of the post could have been given to another officer till such time the respondent's case has been decided by a competent Court. However, in case of conviction he would have lost his job. The petitioner could have instituted departmental proceedings against the respondent for his alleged criminal acts under their service rules known as Habib Bank Limited (Staff) Service Rules, 1981 (hereafter referred to the "Rules"). Removal of the respondent under clause 15 of the Rules on the ground that respondent had lost faith, confidence and trust of the competent authority was an illegal order which in the garb of termination simpliciter was in effect by way of punishment for the alleged criminal acts of respondent which were sub judice before a competent Court and which subsequently were found to be baseless and false. Before the quashment of the F.I.R. and pendency of the criminal case the petitioner could have initiated departmental proceedings as the criminal case and the departmental proceedings are entirely different not being co-extensive nor inter-connected. Even after acquittal of respondent in criminal trial, departmental proceedings could have been instituted as the departmental proceedings are concerned with the service discipline, good conduct, integrity and efficiency of the employees. For the above reliance is placed on the case of Syed Muhammad Iqbal Jafri v. Registrar, Lahore High Court, 2004 PLC (C.S.) 809.

13. Admittedly at the time when action of termination was taken against the respondent the petitioner-Bank was being managed, run and controlled by the Federal Government and though at that time the exact status of the employees of the Nationalized Banks could not be determined but the fact is that

the law of Master and Servant had ceased to be applicable as the petitioner-Bank was no longer a privately managed bank and further that the employees of the petitioner-Bank had been given certain guarantees and sanction under The Banks (Nationalization) Act, 1974. It is also an admitted fact that Service Rules for the petitioner employees had been framed and were in existence. The competent authority of the respondent-Bank thus had no power to terminate the services of the respondent without issuing show-cause notice to the respondent, calling upon his explanation and holding an inquiry, if so required into the allegations. The competent authority thus acted not only in contravention of the provisions of law relating to the removal, dismissal and termination of the employees of a nationalized bank but also violated the provisions of natural justice according to which no one can be condemned without providing him an opportunity of defending himself. Such order could not be said to be a legal, valid and proper order. The fact that the Service Rules in existence in the Petitioner's Bank did not have statutory backing would not give unlimited, unfettered and absolute power to the Petitioner to ignore the same and to deprive the respondent of his right of access to natural justice. If any authority is required in support of the above proposition the same are available from the judgments in the cases of (i) Arshad Jamal v. N.-W.F.P. Forest Development Corporation and others 2004 PLC (C.S.) 802, (ii) The Managing Director, Sui Southern Gas Co. Ltd. v. Saleem Mustafa Shaikh and others PLD 2001 SC 176 (iii) Managing Director, Sui Southern Gas Company Limited, Karachi v. Ghulam Abbas and others 2003 PLC (C.S.) 796; (iv) Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145 and (v) Anisa Rehman v. P.I.A.C. 1994 SCMR 2232.

14. With regard to the contention that the Tribunal had erred in condoning the delay on the ground that no plausible satisfactory and sufficient ground was advanced by respondent for condonation of delay in filing the appeal, it may be stated that delay was condoned by the Tribunal after a minute and detailed examination of the facts and circumstances of the case, the grounds advanced by the respondent for the delay and the pronouncements made by this Court in a large number of cases laying down the principle for condonation or otherwise of the delay in filing appeals and application etc. The Tribunal while condoning the delay did not commit any illegality or material irregularity or acted arbitrarily or against the settled principles governing condonation of delay which would compel this Court to interfere with the exercise of discretion. In a large number of the cases this Court has pronounced that when discretion of condoning the delay in filing an appeal has been legally, judiciously and properly exercised then same is not required to be interfered with. Reference may be made to the case of Managing Director, Sui Southern Gas Company Limited, Karachi v. Ghulam Abbas and others 2003 PLC (C.S.) 796 wherein this Court while discussing the ambit of the discretionary power of the Tribunal relative to condonation of delay observed as under:--

"Besides above reference, decision of the cases, on merits have always been encouraged instead of non-suiting the litigants for technical reasons including of limitation. In this behalf good number of precedents can be cited where question of limitation was considered sympathetically after taking into consideration the relevant facts. Reliance is placed on the cases of Muhammad Yaqoob v. Pakistan Petroleum Limited and another 2000 SCMR 830, Messrs. Pakistan State Oil Company Limited v. Muhammad Tahir Khan and others PLD 2001 SC 980, Teekam Das M. Haseja, Executive Engineer, WAPDA v. Chairman, WAPDA 2000 SCMR 142. There are cases where even delay has been condoned by the Tribunal without receiving application from the appellant but no interference was made by this Court on the premises that Service Tribunal had passed order in exercise of its discretionary powers. In this

behalf reference may be made to the case of WAPDA v. Muhammad Khalid 1991 SCMR 1765. Relevant para. therefrom reads as under thus:

"As regards the question that no application for condonation of delay had been filed by the respondent the matter being one of the discretion, the finding of the Tribunal cannot be set aside on a technicality alone."

In the case of Nazakat Ali v. WAPDA through Manager and others 2004 SCMR 145 this Court made the following observations:---

"... It hardly needs any elucidation that sufficiency of cause of condonation of delay being question of fact is within the exclusive jurisdiction of learned Federal Service Tribunal and once the discretion concerning condonation of delay was exercised judiciously by the Service Tribunal it cannot be disturbed by this Court without any justification which is lacking in this case. In this regard we are fortified by the dictum laid down in Syed Ali Hasan Rizvi v. Islamic Republic of Pakistan 1986 SCMR 1086, Muhammad Azhar Khan v. Service Tribunal, Islamabad 1976 SCMR 262, Water and Power Development Authority v. Abdur Rashid Dar 1990 SCMR 1513 and Sher Bahadar v. Government of N.-W.F.P. 1990 SCMR 1519.

The conclusion arrived at by the learned Federal Service Tribunal being strictly in consonance of law and being well-based does not warrant any interference. The petition being meritless is dismissed and leave refused."

15. Perusal of the relevant portion of the judgment of the Tribunal dealing with this issue leaves no doubt that it had decided this issue after a thorough and very minute examination of the facts, circumstances and the relevant case. Thus the exercise of discretion does not require to be interfered with.

16. For the foregoing facts, discussion and reasons this petition for leave to appeal is found to be without any substance. Accordingly it is dismissed and leave to appeal is refused.

S.A.K./H-38/SC

Leave refused.


08.06.2022

Appellant in person present. Mr. Arif Saleem, Stenographer alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today due to strike of lawyers. Adjourned. To come up arguments on 14.07.2022 before the D.B.



(Fareeha Paul)  
Member (E)



(Salah-ud-Din)  
Member (J)

11.10.2021

Clerk to counsel for the appellant present. Mr. Riaz Khan Paindakheil Assistant Advocate General alongwith Mr. Ishaq Gul DSP for the respondents present.

Learned Members of the DBA are observing Sogh over the demise of Dr. Abdul Qadeer Khan (Scientist) and in this regard request for adjournment was made; allowed. To come up for arguments on 21.12.2021 before D.B.



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

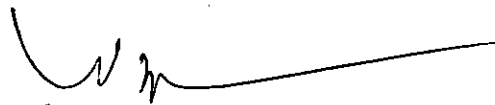


(Rozina Rehman)  
Member (J)

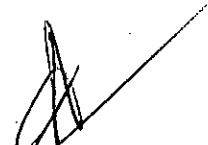
21.12.2021

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

Clerk of learned counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of lawyers. Adjourned. To come up for arguments before the D.B on 05.04.2022.



(Atiq Ur Rehman Wazir)  
Member (E)

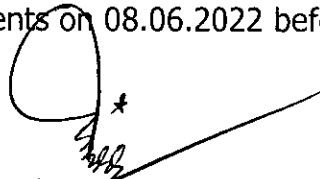


Chairman

05.04.2022

Learned counsel for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Former seeks adjournment in order to properly assist the court. Adjourned. Last opportunity is granted. To come up for arguments on 08.06.2022 before the D.B.



(Mian Muhammad)  
Member(E)



Chairman

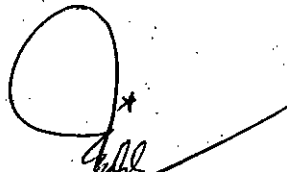


15.03.2021

Counsel for the appellant and Mr. Muhammad Rashid, DDA alongwith Mr. Arif Saleem, Steno for the respondents present.

Former requests for adjournment as he has not prepared the brief.

Adjourned to 07.06.2021 before D.B.

  
(Mian Muhammad)  
Member(E)


  
Chairman

07.06.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Due to general strike of the bar, case is adjourned. To come up for arguments on 11.10.2021 before D.B.

  
(Rozina Rehman)  
Member (J)



27.10.2020

Nemo for appellant.

Kabir Ullah Khattak learned Additional Advocate General alongwith Arif Salim Stenographer for respondents present.

Written reply on behalf of respondents was not submitted. Representative of respondents requests for time to furnish written reply/comments. Opportunity is granted. To come up for written reply/comments on 22.12.2020 before S.B.



(Rozina Rehman)  
Member (J)

22.12.2020

Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Arif Salim Stenographer for respondents present.

Representative of respondents submitted reply which is placed on file. To come up for rejoinder, if any, and arguments on 15.03.2021 before D.B.



(Rozina Rehman)  
Member (J)

08.07.2020

Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Written reply of respondents is still awaited. Learned AAG requested for time in order to submit written reply/comments; granted. To come up for written reply/comments on 01.09.2020 before S.B.

*D*

Member (J)

01.09.2020

Junior to counsel for the appellant present.

After admission of appeal on 27.02.2019, notices have not been served upon the respondents. Therefore, notices be issued to the respondents for submission of written reply/comments on 27.10.2020 before S.B.

Chairman

*if*

~~27.10.2020~~

~~Memorandum~~

~~Kabir Ullah Khattak learned Additional Advocate General~~

~~along with briefs and stenographer for respondents present~~

~~Written reply on behalf of respondents was not submitted~~

~~Representative of respondents requested for time to furnish~~

~~written reply/comments. Request is granted to come up~~

~~for written reply/comments on 22.12.2020 before S.B.~~

27.02.2019

Appellant with counsel present. Preliminary arguments heard.

The appellant (Ex-Constable) has filed the present service appeal against the order dated 08.02.2019 whereby major penalty of dismissal from service was imposed upon him. Departmental appeal moved by the appellant was rejected vide order dated 20.06.2019.

Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 14.04.2020 before S.B.

Appellant Deposited  
Security & Process Fee



Member

14.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 08.07.2020 for the same. To come up for the same as before S.B.




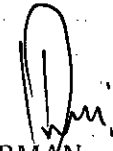


Reader

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- \_\_\_\_\_ 1398/2019 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/10/2019	<p>The appeal of Mr. Arsalan resubmitted today by Uzma Syed Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 23/10/19</p>
2-	24/10/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>09/12/19</u>.</p> <p> CHAIRMAN</p>
	09.12.2019	<p>Nemo for appellant.</p> <p>Notices be issued to appellant/counsel for preliminary hearing before S.B on 14.01.2020.</p> <p> Chairman</p>
	14.01.2020	<p>Junior to counsel for the appellant present.</p> <p>Requests for adjournment due to general strike of the Bar. Adjourned to 26.02.2020 before S.B.</p> <p> Chairman</p>

RB

The appeal of Mr. Arsalan Ex-Constable No. 488 Police Line Kohat received today i.e. on 16.10.2019 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

Copy of departmental appeal against the impugned order mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 1775 /S.T,

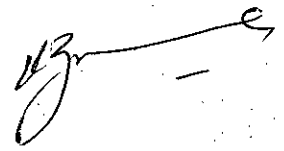
Dt. 17/10/2019.

  
Uzma Syed Adv. Pesh

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Sir,

that departmental Appeal is not available therefore the instand Appeal may be put up before the bench on the basis of rejection order.

  
23-10-2019

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR**

APPEAL NO. 1398 /2019

ARSALAN

V/S

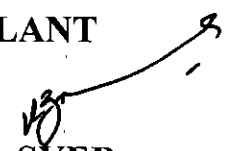
POLICE DEPTT:

**INDEX**

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	-----	1 - 3.
2.	FIR	A	4.
3.	Order dated 13.04.2015	B	5.
4.	Judgment	C	6- 8.
5.	De-novo inquiry	D	9- 11.
6.	Impugned order	E	12- 13.
7.	Appellate order	F	14.
8.	Revision petition	G	15.
9.	Vakalatnama	-----	16.

THROUGH:

APPELLANT

  
UZMA SYED  
ADVOCATE

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

APPEAL NO. 1398 /2019

Mr. Arsalan, Ex constable No.488,  
Police Line Kohat.....APPELLANT

VERSUS

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1459

Dated 16/10/2019

- 1- The inspector general of police, Khyber Pakhtunkhwa, Peshawar.
- 2- The regional police officer, Kohat Region.
- 3- The District Police Officer, district Kohat.

.....RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 08.02.2019 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUARY PERIOD OF NINETY DAYS.**

**PRAYER:**

**That on the acceptance of this appeal the impugned order dated 08.02.2019 may very kindly be set aside and the appellant be reinstated into service with all back benefits. Any other remedy which this august tribunal deems fit that may also be awarded in favor of the appellant.**

**R/SHEWETH:**

**ON FACTS:**

*Brief facts giving rise to the present appeal are as follows:-*

- 1- That appellant was the employee of the respondent department and serving as constable No.488 quiet efficiently and up to the entire satisfaction of his superior.
- 2- That during service appellant was falsely charged in criminal case FIR No, under section 302 PPC, Dated 04.12.2014 in police station city, Kohat. That due to involvement in criminal case the respondent department straight away dismissed the appellant from the service vide order dated 13.04.2015. Copy of the FIR & order dated 13.04.2015 are attached as annexure .....A & B.
- 3- That appellant feeling aggrieved from the impugned order dated 13.04.2015 filed departmental appeal followed by service appeal No. 773/2016 before this august tribunal. That this august tribunal accepted the service appeal of the appellant and directed the respondents to conduct Denovo proceeding in

Filed to-day

Registrar

16/10/19

Re-submitted to-day  
and filed.

Registrar  
23/10/19



the matter. Copies of the judgment & de-novo inquiry are attached as annexure.....**C & D.**

- 4- That the respondent department conducted one sided Denovo proceeding and in completion of the alleged inquiry the appellant was dismissed from service vide order dated 08.02.2019 copy of the impugned order is attached as annexure .....**E.**
- 5- That appellant feeling aggrieved from the impugned order dated 08.02.2019 filed D/A which was rejected on 20.06.2019 without touching the merits. That appellant filed revision petition against the order dated 20.06.2019 before the respondent No.1 but no reply has been received so far. Copies of the appellate order and revision petition are attached as annexure.....**F & G.**
- 6- That appellant feeling aggrieved and having no other filed the instant service appeal on the following grounds amongst the others.

**GROUND:**

- A- That the impugned order dated 08.02.2019 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- C- That the respondents acted in arbitrary and malafide while issuing the impugned orders dated 08.02.2019 and 20.06.2019 which are not tenable in the eyes of law and the same are liable to be set aside.
- D- That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 08.02.2019.
- E- That no chance of personal hearing has been provided to the appellant before issuing the impugned order dated 08.02.2019 which is necessary as per judgment of the Apex Court before taking any punitive action against the civil servant.
- F- That the appellant has Honorably been acquitted by the Learned Trial Court in the charges leveled against him, hence in light of the judgment of the Apex Court, “where is no charge, there is no punishment”.
- G- That in the alleged de-novo inquiry no charge has been proved against the appellant, therefore, the appellant is fully entitle for re-instatement in service with all back benefits.

H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

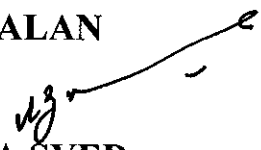
Dated: 15.10.2019

APPELLANT



ARSALAN

THROUGH:



UZMA SYED  
ADVOCATE

نمبر 12-50

ایڈیشن پولیس اور سونام نمبر 11

ایڈیشن اطلاع رپورٹ

حدیث جوارہ  
1600974-S  
00-SS502S1

کوئٹہ

تاریخ و وقت نسبت مجرم قابل دست اندازی پولیس رپورٹ شروع و وقت 12:00 بجے

مذکورہ سٹوچاٹ

مختارہ سی

تاریخ و وقت وقوعہ = 12/4 وقت = 19:00

نمبر 7/3

1	تاریخ و وقت رپورٹ = 12/4 وقت = 19:35	مذکورہ سٹوچاٹ
2	نام و سکونت اطلاع دہندہ و متصفیہ	کاہران ولد واجد عمر 18 سال سکونت کاشنگ ضلع مردان
3	مختصر کیفیت مجرم (معدومہ) حال اگر کچھ بیا گیا ہو	302 P
4	جائے وقوعہ فاصلہ مقام سے اور سمت	نزد دکان آذان صہیف راشد مارکٹ واقع گراہی ڈھور ڈیول
5	نام و سکونت ملزم	
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرے۔	بہر تشددگی نہ اسمہ بسپور سیشن رپورٹ میرتبہ دیا جا رہا ہے
7	مقام سے روانگی کی تاریخ و وقت	بسپور سیشن رپورٹ

ایڈیشن اطلاع نیچے درج گورو اس وقت ایک تحریر فرامہ مجانب کبر شاہ  
Asi بدست راجن محل 787 موصول ہو کر درج ذیل ہے۔  
مذکورہ مقام سی بدوران گذشت اطلاع ملنے پر ایڈیشن  
پہنچا اور پھر جس روم میں انش اذان موصول ہوا وہاں جا کر 18 سال سکونت کاشنگ ضلع مردان  
اول تفتیش و تفتیش کے متعلق جانچا گیا اور موجود پکار بحق مقبول کاہران ولد واجد عمر 18 سال سکونت کاشنگ ضلع مردان  
رپورٹ کرتا ہے۔ کہ احتساب وقت 19:00 بجے میں ہم تصور ولد الوب سکے ایڈیشن آباد جو میرتبہ سا گراہی  
میں رخصت کر رہے۔ ارسلان جو پولیس میں ملازم ہے۔ جس نامی لڑکا، جاوید مقبول، جو چاہے آج گلے  
کے حق میں فیورک کا ساخان لے جایا کرتا تھا۔ اجانک جاوید مقبول، ارسلان، حسن دکان سے باہر آئے۔  
دکان کے باہر میں نے پستول فائر کی آواز سنی۔ میں ہم تصور فوری طور پر دکان سے باہر آئے۔  
کہ جاوید مقبول، راجن دن پر تل کر گزری ہوا تھا۔ جنکو ٹوکوں سے پھینکا گیا۔ جو زخم کی آواز  
سنانی ہوئی۔ ارسلان، حسن جو موقع پر موجود نہ تھے۔ مجھے یہ علم نہیں کہ جاوید مقبول کی حالت  
کاشنگ ضلع مردان میں آگوتھا۔ نشان آگوتھا رپورٹ کنندہ پتھر ولد الوب سکے ایڈیشن آباد نے رپورٹ بالا کی بنا پر  
ان آگوتھا۔ کارروائی پولیس میں گفتہ سائن رپورٹ صرف یہ حرف درج ہوا ہو کر پتھر سکے سنا گیا  
درج ذیل تسلیم کر کے زیر رپورٹ خود نشان آگوتھا تہ کیا جسکا میں تفتیش کرتا ہوں۔ وہ آگوتھا  
مختارہ سی اور بدست حال علیحدہ علیحدہ دیکھ کر کے تفتیش پورٹ نام رپورٹ بدست سی بادشاہ ایڈیشن  
کا کسٹ ہو گیا۔ حضرت رپورٹ سے صورت جسم بالا یانی ہے۔ فرامہ ایڈیشن جائیدگی۔ بدست  
کا 787 سال کاشنگ ضلع مردان۔ پتھر سکے ایڈیشن رپورٹ درج کر کے تفتیش ایڈیشن ایڈیشن ایڈیشن  
ان درختا انگریزی ایڈیشن ASI سی 12-11 کارروائی مقام آجہ فرامہ حجاز کے ایڈیشن  
میں بالا ایڈیشن رپورٹ درج و مشر ہو کر پتھر میں ہم فرامہ ایڈیشن تفتیش درج 12/4  
پتھر سکے ایڈیشن رپورٹ کاشنگ ضلع مردان

MHC / city

Handwritten signature and initials.

ORDER

~~18~~ B-5

Attested  
PS D.S.O. Legal  
Kohat

This order is passed on the departmental enquiry against Constable Arsalan No. 488 of this district Police under the Khyber Pakhtunkhwa, Police Rules, 1975 Amendment 2014.

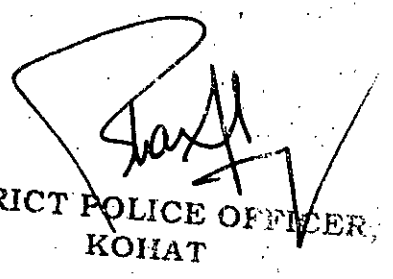
Brief facts are that being involved/arrested in case vide FIF No. 713 dated 04.12.2014 u/s 302/34 PPC, PS City. Which is a gross misconduct on his part.

He was served with Charge Sheet/Summary of Allegations and DSP Legal, Kohat was appointed as Enquiry Officer to proceed against him departmentally. He submitted his finding and found him guilty of the charges leveled against him.

In view of the above he was issued Final Show Cause Notice and served upon him. His reply is perused and found un-satisfactory. He has been Challaned in the case and in judicial lockup.

The undersigned gone through the record and has come to the conclusion that defaulter official has committed gross misconduct, therefore, I Muhammad Sohaib Ashraf District Police Officer, Kohat in exercise of the powers conferred upon me, award him major punishment of dismissal from Service from the date of case registered.

Attested  
Su  
Adm.

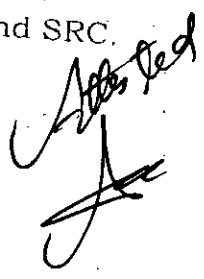
  
DISTRICT POLICE OFFICER,  
KOHAT

OB No. 322  
Date 13-4-2015

OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT.

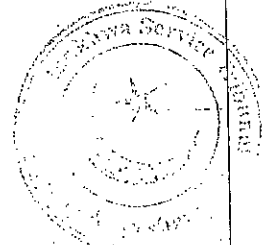
No. 3314-14 PA dated Kohat the 13-4-2015.

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

- 1. Pay Officer, OHC and SRC.
- Attested  


Sr. No. Date of order/proceedings

Order or other proceedings with signature of Judge or Magistrate



C-6

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**Service Appeal No. 773/2016**

Date of Institution ..... 15.07.2016  
Date of Decision ..... 16.10.2018

Arsalan Ex-Constable No.488 son of Abdul Khanan resident of Garhi Atta Khan, Tehsil & District Kohat.

**Appellant**

**Versus**

1. Government of Khyber Pakhtunkhwa through Inspector General of Police, Peshawar.
2. Regional Police Officer, Kohat Region.
3. District Police Officer, Kohat.
4. DSP (Legal) Kohat.

**Respondents**

Mr. Muhammad Hamid Mughal-----Member (J)  
Mr. Hussain Shah-----Member (E)

16.10.2018

**JUDGMENT**

**MUHAMMAD HAMID MUGHAL, MEMBER:** - Learned

counsel for appellant and Mr. Riaz Paindakheil learned Assistant Advocate General for the respondents present.

2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 13.04.2015 whereby he was awarded major punishment of dismissal from the service being involved/arrested in case FIR No.713 dated 04.12.2014 u/s 302/34 PPC P.S City District Kohat. The appellant has also challenged the order dated 15.06.2016 through which his

Attested  
[Signature]

REGISTERED


[Signature]

Khyber Pakhtunkhwa Service Tribunal  
Peshawar

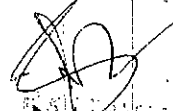
departmental appeal was rejected.

3. Learned counsel for the appellant argued that the appellant was arrested in a false case Fir No.413 dated 04.12.2014 u/s 302/34 PPC-15 AA Police Station City Kohat. Further argued that during the pendency of criminal trial when the appellant was in the judicial lock up/Central Jail Kohat, the departmental inquiry was conducted against the appellant due to his involvement in the above mentioned criminal case. Further argued that the appellant was not associated with departmental inquiry nor he was provided the alleged inquiry report and that without affording any opportunity of hearing to the appellant, the respondent No.3 issued the impugned order of his dismissal from service. Further argued that the departmental appeal of the appellant was also rejected in a hasty manner without considering the actual facts and circumstances of the case.

4. As against that learned Assistant Advocate General argued that the appellant was arrested in the murder case and for that reason departmental action was initiated against him and that the punishment was awarded to the appellant after observing all the legal requirements. Further argued that the inquiry officer in his report gave findings against the appellant. Further argued that the inquiry officer also mentioned in his report that the appellant being a member of disciplinary force used to visit the place of "Hunuch/Khawaja-Sera" which is also a moral stigma. Further argued that the appellant also filed departmental appeal/review petition which was rejected by the appellate/review board and in this

Attested  


ATTESTED



Assistant Advocate General  
 Government of Punjab  
 Lahore

⑤  
 ⑦

8

respect proper order dated 18.11.2016 was issued.

5. Arguments heard. File perused.

6. There is no dispute that the departmental action was initiated and the inquiry report was prepared when the appellant was confined in judicial lock up. Learned Assistant Advocate General remained unable to demonstrate that the witnesses got recorded their statements before the inquiry officer, in the presence of the appellant. The inquiry officer in his report also mentioned that, as per FIR, the appellant used to visit the place of "Bunuch/Khawaja-Sera" which is moral stigma. However no allegation to that effect has been leveled in the charge sheet/statement of allegation.

7. In view of above, the order dated 15.06.2016 of the appellate authority (respondent No.2) and the order dated 18.11.2016 of appeal/review board are set aside and the competent authority is directed to conduct denovo inquiry against the appellant by providing him proper opportunity of defense under the law/rules. The issue of reinstatement of the appellant shall be subject to the outcome of denovo inquiry. The present appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

*[Signature]*

(Iussain Shah)  
Member

*[Signature]*

(Muhammad Hamid Mughal)  
Member

*Attested*  
*[Signature]*

ANNOUNCED  
16.10.2018

Date of Birth	
Amount	1600
Category	10-02
Emp. No.	2-00
Grade	12-00
Name	
Date of Disposal	26-10-18

*[Faint stamp and signature on the left margin]*

D-9



Phone: 091-9211947

Office of the Inspector General of Police  
Khyber Pakhtunkhwa, Peshawar.

No. 1715 /E&I, dated Peshawar the 18 /12/2018

To: The District Police Officer,  
Kohat.

Subject: **DENOVE DEPARTMENTAL ENQUIRY AGAINST  
EX-FC ARSALAN NO. 488**

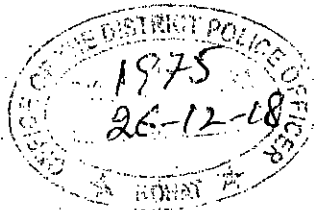
Memo:

Please refer to your letter No. 2673/LB dated 10.12.2018, on the subject cited above.

2. Denovo departmental enquiry against Ex-FC Arsalan No. 488 may be conducted through Mr. Jehanzeb Khan, SP/Investigation Kohat and final outcome be communicated to this office, on or before 02.01.2019, before issuance of formal order, for the perusal of Worthy IGP.

3. Being a court matter the proceedings shall be completed within the limitation period to avoid further legal complications.

*File 39 / 1715*



*(Signature)*  
**(ASLAM NAWAZ)**  
AIG/C&E  
For Inspector General of Police  
Khyber Pakhtunkhwa,  
Peshawar

No. /E&I,  
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Kohat.
2. Mr. Jehanzeb Khan, SP/Investigation, Kohat.
3. The PSO to IGP.

*PRR  
Immediate*

*(PR)*

*SP/inv*

*For report  
before due date*

*Attested  
[Signature]*

*(Signature)*  
**(ASLAM NAWAZ)**  
AIG/C&E  
For Inspector General of Police  
Khyber Pakhtunkhwa,  
Peshawar

*11773  
2/12/18*

*(Signature)  
20/12*



No. 45 /PA  
Dated 17/01/2019

10

**REFERENCE ATTACHED**

SUBJECT: **DENOVODEPARTMENTAL ENQUIRY AGAINST CONSTABLE ARSALAN NO.488 DISTRICT KOHAT.**

Respected Sir,

Kindly refer to your office letter No.13648/PA, dated 27.12.2018.

**BRIEF ALLEGATIONS.**

"Being in Police service he was charged / arrested for the murder of a transgender, vide FIR No.713 dated 04.12.2014 u/s 302/34 PPC PS City, Kohat".

**PROCEEDINGS.**

1. The delinquent Constable Arsalan No.488 was re-instated in service by the W/DPO, Kohat vide Order Endst: No.13641-45/PA, dated 27.12.2018 on the judgement of Service Tribunal in connection with initiate denovo proceedings.
2. In order to dig-out the actual facts, Constable Arsalan No.488 was summoned, charge sheet & Statement of allegation was served upon him which he received and replied within stipulated period. He was also heard in person his reply not weight-able.
3. During cross examination he expressed that the then DPO Kohat did not heard in person he was in Jail in connection with involvement in Case FIR No.713 dated 04.12.2014 U/S 302/34 PPC PS City, Kohat.
3. Accused Ihsanullah was also involved in the said case, he was called. He stated in his statement that he was not present on the spot with the defaulter Constable Arsalan No.488.
4. Complainant Kamran s/o Wajid r/o Hangu Phattak (Eunuch) permanent resident of Katlang Mardan has been died.
5. Arif s/o Darwaish (Eunuch), Jibrān s/o Abdul Ghaffar (Eunuch) & Farmanullah s/o Ghulam Hussain (Eunuch) residents of Hangu Phattak were summoned and the issue was discussed in detail. They stated that the complainant Kamran (Eunuch) was personally known to him and he was residing with him has been died due to Jaindas.
6. Ex-I.O SI Gul Razim Khan (retired) was summoned. He stated in his statement that he was investigated the said case. Defaulter Constable Arsalan No.488 & Ihsanullah were found guilty.
7. Upon the enquiry finding by the then DSP/Legal Kohat, the then DPO, Kohat was issued Charge Sheet & Statement of Allegation No.7697-98/PA, dated 09.12.2014 and served upon him properly.
8. The alleged Constable Arsalan No.488 was dismissed from service due to involvement in Case FIR No.713 dated 04.12.2014 U/S 302/34 PPC PS City, Kohat which is gross misconduct on his part vide OB No.322 dated 13.04.2015.
9. The defaulter Constable Arsalan No.488 was filed an appeal before the Service Tribunal Khyber Pakhtunkhwa, Peshawar for his re-instatement in service.

**FINDINGS**

10. In view of the above discussion, statements recorded, the undersigned came to the conclusion that :-

- A. Defaulter Constable Arsalan No.488 was discharged due to the involvement in Case FIR No.713 dated 04.12.2014 U/S 302/34 PPC PS City for his gross misconduct.
- B. By issuing of Charge Sheet & Statement of allegation and received properly.

*Attested  
As.*



C. During cross examination the alleged Constable ignorance about the Case vide FIR No.713 dated 04.12.2014 U/S 302/34 PPC PS City in which he was charged.

✓ D. The delinquent Constable was acquitted according to the Judgment of Hon'ble Court of ASJ-IV, Kohat due to contradiction of the relevant statements.

E. According to the I.O SI Gul Razim Khan (retired) the alleged Constable Arsalan No.488 was found guilty.

F. The defaulter Constable Arsalan No.488 was re-instated in Service by W/DPO, Kohat vide Order Endst: No.13641-45/PA, dated 27.12.2018 as per Judgment of Service Tribunal.

G. The defaulter Constable Arsalan No.488 was enlisted on 26.05.2008 and he was dismissed from service by the then DPO, Kohat vide OB No.322 dated 13.04.2015.

H. As per source report, his society with the "Khawaja Sara brathere"

I. **"As per the then Enquiry Officer opinion/finding, the defaulter Constable Arsalan being a member of disciplined force, used to visit the place of Eunuch/Khawaja Sara which is also moral stigma".**

✓ J. From the perusal of Service record of the delinquent Constable which shows that he has habitual absentee.

K. **I, was agreed** with the above opinion/finding of the then Enquiry Officer (DSP/Legal, Kohat). According to **P.R Chapter-14** the Character of Police Officer will be clean & crystal.

L. Due to above circumstances the alleged Constable Arsalan No.488 is not fit for Police department, and it is suggested/requested to filed an appeal against the Judgement of Service Tribunal Khyber Pakhtunkhwa Peshawar, if agree. The decision of the Seniors will be final.

Enquiry report is submitted for kind perusal.

W/DPO KOHAT

*Jw 1-3.*  
**(JEHANZEB KHAN)**  
**SUPERINTENDENT OF POLICE**  
**INVESTIGATION, KOHAT**

*Agreed*

*[Handwritten signature]*

*Dismissed from service*

*[Handwritten signature]*

*Attested*



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT  
Tel: 0922-9260116 Fax 9260125

No. 1471 /PA dated Kohat the 08/12 /2019

## ORDER

This order will dispose of de-novo departmental proceedings conducted against constable Arsalan No. 488 of this district Police, in compliance with the judgment dated 16.10.2018 of Khyber Pakhtunkhwa Service Tribunal in service appeal No. 773/2016 & Inspector General of Police letter No. 1715-18/E&I dated 18.12.2018.

Short facts of the proceedings are that the accused official while posted at Police Lines Kohat was charged/arrested in murder of transgender vide FIR No. 713 dated 04.12.2014 u/s 302, 34 PPC PS City. The accused official was proceeded with departmentally on the above charge, which resultant into his dismissal from service vide order dated 13.04.2015. After availing departmental forums, the accused official filed service appeal against impugned order, which was accepted with the directions to conduct denovo enquiry against the appellant by providing him proper opportunity of defense under the law / rules.

In compliance with the above, charge sheet alongwith statement of allegations was issued to the accused official and Superintendent of Police Investigation Kohat was appointed as enquiry officer by the competent authority. After holding proper proceedings, the enquiry officer established charge against the accused official and found not fit for service in Police.

Final Show Cause Notice alongwith copy of enquiry report was served upon the accused official. Reply received unsatisfactory, without any plausible explanation.

Therefore, the accused official was called in Orderly Room, held on 04.02.2019 and heard in person, but he failed to submit any explanation to his gross misconduct. The accused official was associated with enquiry proceedings and provided opportunity of defense but he failed to defend himself as well.

Record gone through which indicates that the accused official alongwith other was charged for murder of a transgender (eunuch) vide FIR No. mentioned above. The accused official, besides murder of an innocent person of society earned bad name to disciplined force. Furthermore, the appellant used to visit the place of transgender, which was a moral stigma.

In view of the above and available record, I reached to the conclusion that the charged leveled against the accused official is established beyond any shadow of doubt and retention of such like element in a discipline force is not desirable and shall earned bad name to Police. Therefore, in

*Attested  
As*

exercise of powers conferred upon me under the rules ibid I, Capt. @ Wahid Mehmood, District Police Officer, Kohat, impose a major punishment of dismissal from service on accused constable Arsalan No. 488. (Re-instated in service for the purpose of deno enquiry) with immediate effect.

13

Announced  
04.02.2019

DISTRICT POLICE OFFICER,  
KOHAT 26/2

OB No. 183

Date 6-2-2019

No. 1472-95 / PA dated Kohat the 08-2-2019.

- Copy of above is submitted for favour of information to the:-
1. Regional Police Officer, Kohat please.
  2. Deputy Inspector General of Police, Enquiry & Inspection Peshawar w/r to his office letter: No. 1715-18/E&I dated 18.12.2018.
  3. R.I/Reader, Pay officer, SRC and OHC for necessary action

DISTRICT POLICE OFFICER,  
KOHAT 26/2

*As the head*  
*JK*

F- (14)

ORDER.

This order will dispose of a departmental appeal, moved by Ex-Constable Ahsan No. 488 of Operation Staff Kohat against the punishment order, passed by DPO Kohat vide OB No. 183, dated 06.02.2019 whereby he was awarded major punishment of dismissal from service.

Short facts of the case are that the appellant while posted at Police Lines Kohat was charged / arrested in a murder case of a transgender vide FIR No. 713 dated: 04.12.2014 vs. 302, 34 PPC PS City. The accused official was dealt with departmentally which resulted into his dismissal from service. After availing departmental forum, the appellant filed service appeal in Service Tribunal which was partially accepted and ordered for de novo enquiry. The de novo enquiry again culminated into his dismissal from service.

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 in this office on 19.06.2019. During hearing, the appellant failed to submit any cogent reason in his defense.

I have gone through the available record and came to the conclusion that the allegations leveled against the appellant are proved and the authority has passed a legal and speaking order. Therefore, his appeal being devoid of merits is hereby rejected.

Order Announced  
19.06.2019

*JH Ce*  
(TAYYAB HAFEEZ CHEEMA) PSP  
Region Police Officer,  
Kohat Region.

No. 5387 /EC, dated Kohat the 29 /06 /2019.

Copy for information and necessary action to the District Police Officer, Kohat w/r to his office Memo No. 5909/LE, dated 21.03.2019. His Service Roll & Fauji Missal / Enquiry File is returned herewith.

*JH Ce*  
(TAYYAB HAFEEZ CHEEMA) PSP  
Region Police Officer,  
Kohat Region.

*Attested  
JHC*

QAG  
RMO

**BEFORE THE WORTHY INSPECTOR GENERAL OF POLICE, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Subject: - **APPEAL FOR REINSTATEMENT INTO SERVICE.**

Respected Sir,

With due respect, the appellant submits the following few lines for your kind and sympathetic consideration:-

1. That the appellant joined Police department in the year 2008 and successfully qualified recruit course & others.
2. That the appellant was performing official obligations with great zeal & zest up to the entire satisfaction of my senior and no complaint is ever received against me.
3. That the appellant while posted at Police Lines, Kohat, was falsely implicated in case vide FIR No. 713, dated 04.12.2014 u/s 302, 34 PPC PS City, Kohat.
4. That the appellant, after conducting enquiry, was awarded major punishment of dismissal from service and the appellant after availing next appellant forums, approached Service Tribunal.
5. That the Service Tribunal vide its judgment accepted my appeal and ordered for denove enquiry.
6. That on completion of denove enquiry, I was again awarded major punishment of dismissal from service vide OB No. 183, dated 06.02.2019.
7. That appeal of the appellant was also rejected vide RPO/Kohat order Endst: No. 5387/EC, dated 20.06.2019.
8. That I have already been acquitted by the court of law in instant case and my appeal for reinstatement into service has been accepted by the Honourable Service Tribunal, but the authority has again awarded me major punishment of dismissal from service without any solid proof / reason.

Above in view, it is, therefore, very humbly requested that I may very kindly be reinstated into service with all back benefits. I shall pray for your long life and prosperity, please.

Dated: 12.07.2019.

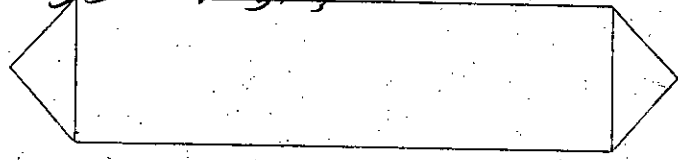
**(Ex-Const: Arsalan 488)**  
Kohat District

*Attested  
Jas*

*A.I. 07 15/07/19*

G-15

بعدالت جہاں میں فیصلہ ہوگا اس میں فیصلہ ہوگا



رولٹس اور ماہی

2ء منجانب  
بنام

ارسلان

مورخہ  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام کے 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 تقرر ثالث و فیصلہ پر خلف دیئے 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 صورت 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 داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے وہوگا۔ 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 لکھ دیا کہ سند ہے۔

2019ء

دسمبر

ماہ

16

المرقوم

ارسلان

العہد گاہ العہد گاہ

کے لئے منظور ہے۔

ارسلان

Attested by  
M. Y. Zaman  
Advocate

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA  
**SERVICE TRIBUNAL, PESHAWAR**

---

Service Appeal No. 1398/2019  
Arsalan, Ex-Constable

..... Appellant

**VERSUS**

Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar and others

..... Respondents

**PARAWISE COMMENTS, REPLY BY RESPONDENTS.**

**Respectively Sheweth:-**

Parawise comments on behalf of Respondents are submitted as under:-

**Preliminary Objections:-**

- i. That the appellant has got no cause of action.
- ii. That the appeal is not maintainable in the present form.
- iii. That the appellant estopped to file the instant appeal for his own act.
- iv. That the appellant has not come to this Hon: Tribunal with clean hands.
- v. That the appeal is barred by law and limitation.

**FACTS:-**

1. Pertains to record. However, the appellant earned several bed entires.
2. The appellant was charged and arrested in murder of **transgender** vide FIR No. 713 dated 04.12.2014 u/s 302, 34 PPC, 15 AA PS City, Kohat. He had committed a heinous crime and gross professional misconduct as well therefore, departmental proceedings were initiated against the appellant under the relevant rules. The charge / allegation leveled against the appellant were established and the proceedings culminated into his dismissal from service vide order dated 13.04.2015, passed by Respondent No. 3.
3. The departmental appeal of the appellant was found devoid of merits and rejected by respondent No. 1 & 2 on merit. Furthermore, incompliance with the judgment of Honorable Tribunal in service appeal No. 773/2016, de-novo departmental proceedings were initiated against the appellant.
4. During the course of de-novo departmental proceedings, the charges / allegations framed against the appellant were established and on conclusion of proceedings, the appellant was awarded punishment commensurate to the charges.



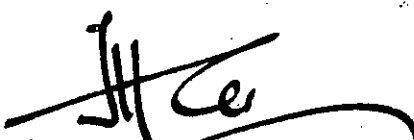
5. The departmental appeal of the appellant was processed by respondent No. 2 under the relevant rules and found devoid of merits, hence correctly rejected.
6. The appellant is estopped to file the instant appeal for his own act.


**GROUND:-**

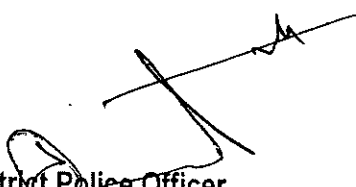
- A. Incorrect, de-novo departmental inquiry was initiated against the appellant purely on merits and the respondent No. 3 passed order based on facts, evidence, merit and in accordance with rules.
- B. Incorrect, the appellant was proceeded departmentally for his own act under the relevant rules and no fundamental right of the appellant was violated.
- C. Incorrect, reply is submitted in above paras.
- D. Incorrect, the appellant was served with charge sheet based on statement of allegation to which he has submitted reply to the inquiry officer / competent authority.
- E. Incorrect, the appellant was afforded ample opportunity of defence / hearing during the course of proceedings and departmental appeal as well.
- F. Incorrect, the appellant was not acquitted honorably from the charges by the learned trial court, but extended benefit of doubt to the accused for his acquittal.
- G. Incorrect, the charge leveled against the appellant was proved during the course of de-novo departmental proceedings and the appellant was held guilty of the charge. It is added that the appellant had committed a gross professional misconduct i.e killing of a **transgender**, earned bad name to the department as well and his retention was a stigma on a disciplined force.
- H. The respondents may also be allowed to advance other grounds during course of hearing through representative / District Attorney.

**Prayer:-**

In view of the above and previous conduct of the appellant, the appeal is devoid of merits / law badly time barred, it is prayed that the appeal of the appellant may kindly be dismissed with costs.

  
Regional Police Officer,  
Kohat, Region  
(Respondent No. 2)

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
(Respondent No. 1)

  
District Police Officer,  
Kohat  
(Respondent No. 3)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA  
**SERVICE TRIBUNAL, PESHAWAR**

---

Service Appeal No. 1398/2019  
Arsalan, Ex-Constable

..... Appellant


**VERSUS**

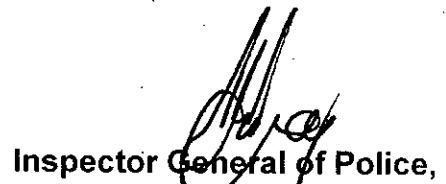
Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar and others


..... Respondents

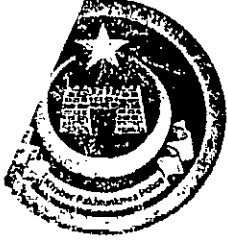
**COUNTER AFFIDAVIT**

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.

  
Regional Police Officer,  
Kohat, Region  
(Respondent No. 2)

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
(Respondent No. 1)

  
District Police Officer,  
Kohat  
(Respondent No. 3)



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT  
Tel: 0922-9260116 Fax 9260125

No 1471 /PA dated Kohat the 08/2 /2019

## ORDER

This order will dispose of de-novo departmental proceedings conducted against constable Arsalan No. 488 of this district Police, in compliance with the judgment dated 16.10.2018 of Khyber Pakhtunkhwa Service Tribunal in service appeal No. 773/2016 & Inspector General of Police letter No. 1715-18/E&I dated 18.12.2018.

Short facts of the proceedings are that the accused official while posted at Police Lines Kohat was charged/arrested in murder of transgender vide FIR No. 713 dated 04.12.2014 u/s 302, 34 PPC PS City. The accused official was proceeded with departmentally on the above charge, which resultant into his dismissal from service vide order dated 13.04.2015. After availing departmental forums, the accused official filed service appeal against impugned order, which was accepted with the directions to conduct denovo enquiry against the appellant by providing him proper opportunity of defense under the law / rules.

In compliance with the above, charge sheet alongwith statement of allegations was issued to the accused official and Superintendent of Police Investigation Kohat was appointed as enquiry officer by the competent authority. After holding proper proceedings, the enquiry officer established charge against the accused official and found not fit for service in Police.

Final Show Cause Notice alongwith copy of enquiry report was served upon the accused official. Reply received unsatisfactory, without any plausible explanation.

Therefore, the accused official was called in Orderly Room, held on 04.02.2019 and heard in person, but he failed to submit any explanation to his gross misconduct. The accused official was associated with enquiry proceedings and provided opportunity of defense but he failed to defend himself as well.

Record gone through which indicates that the accused official alongwith other was charged for murder of a **transgender (eunuch)** vide FIR No. mentioned above. The accused official, besides murder of an innocent person of society earned bad name to disciplined force. Furthermore, the appellant, used to visit the place of transgender, which was a moral stigma.

In view of the above and available record, I reached to the conclusion that the charged leveled against the accused official is established beyond any shadow of doubt and retention of such like element in a discipline force is not desirable and shall earned bad name to Police. Therefore, in

exercise of powers conferred upon me under the rules ibid I, Capt. @. Wahid Mehmood, District Police Officer, Kohat impose a major punishment of dismissal from service on accused constable Arsalan No. 488. (Re-instated in service for the purpose of deno enquiry) with immediate effect.

Announced

04.02.2019

DISTRICT POLICE OFFICER,  
KOHAT 26/2

OB No. 183  
Date 06-2-2019

No 1472-75 / PA dated Kohat the 08-2-2019.

Copy of above is submitted for favour of information to the:-

1. Regional Police Officer, Kohat please.
2. Deputy Inspector General of Police, Enquiry & Inspection Peshawar w/r to his office letter: No. 1715-18/E&I dated 18.12.2018.
3. R.I/Reader, Pay officer, SRC and OHC for necessary action

DISTRICT POLICE OFFICER,  
KOHAT 26/2

۱۱/۰۲/۱۹  
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صباح عالی!

اموال شوکار ٹولس 708 فارم دفتر جناب PPO

معرضہ خدمت ہوگا۔ کہ میں نے بسلمہ انور سہری جو تیلے بیان دیا ہے  
وہی سہری بیان ہے۔ میں نے گناہ ہوں میری ذلت سہری قابل کی طرف

العارضہ

کشیلے ارسال: 488 حال کھنڈی پولی لالہ کھنڈی



26-1-2019



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT

Tel: 0922-9260116 Fax 9260125

No 708 /PA dated Kohat the 21 / 1 /2019

**FINAL SHOW CAUSE NOTICE**

1. I, **Capt. ® Wahid Mehmood, District Police Officer, Kohat** as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, **Constable Arsalan No. 488** as follow:-

i. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 13646-47/PA dated 27.12.2018.

ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.

iii. **You while in service was charged / arrested for the murder of a transgender vide FIR No. 713 dated 04.12.2014 u/s 302/34 PPC PS City.**

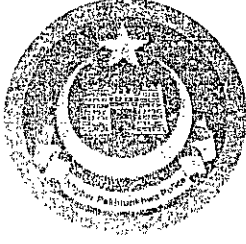
2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major penalty provided under the Rules **ibid.**

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

5. The copy of the finding of inquiry officer is enclosed.

DISTRICT POLICE OFFICER,  
KOHAT *[Signature]* 21/1



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT

Tel: 0922-9260116 Fax 9260125

No 708 /PA dated Kohat the 21 / 1 /2019

**FINAL SHOW CAUSE NOTICE**

1. I, **Capt. ® Wahid Mehmood, District Police Officer, Kohat** as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, **Constable Arsalan No. 488** as follow:-

i. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 13546-47/PA dated 27.12.2018.

ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.

iii. **You while in service was charged / arrested for the murder of a transgender vide FIR No. 713 dated 04.12.2014 u/s 302/34 PPC PS City.**

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major penalty provided under the Rules **ibid.**

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

5. The copy of the finding of inquiry officer is enclosed.

DISTRICT POLICE OFFICER,  
KOHAT 21/1



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT

Tel: 0922-9260116 Fax 9260125

No 708 /PA dated Kohat the 21 / 1 /2019

**FINAL SHOW CAUSE NOTICE**

1. I, **Capt. ® Wahid Mehmood, District Police Officer, Kohat** as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, **Constable Arsalan No. 488** as follow:-

- i. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 13646-47/PA dated 27.12.2018.
- ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.

- iii. **You while in service was charged / arrested for the murder of a transgender vide FIR No. 713 dated 04.12.2014 u/s 302/34 PPC PS City.**

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major penalty provided under the Rules **ibid**.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

5. The copy of the finding of inquiry officer is enclosed.

DISTRICT POLICE OFFICER,  
KOHAT *21/1*



## PROCEEDING INDEX

1.	On 28.12.2018 Denovo departmental enquiry against Ex-Constable Arsalan No.488, received from DPO, Kohat vide his Memo:No.113648/PA dated 27.12.11.2018.	E.O./SP/Inv: Kohat.
2.	On 28.12.2018 the delinquent Constable Arsalan-488 while he was posted in Police Lines, Kohat was informed to appear before the Enquiry Officer for delivering the Charge Sheet with statement of allegation.	E.O./SP/Inv: Kohat.
3.	On 31.12.2018 the delinquent official was present and Charge Sheet with statement of allegation served upon him after obtaining signature on duplicate copy as token of receipt.	E.O/S.P/Inv: Kohat.
4.	Urdu Parwana No.01/PA, dt: 01.01.2019 issued to SHO PS City to direct 06 PWs in Case FIR No.713 dt: 04.12.2014 U/S 302 PPC PS City to appear before the undersigned on 02.01.2019.	E.O/S.P/Inv: Kohat.
5.	<i>on 02.01.2019 PW Anif (Khawaja Sara), Fikran &amp; Paman (Etmach) were present &amp; their statement got recorded.</i>	<i>E.O/SP/Inv</i>
6.	<i>on 07.01.2019 Reply of chrg sheet received from the delinquent official.</i>	<i>E.O/SP/Inv</i>
7.	<i>on 07.01.2019 Ihsanullah was present &amp; his statement recorded.</i>	<i>E.O/SP/Inv</i>
8.	<i>on 08.01.2019 SI Gul Razim was summoned on 09.01.2019.</i>	<i>E.O/SP/Inv</i>
9.	<i>on 09.01.2019 SI Gul Razim Khan (retired) was present &amp; his statement recorded.</i>	<i>E.O/SP/Inv</i>
10.	<i>The Enquiry papers are submitted herewith for A.O. perusal &amp; further orders please.</i>	<i>E.O/SP/Inv</i>

**REFERENCE ATTACHED**

Subject: **DENOVODEPARTMENTAL ENQUIRY AGAINST CONSTABLE ARSALAN NO.488 DISTRICT KOHAT.**

**Respected Sir,**

Kindly refer to your office letter No.13648/PA, dated 27.12.2018.

**BRIEF/ALLEGATIONS.**

"Being in Police service he was charged / arrested for the murder of a transgender, vide FIR No.713 dated 04.12.2014 u/s 302/34 PPC PS City, Kohat".

**PROCEEDINGS.**

1. The delinquent Constable Arsalan No.488 was re-instated in service by the W/DPO, Kohat vide Order Endst: No.13641-45/PA, dated 27.12.2018 on the judgement of Service Tribunal in connection with initiate denovo proceedings.
2. In order to dig-out the actual facts, Constable Arsalan No.488 was summoned, charge sheet & Statement of allegation was served upon him which he received and replied within stipulated period. He was also heard in person his reply not weight-able.
3. During cross examination he expressed that the then DPO Kohat did not heard in person he was in Jail in connection with involvement in Case FIR No.713 dated 04.12.2014 U/S 302/34 PPC PS City, Kohat.
3. Accused Ihsanullah was also involved in the said case, he was called. He stated in his statement that he was not present on the spot with the defaulter Constable Arsalan No.488.
4. Complainant Kamran s/o Wajid r/o Hangu Phattak (Eunuch) permanent resident of Katlang Mardan has been died.
5. Arif s/o Darwaish (Eunuch), Jibran s/o Abdul Ghaffar (Eunuch) & Farmanullah s/o Ghulam Hussain (Eunuch) residents of Hangu Phattak were summoned and the issue was discussed in detail. They stated that the complainant Kamran (Eunuch) was personally known to him and he was residing with him has been died due to Jaindas.
6. Ex-I.O SI Gul Razim Khan (retired) was summoned. He stated in his statement that he was investigated the said case. Defaulter Constable Arsalan No.488 & Ihsanullah were found guilty.
7. Upon the enquiry finding by the then DSP/Legal Kohat, the then DPO, Kohat was issued Charge Sheet & Statement of Allegation No.7697-98/PA, dated 09.12.2014 and served upon him properly.
8. The alleged Constable Arsalan No.488 was dismissed from service due to involvement in Case FIR No.713 dated 04.12.2014 U/S 302/34 PPC PS City, Kohat which is gross misconduct on his part vide OB No.322 dated 13.04.2015.
9. The defaulter Constable Arsalan No.488 was filed an appeal before the Service Tribunal Khyber Pakhtunkhwa, Peshawar for his re-instatement in service.

**FINDINGS**

10. In view of the above discussion, statements recorded, the undersigned came to the conclusion that :-

- A. Defaulter Constable Arsalan No.488 was discharged due to the involvement in Case FIR No.713 dated 04.12.2014 U/S 302/34 PPC PS City for his gross misconduct.
- B. By issuing of Charge Sheet & Statement of allegation and received properly.

During cross examination the alleged Constable ignorance about the case vide FIR No.713 dated 04.12.2014 U/S 302/34 PPC PS City in which he was charged.

D. The delinquent Constable was acquitted according to the Judgment of Hon'ble Court of ASJ-IV, Kohat due to contradiction of the relevant statements.

E. According to the I.O SI Gul Razim Khan (retired) the alleged Constable Arsalan No.488 was found guilty.

F. The defaulter Constable Arsalan No.488 was re-instated in Service by W/DPO, Kohat vide Order Endst: No.13641-45/PA, dated 27.12.2018 as per Judgment of Service Tribunal.

G. The defaulter Constable Arsalan No.488 was enlisted on 26.05.2008 and he was dismissed from service by the then DPO, Kohat vide OB No.322 dated 13.04.2015.

H. As per source report, his society with the "Khawaja Sara brathere"


I. **"As per the then Enquiry Officer opinion/finding, the defaulter Constable Arsalan being a member of disciplined force, used to visit the place of Eunuch/Khawaja Sara which is also moral stigma".**

J. From the perusal of Service record of the delinquent Constable which shows that he has habitual absentee.

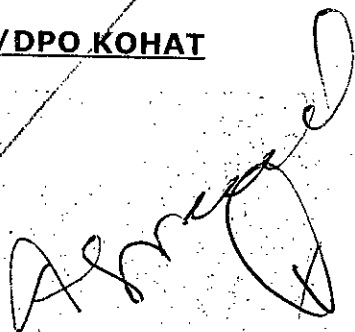
K. I, was **agreed** with the above opinion/finding of the then Enquiry Officer (DSP/Legal, Kohat). According to **P.R Chapter-14** the Character of Police Officer will be clean & crystal.

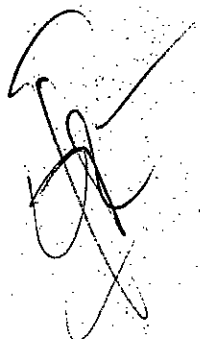
L. Due to above circumstances the alleged Constable Arsalan No.488 is not fit for Police department, and it is suggested/requested to filed an appeal against the Judgement of Service Tribunal Khyber Pakhtunkhwa Peshawar, if agree. The decision of the Seniors will be final.

Enquiry report is submitted for kind perusal.

  
(JEHANZEB KHAN)  
SUPERINTENDENT OF POLICE  
INVESTIGATION, KOHAT

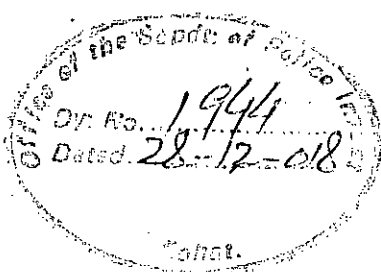
W/DPO KOHAT





Dismissed from  
service





OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT  
Tel: 0922-9260116 Fax 9260125

No 13648 /PA dated Kohat the 27/12/2018

To: - The Superintendent of Police,  
Investigation Wing Kohat.

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST EX-FC ARSALAN NO. 488

Memo: -

Refer to W/IGP Peshawar office letter No. 1715/E&I, dated 18.02.2018.

Charge Sheet alongwith Statement of Allegations against Ex-constable Arsalan No. 488 is sent herewith for denove departmental enquiry. The proceedings be completed at the earliest and send finding along with enquiry file for onward submission to AIG/C&E for the perusal of Worthy IGP.

(Encl: 43 Pages)

DISTRICT POLICE OFFICER,  
KOHAT 27/12

PA.  
For m/c  
d  
Call  
Superintendent of Police  
Investigation Kohat 28/12/18



Office of the  
District Police Officer,  
Kohat

No 13646-47PA

Dated 27-12/2018

**CHARGE SHEET.**

1. I **CAPT @ WAHID MEHMOOD, DISTRICT POLICE OFFICER, KOHAT** as competent authority, hereby charge you **Constable Arsalan No. 488** Under Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014) as you have committed the following illegal act.

You while in service was charged / arrested for the murder of a transgender, vide FIR No. 713 dated 04.12.2014 u/s 302/34 PPC PS City.

2. By reasons of the above, you appear to be guilty of misconduct as defined in Rule 2 (iii) of Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties explained in rule 04 of the said rules.

3. You are, therefore, required to submit your written statement within 07 days 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 defence to put in and in that case ex-parte action shall be taken against you.

4. A statement of allegation is enclosed.

*Handwritten signature*  
*Handwritten signature*

*Handwritten signature*  
DISTRICT POLICE OFFICER,  
KOHAT *27/12*



Office of the  
District Police Officer,  
Kohat

No 13646-47/PA

Dated 27-12/2018

**DISCIPLINARY ACTION**

1. I, **CAPT @ WAHID MEHMOOD, DISTRICT POLICE OFFICER, KOHAT** as competent authority, am of the opinion that you **Constable Arsalan No. 488** have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

You while in service was charged / arrested for the murder of a transgender, vide FIR No. 713 dated 04.12.2014 u/s 302/34 PPC PS City.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations **Mr. Jehanzeb Khan SP Investigation Wing Kohat** is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Disciplinary Rule-1975, provide reasonable opportunity of hearing to the accused official, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

DISTRICT POLICE OFFICER,  
KOHAT

No. 13646-47/PA, dated 27-12/2018.

Copy of above is forwarded to:-

1. **Mr. Jehanzeb Khan SP Investigation Wing Kohat** for denove enquiry proceedings against the accused officer.
2. **Accused official:-** With the directions to appear before the Enquiry officer, on the date, time and place fixed by the enquiry officer, for the purpose of denove enquiry proceedings.



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
KOHAT  
Tel: 0922-9260116 Fax 9260125

No \_\_\_\_\_/PA dated Kohat the \_\_\_\_/\_\_\_\_/2018

**ORDER**

In pursuance of Judgment of Khyber Pakhtunkhwa Service Tribunal dated 16.10.2018 in service appeal No. 773/2016 and Inspector General of Police, Khyber Pakhtunkhwa letter No. 1715/E&I dated 18.12.2018, You Constable Arsalan No. 488 is hereby reinstated in service only for the purpose of denove enquiry.

DISTRICT POLICE OFFICER,  
KOHAT 27/12

No 13641-45/PA dated 27-12 2018

Copy of above is submitted for favour of information to the:

1. Superintendent of Police Investigation Wing Kohat.
2. R.I/Pay Officer/Reader/SRC/OHC for necessary action.



Office of the Inspector General of Police  
Khyber Pakhtunkhwa, Peshawar.

No. /E&I, dated Peshawar the 18 /12/2018

To: The District Police Officer,  
Kohat.

Subject: DENOVE DEPARTMENTAL ENQUIRY AGAINST  
EX-FC ARSALAN NO. 488

Memo:

Please refer to your letter No. 2673/LB dated 10.12.2018, on the subject cited above.

2. Denovo departmental enquiry against Ex-FC Arsalan No. 488 may be conducted through Mr. Jehanzeb Khan, SP/Investigation Kohat and final outcome be communicated to this office, on or before 02.01.2019, before issuance of formal order, for the perusal of Worthy IGP.

3. Being a court matter the proceedings shall be completed within the limitation period to avoid further legal complications.

(ASLAM NAWAZ)  
AIG/C&E

For Inspector General of Police  
Khyber Pakhtunkhwa,  
Peshawar

No. 1716-18 /E&I,

Copy of above is forwarded for information to:-

1. The Regional Police Officer, Kohat.
2. Mr. Jehanzeb Khan, SP/Investigation, Kohat.
3. The PSO to IGP.

*RA.*  
*For m/s.*  
*W*  
Superintendent Of Police  
Investigation Kohat 27/12/18  
*Where's other relevant paper of enquiry*  
*Wd*  
*27/12/18*

*ASLAM NAWAZ*  
(ASLAM NAWAZ)  
AIG/C&E  
For Inspector General of Police  
Khyber Pakhtunkhwa,  
Peshawar

Office of the Superintendent of Police  
Dy. No. 1934  
Dated. 27-12-2018  
Kohat.

Registrar  
29/12/18 4.





Office of the Inspector General of Police  
Khyber Pakhtunkhwa, Peshawar.

No. /E&I, dated Peshawar the 18 /12/2018

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*AA.*  
*For m/a*  
*W*  
*where's other relevant paper of enquiry*  
*Wd*  
*27/12/18*

Superintendent Of Police  
Investigation Kohat *27/12/18*

*Aslam Nawaz*  
(ASLAM NAWAZ)  
AIG/C&E  
For Inspector General of Police  
Khyber Pakhtunkhwa,  
Peshawar

Office of the Supdt of Police In-charge  
Dy. No. 1934  
Dated. 27-12-2018  
Kohat.

Registrar  
29/12/18

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302/34 713 of 713 CrP  
15AA 14

A

IN THE COURT OF MOHSI ALI TURK, ADDITIONAL SESSIONS  
JUDGE IV, KOHAT

Sessions Case No. 23/2015

Date of institution: 10.01.2015  
Date of decision: 07.03.2016

The State through Kamran s/o Wajid r/o Katlang District Mardan presently  
Haji Phatak, Kohat. (Complainant)

VERSUS

1. Arsalan s/o Abdul Khan r/o Garhi Atta Khan Tehsil & District, Kohat &
2. Ihsanullah alias Ihsan s/o Amanullah r/o Jungli Khel presently Dhera Banda Tehsil & District, Kohat (Accused)

FIR No. 04.12.2014 u/s 302, 34 PPC READ WITH 15AA POLICE STATION CITY

Mohsi Ali Turk  
Addl. Dist. & Sessions  
Judge IV Kohat

1. Accused Arsalan and Ihsanullah faced trial in case FIR No. 713 dated 04.12.2014 u/s 302/34 PPC read with section 15 AA of police station City, Kohat. They were initially not charged in the FIR but shown present on the spot at the time of occurrence. FIR was lodged by Kamran s/o Wajid r/o Katlang Mardan but the accused were subsequently nominated by one eyewitness namely Ahmed Yar s/o Syed Rahman in his statement u/s 164 Cr.P.C. recorded on 06.12.2014.

2. As per FIR, Kamran s/o Wajid reported to Akbar Shah ASI of police station City, Kohat emergency room of Liaqat Memorial Hospital, Kohat that at 1900 hours he alongwith Taimur s/o Ayub who is a dancer, Arsalan, who is employed in police, Ihsan and deceased Javed

Attended  
Adm

who use to take musical instruments to the dancing parties were present in the DJ shop in Rashid Market, situated in Garhi Dhodiwal, Kohat. At the relevant time, the deceased Javed, Arsalan and Ihsan went out of the shop. He was present inside the shop but heard voice of firing. He and Taimur went outside the shop and found the deceased Javed injured on his thigh who was taken by the people to hospital but he succumbed to the injuries. Arsalan and Ihsan were however, absent from the spot. He reported that he does not know as to who has killed the deceased Javed. Report of the complainant Kamran was verified by Taimur s/o Ayub r/o Abbottabad.

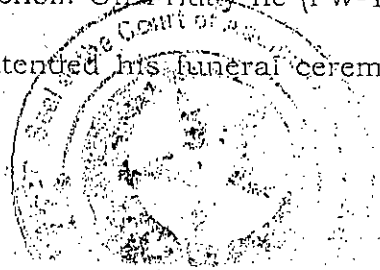
3. In light of story narrated in the FIR, Kamran and Taimur were two direct witnesses of the occurrence, who were reported to be present in shop alongwith the deceased and accused and they first saw the deceased Javed injured on the spot. They were also present with him in the hospital at the time of lodging of report. However, both the persons having got first hand information regarding the occurrence were not produced by the prosecution before the Court. Statement of the concerned DFC namely Minhaj-ud-din No. 358 was recorded as CW-1 who reported that PWs Taimur, Kamran and Najcebullah have abandoned their residence at the reported place and gone to some unknown place, whose attendance could not be ensured by the police and prosecution and ultimately, the Public Prosecutor abandoned their evidence. It is however, relevant that the complainant Kamran has not charged anyone in the FIR and he reported that he did not know as to who has killed the deceased Javed.

Minhaj Ali Turk  
Addl. Dist. Sessions Judge Kohat

Abdullah  
s/o  
M. Ali



4. The whole case of prosecution against the accused is revolving around the statement of eyewitness Ahmed Yar s/o Syed Rahman recorded on 06.12.2014 and the circumstantial evidences collected by the Investigating-Officer. Ahmed Yar was produced before the Court as PW-10 who narrated the same story as was recorded in his statement u/s 164 Cr.P.C. He stated that on the day of occurrence in evening he alongwith Javed, Taimur, Kamran and others were sitting in the Dera of Arif situated at Hangu Phatak Kohat. Meanwhile, Arsalan and Ihsan came there and asked that they have a musical and dance program for which they wanted to hire dancers and music staff. Thereafter, he (PW-10) along with Taimur, Kamran and Javed deceased accompanied the accused facing trial. The accused were on motorcycle and they followed them in rickshaw to Rashid Market where the shop of sound system is situated. There, the deceased Javed in the company of accused facing trial and Taimur and Kamran entered the shop while he (PW-10) stayed outside. At the relevant time, accused facing trial and deceased Javed came out from the shop. The deceased was having shopper containing money Rs. 40,000/-. The accused facing trial Ihsan was trying to snatch money from the deceased. The deceased was not giving money to him. In the meanwhile, accused Arsalan fired at the deceased with pistol as well as a second fire was also made. The deceased got hit and made cries that he was hit. Due to fear, he (PW-10) ran away there from. During running when he looked back the accused facing trial were decamping on motorcycle from the spot after the occurrence. He also escaped to his village at Tangi Tehsil. On Friday he (PW-10) came to know that Javed was dead. He attended his funeral ceremony. On



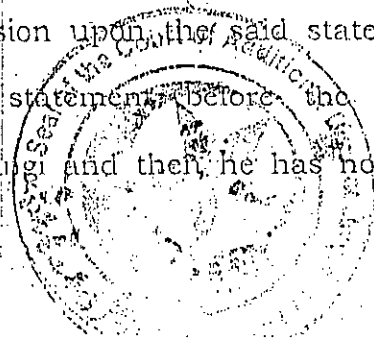
*Attended*  
*Arif*

Saturday he came to Kohat again and went to PS for the report/statement and then he went to his village.

5. In cross-examination PW Ahmed Yar stated that at 7pm on 04.12.2014, the occurrence took place but he was afraid and he straightaway escaped from the place of occurrence and went to his village Tangi. It is note worthy that village Tangi is situated in District Charsadda which is at two hours drive from Peshawar. He stated that in the night on 04.12.2014, he stayed at Peshawar and next morning he went to his village at Tangi where he got information that the deceased has died from the injuries which he sustained last night and then he attended his funeral ceremony at 11am. The deceased Javed however, belongs to village Takhta Abad District Peshawar and as per Ahmed Yar on 05.12.2014, he first went from Peshawar to his village Tangi where he got information and then he came back to Takhta Abad, Peshawar where he attended the funeral ceremony of his friend Javed at 11am. It is however, very difficult to manage the time so efficiently, particularly in the month of December. A person went from Peshawar to Tangi and then he came back from Tangi to Peshawar and attended funeral ceremony. All this took place within 3/4 hours. He further stated in his cross-examination that on the next day i.e. 06.12.2015, he came to Kohat alongwith one Yousuf and here he recorded his statement in police station. He stated that he came to police station alongwith Yousuf and narrated the story of occurrence to SHO who recorded his statement and took thumb impression upon the said statement. He stated that after recording his statement before the SHO, he straightaway went to his village Tangi and then he has not come to

Mohsin Ali Khan  
Addl. Dist. & Sessions  
Kohat 17/12/2014

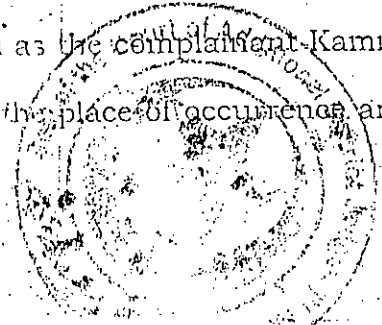
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Javed



Kohat. He stated that he has appeared before the Court only once i.e. on 09.01.2016 and prior to this he had never appeared before the Court. This fact highly doubt the authority of his statement u/s 164 Cr.P.C. which is bearing signature of the Magistrate and thumb impression of PW Ahmed Yar. Counsel for the accused alleges that being procured witness, SHO recorded statement of Ahmed Yar in PS and then, did not produce him before the Magistrate but managed signatures of even the Magistrate, deceitfully. In light of statement of Ahmed Yar, this plea is appealing to mind. This statement u/s 164 Cr.P.C. is the whole foundation of charge against the accused as besides the PW Ahmed Yar, none else has given any statement regarding identification of the accused but when foundation is weak, the whole case would crumble.

6 Another important aspect of the case is that PW Ahmed Yar stated that infact the deceased Javed was having a sum of Rs. 40,000/- in his hands and the accused facing trial attempted to snatch the said money from him which he was not giving to the accused and then Arsalan made firing upon him. He however, stated that after the firing both the accused ran away. It would mean that the shopping bag containing money was left on the spot but record of the case is silent about the said money. This money was neither found on the spot by those people who took the deceased to hospital nor by the investigation Officer. It would mean that the story regarding snatching of money is also disputed.

7 As per PW Ahmed Yar as well as the complainant Kamran, people from the surrounding gathered at the place of occurrence and they took the



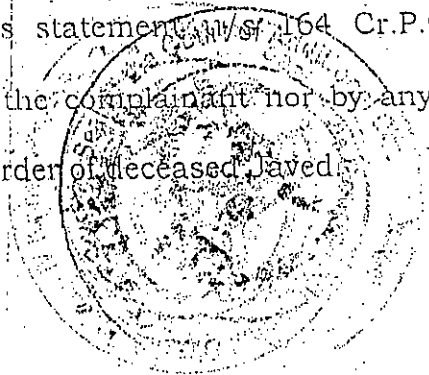
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deceased then injured to hospital. Record of the case however, shows that the Investigating Officer has at the time of spot inspection collected two empties of 30 bore from the place of occurrence at point No. 1, which is situated in front of market named as Rashid Market. Many people had gathered at the place of occurrence but still the empties were intact and not moved from the place, where these were ejected from the pistol. This fact is also highly unbelievable and makes the recovery suspicious.

8. Initially, site plan was prepared at pointation of the complainant Kamran but in the said site plan, no place was attributed to PW-10 namely Ahmed Yar. Ahmed Yar stated that at the relevant time he was present at the place of occurrence as he has gone there in rickshaw in company of the other PWs and accused. He was not a stranger to the complainant and PWs and in such case, his presence outside the shop in the market at point No. 6 was supposed to be noticed by the complainant Kamran. He was neither shown present on the spot in the FIR nor at the time of preparation of site plan, Kamran has shown his presence on the spot. It would further mean that PW Ahmed Yar has neither accompanied the complainant to spot nor he was present at the place of occurrence but was a procured witness. Particularly when PW-10 himself stated in his statement before the Court that he alongwith Taimur, Kamran and Javed deceased accompanied the accused facing trial to their shop at Rashid Market. From 04.12.2014 till 06.12.2014 when PW Ahmed Yar recorded his statement u/s 164 Cr.P.C. his presence was neither disclosed by the complainant nor by any other person associated to the story of murder of deceased Javed.

Mansoor Ali Jinnah  
 Law Centre  
 7th Floor  
 10, Park Road  
 Islamabad

Ahmed Yar  
 is  
 Arden



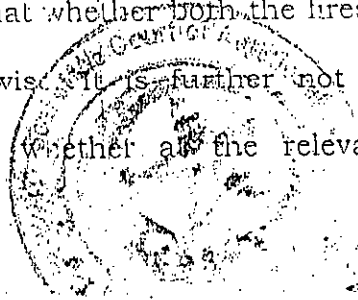
9. PW Ahmed Yar stated that the deceased Javed was his close friend and they used to work together but in his statement as PW-10, he stated that after the fire was made and the deceased got hit and started crying, he ran away from there. I don't believe that a close friend would leave a person in pain and escape from the place. Ordinary course was that if he was present, he must have picked the injured person and taken him to the hospital. He was not supposed to run from Kohat to Tangi and not to look back to his ailing friend. This uneven and unnatural attitude also disproves the presence of Ahmed Yar at the place of occurrence.

10. PW Ahmed Yar stated that two fires were made but medical report of the injured person is showing only a single fire with charring marks. Charring marks on the injury means that fire was made upon the deceased from a very close distance but in the site plan, the place of occurrence i.e. 4A and 5A have been shown at sufficient distance from point No. 1A attributed to the deceased and in such case, charring marks particularly with a pistol of 30 bore were not probable. These points 4A and 5A were recorded at the instance of PW Ahmed Yar but non corroboration this pointation by the medical evidence would further doubt the veracity of statement of PW-10.

Mohsin Ali Tahir  
Addl. Dist. & Sessions  
Judge, Kohat

Attended  
Adm

11. As per FIR, the deceased Javed, Arsalan and Ihsan were present in the shop but at the relevant time, they went out of the shop together and immediately they heard a voice of fire shot. It would mean that a single fire shot was made but as per PW Ahmed Yar, two fire shots were made but it is not known that whether both the fires were made by the accused Arsalan or otherwise. It is further not mentioned by the complainant Kamran that whether at the relevant time both the



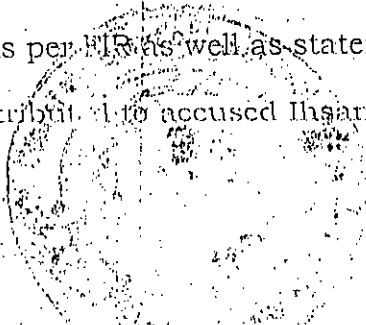


accused were having pistols or not. The accused Ihsan was not attributed the role of having a pistol or making fire but as per Ahmed Yar, he attempted to snatch money and Arsalan made fire. In such case, recovery of pistol from the accused Ihsan and its positive FSL report would not give any benefit to the prosecution.

12. As per case of prosecution, both the accused decamped from the place of occurrence on motorcycle. It means that after the occurrence, the accused did not come back to his shop but straightaway ran away. On 08.12.2014, the accused Arsalan was arrested and interestingly, the pistol i.e. weapon of offence was then recovered by the Investigating Officer on his pointation from the shop where the occurrence took place. It is strange that how the pistol was taken back to the shop and kept in a box inside the shop, which was earlier taken by the accused with him; at the time of occurrence. I don't believe that after the murder, a person would come back to the crime scene and keep his pistol at the crime scene. This recovery of pistol at pointation of the accused Arsalan is highly unreasonable. Furthermore, the said recovery was made in police custody and no private witness was associated to recovery proceedings; despite the fact that this recovery was made from a market and there are many shops in the said market. Non-association of private witnesses to recovery proceedings would reflect adversely upon the conduct of Investigating Officer. Similarly, the Investigating Officer has also recovered a pistol No. 1122 from possession of the accused Ihsan but as per FIR as well as statement of PW Ahmed Yar, no role of firing was attributed to accused Ihsan. In such case, recovery of

*Attested*

*in*



pistol as weapon of offence and positive FSL report also seen suspicious.

13. Since the conduct and character of star witness of prosecution is doubtful and there are even many other discrepancies in the case of prosecution, I do not consider the evidence sufficient for the purpose of conviction of the accused facing trial. A person cannot be convicted on the basis of single circumstantial evidence i.e. recovery of pistol and positive FSL report, particularly when the direct evidence is highly disputed. Benefit of doubt is therefore, extended to the accused facing trial Arsalan and Ihsanullah and they are acquitted from the charge case FIR No. 713 dated 04.12.2014 u/s 302/34 PPC read with section 15AA. They are in custody, be released forthwith, if not required in other case. Case property is confiscated to the State and to be returned after expiry of period of limitation for appeal/revision.

Announced  
09.07.2016

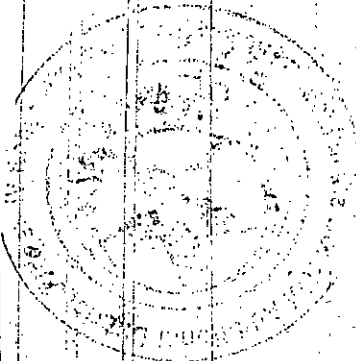
(Mohsin Ali Turk)  
Additional Sessions Judge-IV, Kohat

CERTIFICATE

Certified this judgment consists of nine pages. Each page has been checked, corrected and signed by me, where-ever necessary.

Additional Sessions Judge-IV, Kohat

*Attended  
ADR*



Mohsin Ali Turk  
Additional Sessions Judge-IV, Kohat