


FORM OF ORDER SHEET

Court of _____

Case No.- 1697/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/11/2022	<p>The appeal of Mr. Muhtaj resubmitted today by Mr. Nazir Ahmad Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Muhtar son of Yar Muhammad Constable No. 1559 Police Force Peshawar received today i.e. on 24.11.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal has not been flagged/ marked with annexures marks.
- 2- Copy of departmental ^{memo} mentioned in para-7 of the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Annexure-E of the appeal is illegible which may be replaced by legible/better one.
- 4- Spare copies for respondent no. 3 & 4 are incomplete which may be completed.

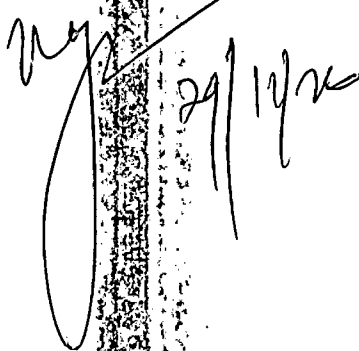
No. 3362 /S.T,

Dt. 25/11 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Nazir Ahmad Adv.
High Court Pesh.

- Sw,
1. Reply of para 2 - The Appellant was in jail, so has no copy of the Appeal, However, the rejection letter that the appeal is rejected, so definitely filed.
 2. Annexure E is illegible & easily readable. Let me send the member.
 3. properly flagged & R. No 374 Copies complete

Re. Mr. Muhtar

29/11/22

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 1697/2022

Mr. Muhtaj S/O Yar Muhammad versus Govt: of KPK
through IGP KPK.

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Muhtaj
Appellant

Through *Nazir Ahmad*
Nazir. Ahmad . advocate
High Court Peshawar.
Cell\ 03328540783

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

①

Service Appeal No ¹⁶⁹⁷-----/2022

Muhtaj S/O Yar Muhammad , Constable No -1559 Police Force Headquarters Peshawar, R/O Zakhi Qabristan Akbar-Pura District Nowshera)

(Appellant)

Vs

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar
2. Additional Inspector General of Police (HQs) KPK Peshawar
3. Superintendent of Police (HQs) Peshawar.
4. Capital City Police Office Peshawar.

(Respondents)

Appeal under Section 4 of the KPK Service Tribunal Act 1974

A. against the impugned Order No. 1384-90/PA/SF/ Peshawar dated 28.03.2016 of Superintendent Of Police Head Quarters Peshawar, whereby the Appellant is dismissed from service with immediate effect under Police and disciplinary Rules 1975 and the period he remained absent from 30.4.2014 till 28.3.2026 is treated without pay.

B. Against Order No- 2607-13 /22., dated 4.11.2022 whereby the Additional Inspector General of Police been head of the Appellate Board rejected the Revision petition of the Appellant .

Prayer:-

May this Honourable Tribunal be gracious, to accept this Appeal and set aside:

- a. Any enquiry against the appellant and the impugned Order No.- 1384-90/PA/Si/ Peshawar dated 28.03.2016 of Superintendent Of Police Head Quarters Peshawar, whereby the Appellant is dismissed from service with immediate effect under Police Rules

- 1975 and the period he remained absent from 30.4.2014 till 28.3.2026 is treated without pay and
- b. Order No- 2607-13 /22 dated 4.11.2022 whereby the Additional Inspector General of Police been head of the Appellate Board rejected the Revision petition of the Appellant.
- c. Re-instate the Appellant with all back benefits.

Respectfully Sheweth: - The need for the instant I Appeal arises due to the following facts:

Facts:

1. That the Appellant joined the Police Department on 21.07.1998 as constable and attended a lot of courses including Gas course, Finger prints course, bomb course, bomb disposal course and fireman and was a favorite police man.
2. That the Appellant felt some trouble in his body and was not able to perform gun duty so by recommendation of the Medical board was deputed as Driver Constable.
(The documents are attached as annexure A)
3. That the Appellant served with dedication and with all his fairness but was unluckily due to strain relation of his family the opponents falsely involved him in FIR No- 59 dated 23.4.2014 under Section 302/324/148/149 PPC , Police Station Akbar Pura District Nowshera and was declared proclaimed offender . Similarly an FIR no 265 dated 30.07.2013 U/S 302/324/148/149 PPC in police station was registered against him. **The District Police** Officer Nowshera directed him to surrender but he was in search of compromise with the opponents.
(Order of the DPO Nowshera is attached as Annexure B) .
4. The Appellant failed in compromise, but due to delay of arrest was declared proclaimed offender and at last was arrested on 5.10.2017 and was sent to judicial lock up.
5. That the Department suspended the Appellant and conducted an enquiry against him when he was absconder and was unable to appear before the committee and defend himself and did not

participated in any enquiry, give him a final show cause notice and the department without giving him a chance of hearing and defence, passed the impugned order declaring him habitual absentee and dismissed him from service with the knowledge that two criminal cases are registered against him. (3)

(The impugned order is attached as Annexure---C).

6. That the Court of Additional Session judge II Nowshera, in case N-Sc-96 on 8.10.2019 acquitted him of charges in FIR No -59 and released him and similarly the Peshawar High Court Peshawar in case No- Cr Appeal 852 of 2020 on 5.10.2021 accepted the Appeal and set-aside the judgment of conviction and acquitted him of the charges leveled against him and released him .

(the judgment of the High court is attached as Annexure D)

7. That the Appellant filed a departmental before the Capital City Police Peshawar which is rejected on 31.1. 2018 when the appellant was in jail with no chance of personal hearing.

(Copy impugned Order on such Appeal is attached as Annexure E).

8. That the Appellant then filed a Revision Petition under the Police Rule which is also rejected on 4.11.2022

(Copy of Departmental Revision and order dated 4.11.2022 is attached as Annexure F)

Being aggrieved from the impugned orders this Appeal is preferred on the following grounds:

Grounds:-

A. That the first impugned order is against the law and Article 194 of CSR as the criminal proceeding against the Appellant was not yet final and the Appellant had a right to Appeal and his right to appeal at two high forums was still intact and at the end the Honourable Peshawar High Court Peshawar decided that the

Appellant was innocent and was falsely involved by the opponents which is a tradition in the entire Pakhtunkhwa. The Appellant is removed through impugned order which is based on such fake FIR, therefore, the impugned order requires the interference in the light of ESTACODE. Under the Code the accused is to be suspended so when acquitted shall be reinstated and now the Appellant is acquitted by the High Court Peshawar. Therefore may be reinstated with all back benefits.

- (4)
- B. That the enquiry officer declared the Appellant as habitual absentee and on the other hand it has admitted by him that he was absconder in two FIRs. The enquiry is held when the Appellant was in prison so not associated with enquiry at any stage so all the rights of the Appellant cross examination on witnesses, personal hearing and fair trial are violated. Therefore, the enquiry against the Appellant is against the law and Rules and is, full of contradictions and against the Principle of fair trial which infringed the right of the Appellant..
 - C. That the SP Head Quarters Peshawar has passed the impugned order in hurry without waiting for the final order of the last court of competent jurisdiction and has acted against the Police Rules as the reasons given were not final.
 - D. That the Appellant is dismissed from service on his conviction but the order of his conviction is not sustained in the eyes of law and is against the E& Discipline Rules as there is no misconduct or any act done by him which is punishable
 - E. That the propriety and the Principle of law demand that Appellant is to be restored to that position i.e. where he was as the court has absolved him of all charges.
 - F. That the absence from duty was not intentional but a product of circumstances.
 - G. That the Appellant is free of all charges and is seeking the reinstatement of his discontinued service as there is no misconduct

on his part and involving any one how high innocent he may be in criminal case is a routine in the society .

(5)

- H. That Article 4 of the Constitution of Pakistan reveals that every person shall be treated in accordance with law and no action detrimental to his right, property and reputation shall be taken without due process of law.
- I. That the impugned order is void ab- initio hence be set aside by your honour in the best interest of justice.

Therefore the appeal may be accepted with the Prayers as above.


(Appellant)

Through
Nazir. Ahmad, advocate
High Court. Peshawar.

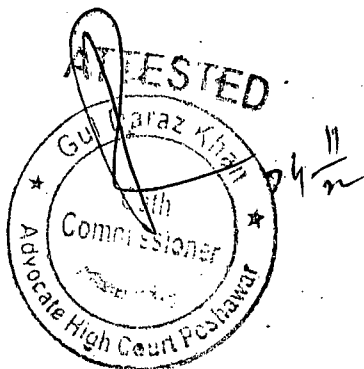
Certificate

This is certified that the appellant has not filed nay Appeal in respect of the same subject matter before.


Appellant

Affidavit

I the appellant hereby affirm and declare that the contents of the Appeal to the best of my knowledge are correct and nothing is kept concealed from this Honourable Tribunal .




Deponent
17201-1813832-9

Annexure 2

CAPITAL CITY POLICE PESHAWAR

(A)

TO DIRECTOR GENERAL HEALTH & SERVICES, KHYBER PAKHTUNKHWA, PESHAWAR

FROM SP HEADQUARTER, CAPITAL CITY POLICE OFFICE, PESHAWAR

NO. 6706 ICRC

DATE 22 April 2013

SUBJECT APPLICATION FOR LIGHT DUTY

W 8567 ✓
23/4/13


(B)

MEMORANDUM

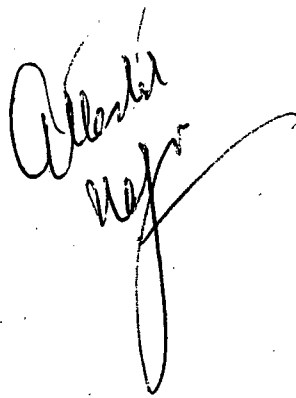
Enclosed please find herewith an application submitted by Driver Constable Mukhtaj Muhammad No. 1559 of CCP, Peshawar for light duty.

It is requested that a standing Medical Board may please be constituted to dig-out the facts and opinion of the Medical Board be forwarded to this office to proceed further in the matter. His medical chits are attached.

Encls: (9)


[Shabih Hussain]

Pay arrange 3743
AD (Admin) 23/4/2013



From: The Capital City Police Officer,
Peshawar.

To: The Director General,
Health & Services, Khyber Pakhtunkhwa,
Peshawar

8

No. 14711 /CRC, dated Peshawar the 31/8 /2012.

Subject: MEDICAL EXAMINATION/BOARD

Memo:

Driver Constable Muhtaj Khan No. 1559 of CCP,
Peshawar has referred by SP/HQrs: Peshawar for Medical board due to
some diseases.

It is requested that a standing Medical Board may
please be constituted to dig-out the facts and opinion of the Medical
Board be forwarded to this office to process further. His medical chits
and other connected papers are attached.

CC-

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en (7)

Albert
Neff

JAN 3
SP/HQrs:
FOR CAPITAL CITY POLICE OFFICER,
PESHAWAR.
Ch 28/08
2012

Relief of 23.
Ch 03 of
2012



OFFICE OF THE MEDICAL SUPERINTENDENT
POLICE AND SERVICES HOSPITAL PESHAWAR
GOVERNMENT OF KHYBER PAKTUNKHWA

19


No. 3375-86 /MS/SMB

Dated 17/09/2012.

The Capital City Police Officer
Peshawar.

Subject: - STANDING MEDICAL BOARD.
Memo:-

Constable Mukhtaj Khan No.1559 was examined by the Standing Medical Board held in this office on 05/09/2012. The Proceedings of the Standing Medical Board are sent herewith for further necessary action.


Chairman
Standing Medical Board
Medical Superintendent
Police/Services, Hospital,
Peshawar

Cc:-

1. Director General Health Service3s, Khyber Pakhtunkhwa Peshawar for information w/r to his letter no.3257/Medical dated 05/09/2012.



CHAIRMAN STANDING MEDICAL BOARD/MEDICAL SUPERINTENDENT
POLICE/SERVICES, HOSPITAL PESHAWAR.

The Standing Medical Board comprising the following members assembled in the office of the Medical Superintendent Police/Services, Hospital Peshawar to examine, Constable Muhtaj Khan No. 1559.

(10)

The Standing Medical Board is of the opinion that he is having left side weakness presently under care Neurologist, Improving. Advised to have further light duty for one year and then be reviewed by the Standing Medical Board.

STATION PESHAWAR.
DATED: 08/01/2014.



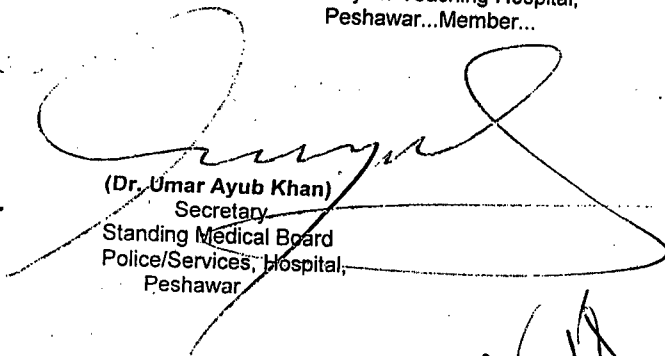
(Dr. Ali Ahmad)
Chairman
Standing Medical Board
Medical Superintendent
Police/Services, Hospital,
Peshawar.



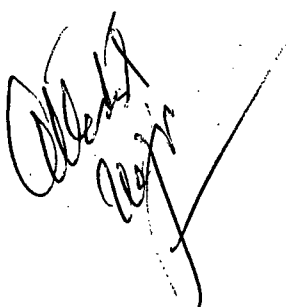
(Dr. Amanullah)
Ophthalmologist
Police/Services, Hospital,
Peshawar.



(Dr. Muhammad Tariq Mehr)
Physician
Khyber Teaching Hospital,
Peshawar...Member...



(Dr. Umar Ayub Khan)
Secretary
Standing Medical Board
Police/Services, Hospital,
Peshawar



RECORDED
INDEXED
10/01/2014



**OFFICE OF THE
MEDICAL SUPERINTENDANT
SERVICES HOSPITAL, PESHAWAR**

Phone: (Off) 091 9210509 (Exch) 091 9223472 Fax: 091 921054

No. 205-06 /MS/SMB/2013-14

Dated 15/01/2014

SP Headquarters
Capital City Police Officer
Peshawar.

11

Subject: - STANDING MEDICAL BOARD

PAR/CRS No. 341
Date 17/1/14

Memo: -

Constable Muhtaj Khan No. 1559 was examined by the Standing Medical Board held in this office on 08-01-2014. The proceedings of the Standing Medical Board are sent herewith for further necessary action.

Chairman
Standing Medical Board
Medical Superintendent
Service Hospital Peshawar

Cc.

1. Director General Health Services, Khyber Pakhtunkhwa Peshawar for information.

CBC
For information, per
21/1/14

CRC
For info, as
proceeding

Superintendent of Police
HQrs. Capital City Peshawar
17/1/14

D. B No. 235
Date 21-1-2014

7/2/14



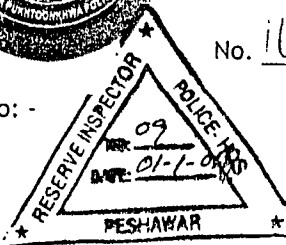
OFFICE OF THE DISTRICT POLICE OFFICER
NOWSHERA
TEL: 0923-9220102, FAX: 0923-9220103

21828
27/12/13

Amesher
(B)

No. 16450-51 /GC, Dated Nowshera, the 28/12/2013.

To: -



The Commandant Elite Force,
Khyber Pakhtunkhwa Peshawar.

2. The Capital City Police Officer,
Khyber Pakhtunkhwa Peshawar.

3169-3
1-1-14

PARCEL No. 7410
Date 31/12/13

(12)

Subject: CASE FIR NO. 265 DATED 30.07.2013 U/S 302/324/148/149 PPC PS AKBARPURA.

Memo:

It is ~~being~~ ^{brought} into your kind notice that the following accused have been charged in the subject mentioned case who are absconding since the day of occurrence. Both of them are serving in Police Department and presently posted in Peshawar. Their place of posting and constabulary Nos are noted against their names:-

LoE/MHA/1110

For intimation

1. Waqar No. 679/F.C posted in Elite Force Peshawar.
2. Muhtaj No. 1559/driver posted in MT staff Peshawar.

It is therefore, requested that the above named accused officials may kindly be directed to surrender themselves before the local police of PS Akbarpura (Investigation Wing) as well as initiate departmental action against them under intimation to this office.

Ri/1/14

DSP-HCEV

For M/G

*Superintendent of Police
Investigation Wing
PS Akbarpura
26/12*

[Signature]
District Police Officer,
Nowshera.

No. _____ /G.C/ dated Nowshera the ____/____/2013.

Copy forwarded for information to Superintendent of Police Investigation Nowshera.

Ri/HO/1110

Ry. M/G

1-1-2014

[Handwritten signatures and notes]

District Police Officer,
Nowshera.

FINAL SHOW CAUSE NOTICE

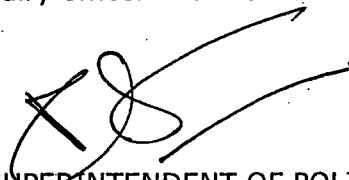
I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Muhtaj No.1559 the final show cause notice.

The Enquiry Officer, Mr. Gul Nawaz Khan, after completion of enquiry proceedings, has recommended for minor punishment for you Constable Muhtaj No.1559 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas the undersigned is satisfied that you Constable Muhtaj No.1559 deserve the punishment in the light of the above said enquiry reports.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
- 2: If no reply to this notice is received within 7 days of its receipt, in 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.
3. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 654 /PA, SP/HQrs: dated Peshawar the 2-1-2014.

Copy to official concerned

654
13

Amended
C

13

Attended
by
for

119-SCSV
13
14
120-0
15
178-SCSV
14

ORDER

This office order relates to the disposal of formal departmental enquiry against Driver/Constable Muhtaj No.1559 of Capital City Police Peshawar on the allegations that he while posted at Police Lines Peshawar was absent from lawful duty w.e.f 30.04.2014 till date & also involved in criminal case vide FIR No.265 dated 30.07.2013 u/s 302/324/148/149-PPC PS Akbar Pura.

2. In this regard, he was placed under suspension & issued charge sheet and summary of allegations. Two separate enquiries were initiated & conducted by SDPOs Saddar Circle & Gulbahar.

3. SDPO Saddar Circle conducted enquiry in the absence period & submitted his report that the defaulter official is habitual absentee and not interested in his official duty. The E.O further recommended major punishment for defaulter official vide Enquiry Report No.2569/PA dated 13.11.2015.

4. Upon the finding of Enquiry Officer, he was issued final show cause notice & delivered him on home address through local Police PS Akbar Pura (Nowshera). The DPO Nowshera forwarded a letter wherein stated that the said official has been involved in criminal case vide FIR No.59 dated 23.04.2014 u/s 302/148/149-PPC PS Akbar Pura & declared as PO.

5. SDPO Gulbahar conducted the enquiry in criminal charges vide FIR No.265 dated 30.07.2013 u/s 302/324/148/149-PPC PS Akbar Pura & submitted his report that the defaulter official did not attend the enquiry proceedings. The E.O further recommended ex-parte action for defaulter official vide Enquiry Report No.1153/E/S dated 24.03.2016.

In the light of recommendations of E.Os & other material available on record, the undersigned came to conclusion that he found guilty of prolong absence/involvement in criminal cases. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-975 with immediate effect. Hence, the period, he remained absent from 30.04.2014 till date is treated without pay.

Encl (55)

13
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 1139 / Dated 28/3/2016

No. 1384-90 /PI/SF/dated Peshawar the 28/03/2016

Copy of above is forwarded for information & n/action to:

- ✓ Capita City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI, CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

28/3
28/3/2016

2 3

Annexure
Annexure

15

Opening sheet for criminal Appeals

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)



Appellate side _____ Criminal Appeal No _____ /2020

District	Date of Filing Appeal	Whether filed by appellant in person or by pleader or agent	Stamp on petition or appeal
Nowshetra	19-10-2020	Shabbir Hussain Gigyani Advocate, Peshawar	Nil

1. Mukhtaj
2. Shafique
3. Waqar Ahmad
4. Mukhtiar Ahmad sons of Yar Muhammad
5. Aizaz S/O Mukhtiar Ahmad

R/O Zakhi Akbarpura District Nowshetra-----Appellants

Versus

1. Ebn-e-Amin S/O Rafique Muhammad (Now dead)
Through his Brother Muhammad Abbas (PW-11)
R/O Zakhi Akbarpura District Nowshetra

2. The State-----Respondents

Appeal U/S 410 Cr.P.C from the order of:

The learned
ASI/MCTC, Nowshetra

Dated:

17-10-2020

Charged U/S:

302/148/149 PPC
(FIR# 59 dated 23-04-2014 PS Akbar Pura)

Sentence:

U/S. 302(b)/149 PPC: Life Imprisonment on 02 counts with compensation of Rupees 05 lac to LRs of deceased within the meaning of section 544-A Cr.P.C. or in default 06 months S.I.

U/S. 148/149 PPC: 03 years R.I.

Both the sentences to run concurrently with benefit of section 382-B Cr.P.C.

Prayer-in-Appeal:

On acceptance of this appeal, the impugned judgment of the learned trial Court dated 17-10-2020 may graciously be set-aside and the appellant be acquitted.

GROUND OF APPEAL ARE ATTACHED

CrA852P2020 MUKHTAJ VS STATE Cr.PG36.pdf

ATTESTED
EXAMINER
Peshawar High Court

Handwritten signatures and stamps, including 'MAZAR AHMED' and 'M.A. L.L.B.'.

①

②

GROUND:

- 1) **Because**, the impugned judgment of the learned trial Court convicting the appellants is against law and facts on the file; hence untenable.
- 2) **Because**, the learned trial Court has not vetted the prosecution evidence in its true, correct, legal and factual spectrum which has caused grave miscarriage of justice.
- 3) **Because**, the learned trial Court has made a complete departure from the well-settled principles relating to the safe administration of criminal justice and has taken into consideration irrelevant and inadmissible pieces of evidence, which is bad in law.
- 4) **Because**, the worthy trial Court has overlooked the golden principle of the Hon'ble Superior Courts regarding declaration of blood feud motive as double edged weapon which can easily be used as a tool for false implication as well as exaggeration of charge.
- 5) **Because**, all facts and circumstances of the case reveals that the incident has not been occurred in the mode and manner as depicted by the prosecution.
- 6) **Because**, the medical report as well as the record depicts that neither the deceased then injured was conscious, what to say about orientation in time & space, nor any report has been lodged by him, rather, at the behest of the complainant party the police had maneuvered a false report/case for showing the same as dying declaration
- 7) **Because**, unrebutted facts on the file, which too has been admitted by the PWs, speaks volume about non-presence of the alleged eye-witnesses on the spot and undisputedly are procured witnesses.
- 8) **Because**, the learned trial Court has altogether ignored the improved, contradictory and defective depositions of the prosecution witnesses and instead of its discarding, the same have been covered with golden wrapper.
- 9) **Because**, the glaring conflict of the medical evidence regarding timing, mood and manner of the alleged occurrence with the site-plan, FIR and other attending circumstances of the case has been overlooked by the learned trial Court.

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4

- 10) Because, admitted facts on file as well as documentary evidence, which has duly been investigated and confirmed by the investigation officer, firmly confirm plea of alibi of three appellants, which completely dismantle the entire case of the prosecution in light of the principle *falsus in uni falsus in omnibus*.
- 11) Because, the learned trial Court has placed its worthy reliance on the planted recoveries, which is evidently beguiled one coupled with non-compliance with the law, rules and procedure.
- 12) Because, no other independent, supportive or corroborative evidence has been produced by the prosecution.
- 13) Because, the medical evidence is in complete conflict with the FIR, site-plan and other attending circumstances of the case, even otherwise, the charge is highly exaggerated and the entire male members of the family have been roped falsely.
- 14) Because, the appellants had not absconded rather due to fear, false implication and harassment were avoiding their arrest and then surrendered before the law, even otherwise, mere abscondence does not cure the false charge of the prosecution.
- 15) Because, terming the alleged absconcion as a piece of evidence by the worthy trial Court is unwarranted, being neither proof of guilt nor substitute of evidence and cannot defeat the rights.
- 16) Because, at any rate, the prosecution has miserably failed to bring home charge against the appellants beyond shadow of reasonable doubt and the impugned judgment is untenable.

Alleged
Noj
HAZIR AHMAD
M.A LLB LL.M

It is, therefore, humbly prayed that on acceptance of this appeal, the impugned judgment of the learned trial Court dated 17-10-2020, convicting the appellants and sentencing him U/S. 302(b)/149 PPC Life with compensation of Rupees 05 lac to LRs of deceased within the meaning of section 544-A Cr.P.C. or in default 06 months S.I. and U/S. 148/149 PPC 03 years R.I., may graciously be set aside and they be acquitted.

Through Mukhtaj etc (Appellants)
 Shabbir Hussain Gilyani, Farman Ullah Sallab, Muhammad Waqar
 Dated: 19-10-2020
 Advocates, Peshawar
 25 OCT 2021
 NOTED TO BE TRUE COPY

NOTE:
 > Appeal in hand is 1st one against the impugned judgment.

Handwritten initials



**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)**

Cr.A.No.852-P of 2020.

Date of hearing: 05.10.2021.

M/s Jalal-ud-Din Akbar-e-Azam Khan Gara
and Shabbir Hussain Gligyani, advocates for
the appellants.

Mr.Muhammad Inam Yousafzal, AAG for the
State.

Syed Abdul Fayaz, advocate for the
complainant.

JUDGMENT

gjan
LAL JAN KHATTAK, J.- Through this
judgment, we shall also decide the criminal
revision bearing No.129-P of 2020 as both
the matters have arisen from the same
judgment dated 17.10.2020 of the learned
Additional Sessions Judge-II/MCTC,
Nowshera delivered in case FIR No.59
dated 23.04.2014 under sections
302/148/149 PPC of Police Station Akbar
Pura, Nowshera, whereby the appellants
have been convicted and sentenced under
section 302(b) PPC to imprisonment for life
on two counts. They have also been
directed to pay compensation of
Rs.500,000/- to legal heirs of both the
deceased as envisaged under section 544-A

Handwritten signature

IR AHMAD
LLB LL M

ATTESTED
EXAMINER
Peshawar High Court

Cr.P.C. or in default whereof same shall be recovered as arrears of land revenue. The appellants have also been convicted under section 148 PPC read with section 149 PPC and sentenced to rigorous imprisonment of three years. Benefit under section 382-B Cr.P.C. has been given to them. The appellants have assailed their convictions and sentences through their joint appeal whereas the complainant had filed Cr.R.No.129-P of 2020 for enhancement of the awarded sentence to the normal penalty of death.

2. Brief facts of the case are that on 23.04.2014, deceased Ibn-e-Ameen, the then injured, reported to Karim Dad Khan, ASI in the casualty of civil hospital Pabbi to the effect that on the day of occurrence when he and his son Sadiq Ameen reached near Hujra Babu Salam Akbar Pura while riding motorbike, there Mukhtaj, Waqar, Mukhtiar, Shafiq and Alzaz, who were already present over there, started firing at them with lethal weapons due to which they i.e. the complainant and his son, were hit. According to the FIR (Ex.PW2/1), Sadiq Ameen died on the spot while the

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5. The prosecution case against the appellants consists of the ocular account furnished by PW-11, dying declaration of deceased Ibn-e-Ameen, medical evidence of both the deceased, recoveries from the spot in the shape of crime empties and bloodstained earth, recovery of motorbike from the spot and site plan of the crime spot.

6. First of all we take up for appreciation the ocular account furnished by PW-11, namely, Muhammad Abbas Khan, who is step brother of deceased Ibn-e-Ameen. Though his name is mentioned in the FIR as an eyewitness to the occurrence but we doubt his presence on the spot at the time of occurrence for the reason that he had not accompanied with the victims when they left their house for Akbar Pura. According to his testimony, when both the deceased did not return home, he and his brother Muhammad Nazir (not produced) went after them to Akbar Pura and when they reached Akbar Pura bazar near the Hujra of Babu Salam, there all the five accused started firing at his brother and nephew with which they were hit and fell down from the motorbike. As per his deposition, both the deceased after hitting

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entered into the Hujra of Babu Salam in order to save their lives where also they were fired at by the accused. The witness further deposed that with the fire shots Sadiq Ameen died on the spot whereas Ibn e-Ameen sustained injuries and was taken to the hospital where he was examined by the doctor and in his presence, the injured reported about the occurrence.

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7. Evidence of Muhammad Abbas Khan (PW-11) cannot be accepted for safe administration of justice on the ground that initially he was not with the victims when they left for Akbar Pura. He stated that he went behind his brother and nephew when they got late. In his evidence nowhere he has stated that he was aware of both the deceased going to Akbar Pura bazar and when he had no knowledge of the victims for their going to Akbar Pura bazar, then how he left for their search to the particular place i.e. the bazar. Also worth mentioning is the statement of PW-11 when he stated that "It is correct that the wife of the deceased had not informed me about the specific places in Akbar Pura nor the name of the person with whom they had to meet".

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EXAMINER
Peshawar High Court

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8. When neither the specific place was known to the witness nor the person whom the deceased had gone to meet, then his seeing the deceased and that too at the time of occurrence can only be termed an extra ordinary happening and an extra ordinary event has to be properly explained by the person who claims to have seen it which is not the case in hand. No doubt, sometime extra ordinary events do take place but in the attending circumstances of the case, presence of PW-11 is not believable on the spot as neither he knew the person whom his brother and nephew had gone to meet nor the place of their visit anywhere (as mentioned earlier), therefore, arrival of the witness on the spot at the time of occurrence is doubtful, hence his evidence cannot be believed in.

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M. A. LL.B. LL.M.

9. Now we take up the FIR-cum-dying declaration of the then injured, namely, Ibn-e-Ameen, who while reporting to ASI Karim Dad in injured condition in the casualty of civil hospital Pabbi stated to the effect that on 23.04.2014 he and his son Sadiq Ameen were riding motorbike and when they reached near the crime spot

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there all the five accused already present over there started firing at them with *Aslaha-e-Atisheen* with which he and his son were hit. According to the contents of the FIR (Ex.PW2/1), with the fire shots the complainant was seriously injured while his son on hitting died on the spot. It is worth to add that PW-11, namely, Muhammad Abbas is rider of the FIR and on extreme left corner whereof there is entry by the doctor to the effect that the patient was alive and conscious.

10. No doubt, as stated earlier, on extreme right corner of the FIR, there is endorsement of the doctor showing that the patient at the time of lodging of the FIR was alive and conscious but such endorsement alone would not be enough to hold that the contents of the FIR were correct qua the assailants. Of course, declaration given by a person at the time of his death carries great importance as to its truthfulness but there are certain pre-requisites which must be there in order to believe such declaration as true and one of them is that the declaration must be made without the interference of any close relative of the dying man who is

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Nazir Ahmad*

NAZIR AHMAD

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EXAMINER
Peshawar High Court

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found present around the dier at the time of making the statement and second the declaration must be corroborated by the circumstances prevailing on the spot at the time of occurrence. Furthermore, it is also necessary to see, in order to believe a dying declaration, whether at the time of his death the dying person was capable to narrate the event occurred before his death.

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11. On the touchstone of the above, if we look at the dying declaration of deceased Ibn-e-Ameen, it would appear that same was not free from foreign interference as his step brother, namely, Muhammad Abbas Khan (PW-11) was present around him at the time when such statement was being made. It is worth mentioning that in the preceding paragraph we have already disbelieved the testimony of Muhammad Abbas Khan and in such like situation interference on behalf of said witness in the statement of his brother, who was returning to his Creator to make an exaggerated account of the occurrence, cannot be ruled out.

Abbas Khan

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12. Besides the above, physical condition of the declarant too was not such which

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could allow him to narrate the occurrence as has been narrated by him. His medical examination shows that he has received the following firearm injuries on his person:-

1. A single firearm entry wound 1 x 1 cm on right interior flank with exit wound 3 x 5 cm on left side of lower back just lateral to the lumbar spine.
2. A single firearm entry wound 1 x 1 cm on lateral side of left buttock with exit wound 2 x 4 cm on upper medical side of left buttock.
3. A single firearm entry wound 1 x 1 cm on left upper guardant (left hypochondrium) with exit wound 2 x 2 cm on right side of upper back.
4. One through and through firearm wound with entry wound 1 x 1.5 cm in epigastria region with exit wound 2 x 1 cm on upper middle back.

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Moreover, the medical officer who had examined the declarant had found his condition very serious (Ex.PW2/1) whereafter referred him for further treatment to LRH. If we see the endorsement of the medical officer appearing at the corner of the FIR and the referral chit, it would appear that the deceased at the time of his death could not be in a position to narrate about

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Peshawar High Court

the occurrence in detail as has been narrated in the FIR.

13. In addition, the dying declaration of the deceased has also not been supported by site plan of the case. It is in the FIR that the deceased were hit by the fire shots when they were riding on motorbike and after hitting they fell down. According to the site plan, both the victims were hit at points No.1 and 2 and the motorbike has been shown at point 'A'. As per the site plan (Ex.PW5/1), after falling on the ground at point No.1 and 2, both the deceased then went up to point 1A and 2A and the *inter se* distance between point 1, 2 and 1A and 2A is 17/18 paces. Keeping in view the serious conditions of both the victims, it was not possible for them to cover a distance of 17/18 paces and let assume that they were in a position to move and they did so, then there must have been some trail of blood from point where they were hit and fallen and the point 1A and 2A whereafter receiving firearm injuries they had reached which is not the case in hand. Therefore, the site plan does not corroborate the facts as narrated in the FIR.

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*17/11/2017
 11:30 AM*

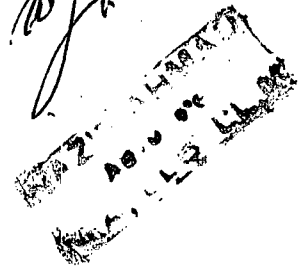
9
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14. For the above stated reasons, we hold that the dying declaration of Ibn-e-Ameen cannot be believed in for conviction of the appellants for the safe administration of justice.

15. Another important aspect of the case is that there is no report of FSL that the 03 empties of 222 bore and 9 empties of 7.62 bore collected from the spot were fired from more than one weapons. In the instant case, five persons, four of whom are brothers and one is nephew, are charged for the murder of two persons. In such like situation, production of the FSL report showing that the empties were fired from five weapons was must which material piece of evidence the prosecution has not produced and it appeared to us that the charge was exaggerated one which lamentable trend is very common in the area.

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16. Thorough and careful examination of the case record has led this court to believe that the prosecution has not proved its case against the appellants beyond any shadow of doubt, which is a hallmark of criminal jurisprudence. The prosecution case is full of doubts benefit of which must go to the

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EXAMINER
Peshawar High Court

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appellants being a century old principle of criminal law. It appears to us that the learned trial court has not appreciated the case evidence in its true perspective and has fallen in legal error to convict the appellants.

17. For what has been discussed above, we accept this appeal, set aside the impugned judgment of conviction and acquit the appellants of the charge leveled against them. They be set at liberty forthwith if not required to be detained or wanted in any other case.

18. Above are the reasons of our short order of even date.

19. So far as Cr.R.No.129-P of 2020 is concerned, as we have set aside the impugned judgment of conviction, therefore, the criminal revision has become infructuous which is hereby dismissed.

JUDGE

JUDGE

Attest
[Stamp: STATE OF BIHAR, PATNA, 25 OCT 2021]

Announced.

05.10.2021

Sachin Singh (P.B.) (Hon'ble Mr. Justice Lal. An Khattak & Hon'ble Justice Muzamil Hussain)

No. 11524
Date of Presentation of Application 27/10/21
No of Pages 15
Copying fee 160
Total 160
Date of Preparation of Copy 27/10/21
Date of Delivery of Copy 27/10/21
Received By 27

TO BE TRUE COPY
25 OCT 2021



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989
Fax No. 091-9212597

Amazur

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ORDER

This order will dispose off departmental appeal preferred by ex-Driver constable Mukhtaj No. 1559 who was awarded the major punishment of Dismissal from service under PR-1975 vide OB No. 1139 dated 28.3.2016 by SP-IQRs: Peshawar on the charges that he while posted at Police Lines Peshawar, absented himself from lawful duty w.e.f. 30.4.2014 till his dismissal i.e. 28.3.2016 and also involved in criminal case vide FIR No. 265 dated 30.7.2013 U.S. 302/324/148/149-PPC PS Akbar Pura.

2- Two separate departmental enquiries were conducted against the delinquent official through DSP-Saddar and DSP-Gulbahar. Both the enquiry officers found him guilty of the allegations leveled against him. The delinquent official also failed to join departmental proceedings as he was absconding after the commission of offence. The delinquent constable Mukhtaj was also issued Final Show Cause Notice which was delivered at his home address through local Police, but he failed to reply. Therefore, the competent authority awarded him the major punishment of dismissal from service.

3- Enquiry file was thoroughly examined. All codal formalities have been completed before awarding him the above punishment by the competent authority. The appellant was absconder after nomination in the criminal case and later-on was arrested in the said case. That after his arrest, he preferred departmental appeal for reinstatement into service from inside the prison through prison authorities after a lapse of one year and 10-months which luts by time limitation. There is no justification to interfere in the order of SP/IQRs, hence his appeal for re-instatement in service is rejected/iled.

Muhammad Tahir

(MUHAMMAD TAHIR)
CAPITAL CITY POLICE OFFICER,
PESHAWAR.

Altaf
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No. 159-64 /PA dated Peshawar the 31/01 2018.

Copies for Information and n/a to the:-

1. Superintendent Judicial Lockup Nowshera w/r to his office letter No. 3314/WL dated 11.12.2017. The appellant may be informed accordingly
2. SP/IQRs: Peshawar.
3. PO/OASI/CRC for making necessary entry in his S.Roll
4. ~~FM~~ MC along with FM

Before the ~~Magistrate~~ Inspector General of Police,
K.P.K. Head Quarters Peshawar.

Answer

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Departmental Appeal under Rule 3 of the K.P. Civil Servants Appeal Rules, 1986, read with Rule 16.29 of the Police Rules 1934, against the impugned Order No. 1384-90/PA/SF/ Peshawar dated 28.03.2016 of Superintendent Of Police Head Quarters Peshawar, whereby the Appellant is dismissed from service with immediate effect under E & D Rules 1975 and the period he remained absent from 30.4.2014 till 28.3.2016 is treated without pay.

Prayer:-

May your Honour be gracious, that on acceptance of this Appeal set aside the impugned Order No. 1384-90/PA/SF/ Peshawar dated 28.03.2016 of Superintendent Of Police Head Quarters Peshawar, and reinstate the Appellant with all back benefits ..

Respectfully Sheweth:- The need for the instant Departmental Appeal before your Honour arises due to the following facts:

Facts:

1. That the Appellant joined the Police Department on 21.07.1998 as constable and attended a lot of courses including Gas course, Finger prints course, bomb course, bomb disposal course and fireman and was a favorite police man.
2. That the Appellant served with dedication and with all his fairness but was unluckily due to strain relation of his family the opponent falsely involved him in FIR No- 59 dated 23.4.2014 under Section 302/324/148/149 PPC, Police Station Akbar Pura District Nowshera and was declared proclaimed offender. Similarly an FIR no 265 dated 30.07.2013 U/S 302/324/148/149 PPC in police station was registered against him.
3. That been pain in back the Appellant was exempted from active duty and was posted as Driver /Constable and till his dismissal he was posted as such.

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Prayer
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OFFICE OF THE INSPECTOR GENERAL OF POLICE
(General Branch)
11/2/21

Answer
11/2/21

4. The Appellant with no other option for time being avoided the arrest for sake of compromise and so was declared proclaimed offender and at last was arrested on 5.10.2017 and was sent to judicial lock up.

5. That the Department suspended the Appellant and conducted an enquiry against him when he was absconder and was unable to appear before the committee and defend himself.

6. That the department without giving him a chance of hearing and defence passed the impugned order declaring him habitual absentee and dismissed him from service with the knowledge that two criminal cases are registered against him.

(The impugned order is attached as Annexure---A).

7. That the Court of Additional Session judge II Nowshera, in case N-Sc-96 on 8.10.2019 acquitted him of charges in FIR No -59 and released him and similarly the Peshawar High Court Peshawar in case No- Cr Appeal 852 of 2020 on 5.10.2021 accepted the Appeal and set aside the judgment of conviction and acquitted him of the charges leveled against him and released him.

(Both the judgments are attached as Annexure B)

8. That the Appellant is free of all charges and is seeking the reinstatement of his discontinued service.

Being aggrieved from the impugned order this Departmental Appeal before you is preferred on the following grounds:

Grounds:-

A. That the impugned order is against the law and Article 194 of CSR as the criminal proceeding against the Appellant was not yet final and the Appellant has a right to Appeal and his right to appeal at two high forums was still intact and that the Honourable Peshawar High Court Peshawar decided that the Appellant was innocent and was falsely involved by the opponents which is a tradition in the entire Pakhtunkhwa, therefore, the impugned order requires your interference in the light of ESTACODE.

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Under the Code the accused is to be suspended so when acquitted shall be reinstated.

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- B. That the enquiry officer declared the Appellant as habitual absentee and on the other hand it has admitted by him that he was absconder in two FIRs therefore, the enquiry against the Appellant was pre mature and is full of contradictions.
- C. That the SP Head Quarters Peshawar has passed the impugned order in hurry without waiting for the final order of the last court of competent jurisdiction and has acted against the Police rules as the reasons given were not final.
- D. That the Appellant is dismissed from service on his conviction but the order of his conviction is not sustained in the eyes of law and is against the E& Discipline Rules .
- E. The propriety and the Principle of law demand that Appellant is to be restored to that position i.e. where he was as the court has absolved him of all charges.
- F. That the absence from duty was not intentional but a product of circumstances.
- G. That Article 4 of the Constitution of Pakistan reveals that every person shall be treated in accordance with law and no action detrimental to his right, property and reputation shall be taken without due process of law.
- H. That the impugned order is void ib- initio hence be set aside by your honour in the best interest of justice.

Therefore the Departmental appeal may be accepted with the Prayers as above.

(Appellant)

Mukhtar 3-11-2021
Mukhtaj S/O Yar Muhammad
Constable No -1559
Police Force Headquarters Peshawar.
R/O Zakhi Qabristan Akbar-Pura District Nowshera)

0334-5787351

Appellant
Signature



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-Driver FC Muhtaj No. 1559. The petitioner was dismissed from service by Superintendent of Police, HQrs: Peshawar vide OB No. 1139, dated 28.03.2016 on the allegations that he while posted at Police Lines Peshawar, absented himself from duty w.e.f 30.04.2014 till date of dismissal from service i.e 28.03.2016 for a period of 01-year, 10-months & 28-days and also involved in criminal case vide FIR No. 265, dated 30.07.2013 u/s 302/324/148/149 PPC PS Akbar Pura. As per DPO/Nowshera he was also involved in case FIR No. 59, dated 23.04.2014 u/s 302/148/149 PPC PS Akbar pura and declared as PO. His appeal was rejected by Capital City Police Officer, Peshawar vide order Endst: No. 159-64/PA, dated 31.01.2018.

Meeting of Appellate Board was held on 27.10.2022 wherein petitioner was heard in person. Petitioner contended that he was falsely charged in both FIRs and was acquitted by the court.

During hearing, petitioner failed to advance any plausible explanation in rebuttal of the charges. The acquittal from the court does not absolve the petitioner from the liability. The Board see no ground and reasons for acceptance of his petition, therefore, the Board decided that his petition is hereby rejected.

Sd/-
(MUHAMMAD ALI BABAKHEL) PSP
(UNPM, NSWC)
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 2607-13 /22, dated Peshawar, the 4-11 /2022.

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar. One Service Roll, one Fauji Missal and one enquiry file of the above named Ex-Driver FC received vide your office Memo: No. 4305/CRC, dated 24.11.2021 is returned herewith for your office record.
2. Superintendent of Police, HQrs: Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

(IRFAN USMAN KHAN) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Wakalat nama

In the Service Tribunal KPk Peshawar

Service Appeal No-----/2022

Muhtaj S/O Yar Muhammad.....Appellant

VS

Government of KPK through Inspector general Of Police and
others Respondents

I Muhtaj S/O Yar Muhammad a drive Constable the Appellant ,
do hereby appoint **Mr. Nazir Ahmad Advocate, High Court at
Peshawar** as my Counsel in subject proceedings and authorize
him to appear, plead, compromise, withdraw or refer the matter
for arbitration for me without any liability for his default and with
the authority to engage/appoint any other advocate/counsel at
my expense if necessary and receive all sums and amounts
payable to me and to all such acts which he may deem necessary
for protecting my interests in the matter. He is authorized to file
Appeal, Revision, Review and Application for restoration or
Application for setting-aside ex-parte decree proceedings on my
behalf.


Appellant

Dated: 22.11.22

Accepted and Attested



Nazir Ahmad Advocate

High Court

Cell: 0301-8571879

: 0332-8540783

bc-10-7897