

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1082/2019

BEFORE: **MRS. ROZINA REHMAN** ... **MEMBER (J)**
 MISS. FAREEHA PAUL ... **MEMBER(E)**

Ibrahim Khan, Forest Guard, Buner Watershed Division Swari Buner.

.... (*Appellant*)

Versus

1. **Conservator of Forests, Watershed Management Circle Abbottabad.**
2. **Divisional Forest Officer, Buner Watershed Division Swari Buner.**
3. **The Chief Conservator of Forests, Northern Southern Forest Region-II Peshawar.**
4. **The Chief Conservator of Forests, Central Southern Forest Region-I Peshawar.**

.... (*Respondents*)

Mr. Fazal Shah Mohmand
Advocate

...

For appellant

Mr. Muhammad Adeel Butt
Addl. Advocate General

...

For respondents

Date of Institution.....22.08.2019
Date of Hearing.....31.05.2022
Date of Decision.....31.05.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the office order dated 15.07.2019 of respondent No. 1 whereby departmental appeal of the appellant filed against the order dated 24.04.2019 of respondent No. 2 has been rejected.

The orders have been impugned to the extent of treating the period between 28.08.2012



to 21.02.2018 as extra-ordinary leave, with recovery of three months pay as against the law, facts and principles of justice.

2. Brief facts of the case, as per available record, are that the appellant joined the duty as Forest Guard on 17.08.1985. While he was posted as Forest Guard Buner Watershed Division Swari, he was involved in certain criminal cases and FIRs were lodged against him as follows:

FIR No. 460, dated: 27.08.2012 under Section 506/34 PPC

FIR No. 473, dated: 05.09.2012 under Section 506/34 PPC

FIR No. 97, dated: 01.03.2013 under Section 302/324/148/149 PPC, PS Daggar.

He was suspended vide office order No. 06.09.2012 but his salaries were paid till February 2013. He was arrested on 22.02.2016 and in the same year he filed a writ petition for release of his salaries. He was tried in the court of law and was finally acquitted of the criminal case registered vide FIR No 97 dated 01.03.2013 by ADJ/IZQ-III Buner vide judgment dated 27.06.2018. After release from criminal case he submitted his arrival on 11.07.2018 which was accepted vide order dated 19.07.2018 and was attached with RFO Chamia Watersehed Range. An inquiry was conducted against him on the basis of which the period from 28.08.2012 to 21.02.2016 was treated as extraordinary leave alongwith recovery of three months pay and the period from 22.02.2016 to 27.06.2018 was treated as period on duty vide office order dated 24.04.2019. Hence the instant appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

4. The learned counsel for appellant contended that he was suspended vide order dated 06.09.2012 and hence he was entitled to the salaries of the said period as per GFR and FR-54. He further contended that impugned order had been passed in violation of the procedure and the appellant had not been issued any charge sheet or showcause notice. He argued that the appellant had been acquitted of the criminal case by the competent

court of law and as per law and rules governing his services, he was entitled to all the benefits of the said period.

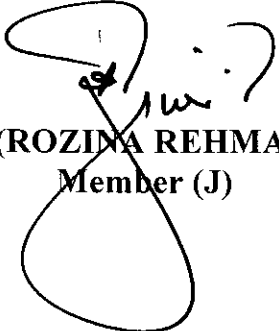
5. The learned Additional Advocate General contended that the appellant was absconded and out of law during the period 28.08.2012 to 21.02.2016 i.e more than 4 years which was a long period. He further said that the Peshawar High Court Mingora Bench had not decided his writ petition No. 507-M/2016 due to involvement in a murder case. He was acquitted by the Additional Sessions Judge Buner vide judgement dated 27.06.2018. An inquiry was conducted by the order of the Administrative Department and in light of the said inquiry report the absconded/absent period from 28.08.2012 to 21.02.2016 was treated as extra ordinary leave as he was out from duty which was a "misconduct" and "in-efficiency" under the (E&D) Rules 2011. However the period from 22.02.2016 to 27.06.2018, spent in the judicial lock up was treated as duty under FR-53 of the Fundamental Rules 1934 read with CSR 194 (A). He invited the attention to chapter-III general condition of service FR-17 which stipulated, "An officer/official shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties". In view of that rule the petitioner did not perform any duty during the absconded period from 28.08.2012 to 21.02.2016, therefore the said period was treated as extra-ordinary leave.

6. The appellant absented himself from official duty without informing his competent authority. Although he was acquitted in FIR No. 97 but other cases are yet to be decided by the respective courts of law. Record provides that notice of absence from duty was issued at his home address after fulfilling all codal formalities, that is issuing him charge sheet and statement of allegations and conducting inquiry. He was given opportunity of personal hearing also. The absence period from 28.08.2012 to 21.02.2016 has been defined and that was the time when he remained an absconder also. Rules governing the services of the appellant are very clear and it transpires that the respondents had been

quite lenient in treating his period of absence as extra-ordinary leave. It was based on his own admission during his personal hearing, when he said that he had been paid salaries upto February 2013, despite the fact that he did not perform any duty during that period and was absconding, that the salary of three months had been ordered to be recovered from him. The recovery is justified on the part of the respondents.

7. In view of the facts narrated above, the appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 31th day of May, 2022.*



(ROZINA REHMAN)
Member (J)



(FAREEHA PAUL)
Member (E)

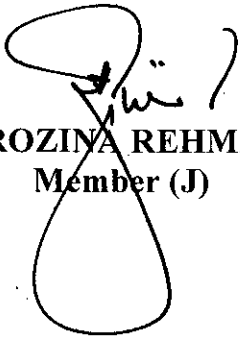
Service Appeal No. 1082/2019

31.05.2022

Mr. Fazal Shah Mohmand, Advocate for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 04 pages, we have arrived at the conclusion that the instant appeal being devoid of merits is hereby dismissed. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 31th day of May, 2022.*


(ROZINA REHMAN)
Member (J)


(FARZHA PAUL)
Member (E)

Suspension benefits
(c, d)

2001 S C M R 269

[Supreme Court of Pakistan]

Present: Muhammad Bashir Jehangiri, Munir A. Sheikh
and Nazim Hussain Siddiqui, JJ

ATTAULLAH SHEIKH---Petitioner

versus

WAPDA and others---Respondents

Civil Appeal No.668 of 1999, decided on 20th September, 2000.

(On Appeal from the judgment, dated 1-9-1997 passed by the Federal Service Tribunal in Appeal No.295(L) of 1997).

(a) Constitution of Pakistan (1973)---

---Art. 212(3)---Fundamental. Rules, F.R.' No.54(b)---Leave to appeal was granted by Supreme Court to consider if F.R. No.54(b) already having been declared as repugnant to Injunctions of Islam as per judgment of Supreme Court reported as Dr. Muhammad Islam, Instructor, Animal Husbandry In-Service Training Institute, Daudzai, Peshawar District v. Government of N.W.F.P. (1998 PLC (C.S.) 1430) could be invoked.

Dr. Muhammad Islam, Instructor, Animal Husbandry In-service Training Institute Daudzai, Peshawar District of N.-W.F.P. (1998 PLC (C.S.) 1430 ref.

(b) Fundamental Rules---

----F.R. 54(b)---Pay and allowances, grant of---Period of absence from duty- --Entitlement of reinstated civil servant---Scope---Authority under the provision of F.R.54(b) of Fundamental Rules may withhold part of allowance and pay of a Government servant on his reinstatement---Rule 54(b) could be invoked by the Departmental Authority in appropriate cases--Where the civil servant is not honourably acquitted and his case is not covered by F.R.54(a) of Fundamental Rules, Revising or Appellate Authority may under the provision of F.R.54(b) of Fundamental Rules, still grant to the civil servant for the period of his absence from duty such portion of such pay and allowances as the Authority deems fit---Normally the period of absence from duty in a case covered by F.R. 54(b) of Fundamental Rules is not to be treated as period spent on duty, but in deserving cases, the Revising/Appellate Authority can direct so.

(c) Criminal trial---

----Acquittal---All acquittals are "honourable" and there can be no acquittal which can be termed as "dishonourable".

Dr. Muhammad Islam, Instructor, Animal Husbandry In-service Training Institute Daudzai, Peshawar District of N.-W.F.P. (1998 PLC (C. S.) 1430 ref.

(d) Fundamental Rules---

---- F.R. 54---Pay and allowance for period of suspension---Acquittal of civil servant from criminal case---Civil servant was reinstated in service after acquittal from a criminal case---Payment of subsistence allowance only to the civil servant---Validity---Where the criminal charges were not established before a competent Court of law and the civil servant was acquitted on those specific charges, the departmental proceedings exactly on the same charges, would be wholly irrelevant and unjustified---Civil servant was acquitted by the competent Court of law which would mean that civil servant had not been suspended and would be entitled to all pay and allowances admissible under the rules, minus the amount which the civil servant had already drawn.

Dr. Muhammad Islam, Instructor, Animal Husbandry In-service Training Institute Daudzai, Peshawar District of N.-W.F.P. (1998 PLC (C.S.) 1430 and Government of N.-W.F.P. v. I.A. Sherwani and another PLD 1994 SC 72 ref.

Ch. Amir Hussain, Advocate Supreme Court for Appellant.
Muhammad Sharif, Advocate Supreme Court for Respondents.

Date of hearing: 20th September, 2000.

JUDGMENT

NAZIM HUSSAIN SIDDIQUI, J.---This appeal with leave of this Court is directed against the judgment, dated 1-9-1997 passed by learned Federal Service Tribunal in Appeal No.295(L) of 1997.

2. Leave to appeal was granted to consider if the Fundamental Rule No.54(b) already having been declared as repugnant to Injunction' of Islam as per judgment, dated 11-11-1990 of Federal Shariat Court passed in Shariat Petition No.4/1/1988 and this finding having been affirmed by this Court through judgment, dated 2-6-1998 reported as Dr. Muhammad Islam. Instructor, Animal Husbandry In-service Training Institute, Daudzai, Peshawar District of N.-W.F.P. (1998 PLC (C.S.) 1430) could be invoked. Fundamental Rules Nos.53 and 54, which are relevant for this case are reproduced below for reference:----

"F.R. No.53.--A Government servant under suspension is entitled to the following payments:--

(a) In the case of [an employee of the Armed Forces] who is liable to revert to Military duty, to the pay and allowances to which he would have been entitled had he been suspended while in military employment.

(b) In the case of a Government servant under suspension, other than that specified in clause (a), he shall be entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service, during the period of his suspension.

"F.R. No.54.--Where a Government servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty--

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal/removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period sent on duty.

In a case falling under clause (b), it will not be treated as period spent on duty unless the revising appellate authority so directs.

Explanation.---In this rule, "revising authority" means the "authority" or "authorised Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal. "

3. In F. R. 53, clause (b) was substituted by the S.R.O. 1173(1)/94, dated 21-9-1994, Gazette of Pakistan, Extraordinary, Part II, dated 5-12 1994 and FR No.54 substituted by S.R.O. 718(1)/93, dated 2-8-1993 Gazette of Pakistan, Extraordinary, Part II, page No.1339. August. 22, 1993. (Effective from 30th June, 1993)."

4. The relevant facts for decision of this appeal are that the appellant previously was working as Senior Clerk, VVAPDA, Operation Division, Kot Addu, District Muzaffargarh. On 24-4-1982, F.I.R. No.31 P.S. FIA, Multan under section 161, P.P.C. read with section 5(2) of the Prevention of Corruption Act, 1947 was registered

against him with an allegation of having accepted illegal gratification from one Ghulam Abbas, complainant. Vide judgment, dated. 17-10-1991 of learned Special Judge (Central) Multan, the appellant was acquitted extending him the benefit of doubt.

5. He on 8-5-1982 was suspended and reinstated on 4-11-1982. Again on 20-8-1984 he was suspended and reinstated on 20-9-1993. While reinstating, the respondent No.3, Superintending Engineer (E), WAPDA, Multan Circle, Multan ordered that nothing shall be paid to the appellant over and above the subsistence allowance already paid to him during suspension period. On the contrary, the appellant claimed that he was entitled to full dues during the suspension period and above order denying him any payment over and above the subsistence allowance, was contrary to law. He preferred departmental appeal on 11-10-1993, which was rejected on 5-6-1997. The department maintained that respondent No.3 had rightly held that the appellant was not entitled to any amount over and above the subsistence allowance already paid to him. A plea was also taken by the department that the appellant was simultaneously proceeded under WAPDA (E&D) Rules and was reverted as LDC for one year, hence was not entitled to full dues under F.R. No.54(b).

6. The matter was taken up to the Federal Service Tribunal and learned Tribunal maintained the above order and rejected the appeal by the judgment, which has been impugned in this appeal.

7. Adverting to the leave granting order, it is noted that the leave was granted to consider whether under the circumstances, Rule 54(b) could be invoked. It is significant to note that in the case of Dr. Muhammad Islam the following was observed:--

"It may also be noted that the provisions of F.R. 54(a) have been declared un-Islamic by the Shariat Appellate Bench of the Court vide Government of N.-W.F.P. v. I.A. Sherwani and another (PLD 1994 SC 72). In other words, the F.R. 54(a) under which the appellant has been deprived of his pay and other financial benefits, does not exist on the statute book, It is admitted by the learned counsel for the parties that term "acquittal" shall be pressed into service."

8. It appears that in the case of Dr. Muhammad Islam reliance was placed upon the case reported as Government of N.-W.F.P. v. I.A. Sherwani and another (PLD 1994 SC 72). In the latter case the Fundamental Rules under consideration was 53 and not 54. Both the rules are on the statute book. The scope of both these rules is distinct. Under the existing rule 53(b) a Government servant under suspension shall be entitled to the relief mentioned therein. In fact, since 21-9-1994 when clause (b) was substituted by S.R.O. 1173(1)/94, a Government servant under suspension shall as a matter of right, be entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service.

9. The import of F.R. No.54 (b) is that an authority may withhold part of allowance and pay of a Government servant on his reinstatement. This rule may be invoked by the departmental authority in appropriate cases. It is noted that under clause (b) of F.R. No.54, if the Government servant is not honourably acquitted and his case is not covered by clause (a) of said Rule, still the revising or appellate authority may grant to him for the period of his absence from duty such portion of such pay and allowances as it deems fit. Normally the period of absence from duty in a case covered by clause (b) is not to be treated as period spent on duty, but in deserving cases, the revising/appellate authority can so direct.

10. It is an admitted fact that the appellant was acquitted by learned Special Judge (Central), Multan from the charges which were levelled against him. This Court, in the case of Dr. Muhammad Islam has laid down a dictum that all acquittals are "honourable" and there could be no acquittal which could be termed as "dishonourable".

11. SGA&I Department, Government of Punjab, in Curricular No.1-90/87, dated 4-2-1988 on the subject 'Treatment of period under suspension' stated:--

"It has been decided that since a person acquitted by the Court by giving him benefit of doubt has no judicial remedy available to him to get such acquittal declared as honourable, all acquittals including those based on benefit of doubt should be treated as honourable for the purposes."

12. Learned Service Tribunal declined the relief to the appellant on the basis of its judgment in Appeal

No.246(L) of 1992, wherein it was held that where a penalty is imposed under the Efficiency and Discipline Rules, the appellant would not be entitled to full emoluments of the period of suspension. It was also held that for entitlement to full pay, acquittal should not only be in the criminal case, but also in the proceedings under the Efficiency and Discipline Rules.

13. It appears that the Tribunal was of the view that, since after registration of the case, the appellant was placed under suspension, as such, the penalty imposed by the respondent No.3 was altogether separate than the findings in the criminal case. The record does not show that any different charge was levelled against the appellant in the departmental proceedings. On the contrary, it is evident that subject-matter was the same and action against appellant was taken on the basis of said criminal proceedings. Where the criminal charges are not established before a competent Court of Law and the accused is acquitted on those specific charges, the departmental proceedings exactly on the same charges, would be wholly irrelevant and unjustified. Since the appellant was acquitted by the Competent Court of Law, it shall be deemed that he had not been suspended and would be entitled to all pay and allowances, admissible under the rules, minus the amount which he had already drawn.

14. Under the circumstances, the impugned order of the Tribunal is set I aside and the appeal. is allowed with above observations.

Q.M.H./M.A.K./A-102/S

Appeal allowed

Suspension benefits

Case Judgement

<http://www.plsbeta.com/LawOnline/law/casedescription.asp?cased...>

• 1999SCMR2870

[Supreme Court of Pakistan]

**Present: Irshad Hasan Khan, Raja Afrasiab Khan
and Muhammad Bashir Jehangiri, JJ**

**MUHAMMAD IQBAL ZAMAN, VERNACULAR CLERK,
MARWAT CANAL DIVISION, BANNU---Appellant**

versus

**SUPERINTENDING ENGINEER, SOUTHERN IRRIGATION
CIRCLE, BANNU and 4 others---Respondents**

Civil Appeal No. 1152 of 1995, decided on 11th March, 1999.

(On appeal from the judgment/order of the N.-W.F.P. Service Tribunal, dated 15-11-1994, passed in Appeal No.333 of 1993).

Constitution of Pakistan (1973)---

---Art. 212---Civil service---Suspension---Arrears of pay relating to suspension. period---Entitlement to---Civil servant who was involved in murder case and was convicted and sentenced by Trial Court, was acquitted of murder charge by High Court in appeal---Civil servant, who after his acquittal was re-instated in service, prayed for arrears of pay relating to his suspension period, but his prayer was turned down by Authority on ground that civil servant was not entitled to arrears as he was not honourably acquitted, but was given benefit of doubt---Validity---Acquittal of civil servant, even if based on benefit of doubt, was honourable---Acquittal of civil servant, even based on benefit of doubt, could not become a hurdle in payment of arrears of pay to civil servant regarding his suspension period provided he had not been found to be gainfully employed during suspension period.

Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another 1994 PLC (C.S.) 693. Government of Pakistan through the Secretary, P.W.D. (Irrigation Branch). Lahore v. Mian Muhammad Hayat PLD 1976 SC 202; Dr. Muhammad Islam v. Government of N.-W.F.P. 1998 PLC 1430 and Malik Azharul Haq v. Director of Food, Punjab, Lahore and another 1991 SCMR 209 ref.

Abdul Aziz Kundi, Advocate Supreme Court for Appellant.

Ejaz Muhammad Khan, Additional Advocate-General, N.-W.F.P. with Haji M.A. Qayyum Mazhar. Advocate-on-Record for Respondents.

Date of hearing: 11th March, 1999.

JUDGMENT

RAJA AFRASIAB KHAN, J.---On 9-2-1965, the appellant, Muhammad Iqbal Zaman was appointed as Patwari in Irrigation Department. In lieu of good performance, he was promoted as Vernacular Clerk. In 1985, he was involved in a murder case vide F.I.R. No.160, dated 19-7-1985, Police Station Miryan, Bannu, and in consequence thereof, in 10-11-1985, he was suspended from service by the respondent No.1. An Additional Sessions Judge, Bannu vide his judgment, dated 22-8-1989 convicted and sentenced the appellant to imprisonment for life in the above said murder case. On appeal, the Peshawar High Court, Circuit Bench D.I. Khan vide its judgment, dated 15-5-1990 acquitted him of the murder charge. The petition for leave to appeal filed by the complainant against the above said judgment was dismissed by this Court on 6-5-1991. After his acquittal, pursuant to his application, he was reinstated in service on 14-7-1991. The prayer regarding arrears of pay relating to his suspension period was declined vide order, dated 4-7-1993 on the ground that he was not honourably acquitted but was given the benefit of doubt. He filed appeal before the respondent No.3, Chief

Engineer, Irrigation Department, Peshawar on 15-7-1993, which could not be decided within the statutory period of 90 days. He filed appeal before the N.-W.F.P. Service Tribunal, which was dismissed by it vide its decision, dated 15-11-1994. Leave to appeal was granted to the appellant vide order, dated 8-11-1995, relying upon the dictum laid down in Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another (1994 PLC (C.S.) 693) and Government of Pakistan through the Secretary P.W.D. (Irrigation Branch), Lahore v. Mian Muhammad Hayat (PLD 1976 SC 202) to consider whether the Tribunal has correctly followed the dictum of this Court in the case of Mian Muhammad Hayat, (supra) in declining the claim of arrears to him holding that acquittal was not honourable.

2. Learned counsel appearing on behalf of the appellant has argued that it is established on record that the appellant has been honourably acquitted of the murder charge. He has drawn our attention to the impugned judgment of the Tribunal wherein it has been observed that the appellant has honourably been acquitted. Learned Additional Advocate-General, N.-W.F.P. has argued that the impugned decision is unexceptionable, inasmuch as, a finding of fact has been recorded by the Tribunal that the acquittal of the appellant is based on benefit of doubt.

3. We have heard the learned counsel for the parties at some length and have perused the record with their assistance. We are of the view that the acquittal, even if, based on benefit of doubt, is honourable. Thus, an acquittal based on benefit of doubt does not become a hurdle in the payment of arrears of pay to the appellant herein regarding his suspension period, provided he has not been found to be gainfully employed during that period. Learned counsel for the appellant placed on record an information in writing to show that the appellant was not gainfully employed during his suspension period, which reads thus:--

"BEFORE THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

C.A.No.1152 of 1995.

Muhammad Iqbal Zaman---Appellant

versus

Superintending Engineer and others---Respondents

Respectfully sheweth,

As directed by this Hon'ble Court today during the hearing of the above appeal and as instructed by appellant it is submitted that during his suspension period appellant was not employed anywhere else and did not earn.??????????

?(Sd)
(Abdul Aziz Kundi)
Advocate-on-Record
for appellant,

Islamabad
11-3-1999"

When faced with this situation, learned Additional Advocate-General was unable to rebut the argument of the learned counsel for the appellant. This being so, we are inclined to agree with the learned counsel that the appellant is entitled to receive the arrears of his pay for the suspension period inasmuch as he has not been found to be gainfully employed during that period. The Tribunal has failed to follow the view of the Service Tribunal in the case of Mian Muhammad Shafa (supra), which reads:--

"There is hardly any ambiguity in these provisions and they do not present any difficulty. We are in no doubt

2021

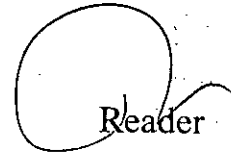
Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for respondents present.

Due to COVID-19, the case is adjourned for the same on 20.04.2021 before D.B.


READER

20.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 12.08.2021 for the same as before.



Reader

12.08.2021

Appellant present through counsel.

Asif Masood Ali Shah learned D.D.A for respondents present.

Former submitted rejoinder with a request for adjournment. Request is acceded. To come up for arguments on 14.12.2021 before D.B.


(Rozina Rehman)
Member (J)

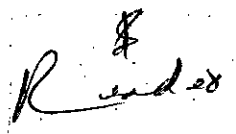


Chairman

14-12-21

DB is on Tons case to come up
For the same on Dated 31-3-22

7-2-2022

Due to retirement of the
Hon'ble Chairman the case is adjourned
to come up for the same as before
on 31-05-2022


Reader


15.06.2020

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Arshid, DFO for the respondents present. Representative of the department submitted para-wise comments on behalf of respondents No. 1 to 5 which is placed on record. To come up for rejoinder, if any, and arguments on 27.08.2020 before D.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.08.2020

Due to summer vacation, the case is adjourned to 03.11.2020 for the same as before.


Reader

03.11.2020

Junior to counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 13.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

23.12.2019

Appellant in person present. Addl: AG alongwith Mr. Arshad Ali Khah, DFO for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 06.02.2020 before S.B.



Member

06.02.2020

Appellant in person and Addl. AG alongwith Arshad Ali Khan, DFO for the respondents present.

Representatives of the respondents seeks further time to furnish reply. Adjourned to 24.03.2020 on which date the requisite reply/comments shall positively be furnished.



(Ahmad Hassan)
Member

24.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 15.06.2020 before S.B.



Reader

22.10.2019

Counsel for the appellant present.

Contends, that the appellant was in judicial lock-up since 28.08.2012 and was placed under suspension through order dated 06.9.2012. On the other hand, while disposing of the departmental disciplinary proceedings against the appellant through impugned order dated 24.04.2015, only the period from 22.02.2016 to 27.06.2018 was treated as period on duty in view of GFR-53. Fundamental Rules provide for counting the entire period of detention as period on duty in circumstances of the case. The appellant was acquitted from the criminal charge on 27.06.2018, it was added.

In view of available record and arguments of learned counsel, instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/ comments on 23.12.2019 before S.B.

Alongwith the appeal there is an application for restraining the respondents from recovery of three months salary from the appellant. Notice of the application be also given to the respondents for the date fixed.

Appellant Deposited
Security & Process Fee
23/10/19



Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 1082/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|------------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 22/08/2019 | <p>The appeal of Mr. Ibrahim Khan presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 22/8/19</p> |
| 2- | 23/08/19 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05/09/19</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p> |
| 05.09.2019 | | <p>Counsel for the appellant present.</p> <p>Learned counsel requests for adjournment in order to further ^{where} the brief. Adjourned to 22.10.2019 before S.B.</p> <p style="text-align: right;">Chairman <i>[Signature]</i></p> |

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1082/2019

Ibrahim Khan.....Appellant

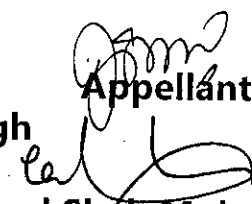
V E R S U S

Conservator & others.....Respondents

I N D E X

| S.No | Description of Documents | Annexure | Pages |
|------|---|----------|-------|
| 1. | Service appeal with affidavit | | 1-4 |
| 2. | Application for interim relief with affidavit | | 5 |
| 3. | Copy of FIR & Office Order dated 06-09-2012 | A & B | 6-7 |
| 4. | Copies of FIRs | C | 8-10 |
| 5. | Copy of Judgment dated 27-06-2018 | D | 11-25 |
| 6. | Copy of Order dated 19-07-2018 | E | 26- |
| 7. | Copy of Inquiry Report & Order dated 24-04-2019 | F & G | 27-31 |
| 8. | Copy of Departmental appeal, Order dated 15-07-2019 and Post Office receipt | H, I & J | 32-57 |
| 9. | Wakalat Nama | | 58 |

Dated:-21-08-2019

Through 
Appellant
Fazal Shah Mohmand
Advocate Peshawar.

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

-1-

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No 1082/2019

Diary No. 1187

Dated 22/8/2019

Ibrahim Khan, Forest Guard, Buner Watershed Division Swari Buner.

.....Appellant

V E R S U S

1. Conservator of Forests, Watershed Management Circle Abbottabad.
2. Divisional Forest Officer, Buner Watershed Division Swari Buner.
3. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad.
4. The Chief Conservator of Forests, Central Southern Forest Region-I Peshawar.
5. Secretary, Govt. of Khyber Pakhtunkhwa, Forest, Environment and Wild Life Department, Peshawar.

.....Respondents

²³⁻¹²
APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE OFFICE ORDER DATED 15-07-2019 OF RESPONDENT NO 1 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 24-04-2019 OF RESPONDENT NO 2 HAS BEEN REJECTED.

PRAYER:-

On acceptance of this appeal the impugned Orders dated 15-07-2019 and Order dated 24-04-2019, to the extent of treating the period between 28-08-2012 to 21-02-2016 as extra ordinary leave, with recovery of three months' pay may kindly be set aside and respondents may kindly be directed to pay the appellant the salaries with effect from 01-03-2012 to 22-02-2016 with all back benefits.

Respectfully Submitted:-

1. That the appellant joined the respondent Department as Forest Guard on 17-08-1985 and since then he performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.
2. That the appellant while lastly posted as Forest Guard Buner Watershed Division Swari, was involved in criminal Case vide FIR No 460 dated 27-08-2012 U/Ss 506/34 PPC of Police Station

Daggar Buner and was suspended vide Office Order dated 06-09-2012, the suspension order was never communicated to the appellant. **(Copy of FIR & Office Order dated 06-09-2012 is enclosed as Annexure A & B).**

3. That the appellant duly performed his duties and salaries were paid to him till February 2013. The appellant was also involved in case FIR No 473 dated 05-09-2012 U/Ss 506/34 PPC and FIR No 97 dated 01-03-2013 U/Ss 302/324/148/149 PPC of Police Station Daggar, regarding which the appellant duly informed respondent No 2. **(Copies of FIRs are enclosed as Annexure C).**
4. That the appellant was arrested on 22-02-2016 and in the year 2016 the appellant also filed Writ Petition for the release of his salaries. The appellant was tried and was finally acquitted of the criminal case by the ADJ/IZQ-III Buner, vide Order and Judgment dated 27-06-2018. **(Copy of Judgment dated 27-06-2018 is enclosed as Annexure D).**
5. That after release from jail the appellant submitted his arrival on 11-07-2018 which was accepted vide Order dated 19-07-2018 and the appellant was attached with RFO Chamia Watershed Range. **(Copy of Order dated 19-07-2018 is enclosed as Annexure E).**
6. That an illegal inquiry was conducted and on the basis of which the period between 28-08-2012 to 21-02-2016 was ordered to be treated as extra ordinary leave, recovery of three months' pay was ordered and the period from 22-02-2016 to 27-06-2018 was treated as period on duty vide Office Order dated 24-04-2019. **(Copy of Inquiry Report & Order dated 24-04-2019 is enclosed as Annexure F and G).**
7. That the appellant filed departmental appeal which was filed vide Office Order dated 15-07-2019, copy of which was communicated to the appellant on 30-07-2019. **(Copy of Departmental appeal, Order dated 15-07-2019 and Post Office receipt is enclosed as Annexure H, I & J).**
8. That the impugned Orders dated 15-07-2019 and Order dated 24-04-2019, to the extent of treating the period between 28-08-2012 to 21-02-2016 as extra ordinary leave, with recovery of three months' pay are against the law, facts and principles of justice on grounds inter alia as follows:-

GRUNDS:-

- A.** That the impugned Orders are illegal, unlawful and void ab-initio.
- B.** That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.
- C.** That the appellant had duly informed his high ups regarding his false involvement in criminal case and thus there is no omission or commission on his part.
- D.** That the appellant was suspended vide Office Order dated 06-09-2012, which was not communicated to the appellant and as such too he is entitled to the salaries of the said period as per GFR and FR 54.
- E.** That no proper inquiry was conducted in the matter to have found out the true facts and circumstances. No one was examined in presence of the appellant nor was he ever afforded opportunity of cross examination.
- F.** That the impugned orders have been passed in violation of the procedure set forth in law, as the appellant was never issued any Charge Sheet or Show Cause Notice, as such the impugned Orders are void and liable to be struck down on this score alone.
- G.** That so far the salaries of six months paid to the appellant are concerned, the appellant during the said period duly performed his duties which is proved from the fact that he even signed the Original Pay Bills of the said period.
- H.** That no notice whatsoever was communicated to the appellant as also evident from the inquiry report, thus no proceedings were taken against the appellant.
- I.** That the appellant could not be punished for the fault of others if any.
- J.** That even the inquiry officer has found that the charge of willful absence has not been proved, thus the appellant is entitled to the benefits of the subject period.
- K.** That the appellant has been acquitted of the criminal case by the Competent Court of law and as per law and rules governing the subject the appellant is entitled to the benefits of the said period.

- L. That even the authority has not treated the period as leave of the kind due as per the recommendations of inquiry officer beyond his domain.
- M. That the appellant was not provided opportunity of personal hearing and as such too he has been denied fundamental right of treatment according to law has been violated.
- N. That ex-parte action has been taken against the appellant and he has been condemned unheard in violation of the principles of natural justice.
- O. That the appellant has about 34 years of service with unblemished service record.
- P. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

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

Any other relief deemed appropriate and not specifically asked for, may also be granted in favor of the appellant.

Dated:-21-08-2019

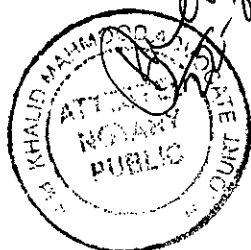
Through

[Signature]
Appellant

[Signature]
Fazal Shah Mohmand
Advocate, Peshawar

AFFIDAVIT

I, Ibrahim Khan, Forest Guard, Buner Watershed Division Swari Buner, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



[Signature]
DEPONENT

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2019

Ibrahim Khan.....Appellant

V E R S U S

Conservator & others.....Respondents

Application for restraining respondents from recovery of Pay from the appellant till the final disposal of titled case.

Respectfully submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned orders being void ab-initio, illegal and the appellant has got a good prima facie case in his favor.
4. That the balance of convenience is also in favor of the appellant and is sanguine of its success.
5. That if respondents are not restrained from making recovery from the appellant he would suffer irreparable loss.

It is therefore prayed, that on acceptance of this application, the respondents may kindly be restrained from recovery of pay from the appellant till the final disposal of titled case.

Dated:-21-08-2019

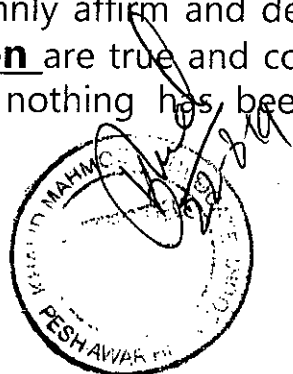
Through

[Signature]
Appellant

[Signature]
Fazal Shah Mohmand,
Advocate, Peshawar

A F F I D A V I T

I, Ibrahim Khan, Forest Guard, Buner Watershed Division Swari Buner, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



[Signature]
DEPONENT

-7- 'B'

OFFICE ORDER NO. 04 DATED SWARI THE 06 //09/2012 ISSUED BY MR. SALEEM KHAN DIVISIONAL FOREST OFFICER BUNER WATERSHED DIVISION SWARI.

As reported by the Head of Investigation, Buner vide his letter No. 1369/Invest., dated 03/09/2012, Mr. Ibrahim Forest Guard S/O Mr. Noordad Khan resident of Torwarsak District Buner, connected in crime No.460 dated 27-08-2012 U/S 506/34 ,PC Police Station Daggar Buner, and he is in Judicial Lock up ^{since} on 28-08-2012. Therefore, Mr. Ibrahim Forest Guard is hereby suspended from service with effect from 28-08-2012, till further order.

Sd/-
(Mr. Saleem Khan)
Divisional Forest Officer
Buner Watershed Division
Swari

Copy forwarded to the:-

- 1- Head of Investigation, Buner for information with reference to his letter cited above.
- 2- Range Forest Officer Chamla W/Shed Range for information.
- 3- Divisional Accountant.

Khan?
Divisional Forest Officer
Buner Watershed Division
Swari

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تاریخ 01/03/15 وقت 10:15

Table with 2 columns: No. and Details. Contains information about the incident, including date, time, and location.

Main body of the report in Urdu, detailing the incident involving a child and a woman, mentioning names like 'Mehnaz' and 'Ammam', and locations like 'PSSS'.

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11-12-

IN THE COURT OF AZIZ MUHAMMAD
ADDITIONAL SESSIONS JUDGE/IZQ-III, BUNER

131

Sessions case No. 45/7

Date of institution: 12.03.2016

18.11.2017

Date of decision: 27.06.2018

Case FIR No. 97, dated 01.03.2013 U/s 302/324/149/149 PPC R/w
ISA, PS Daggar

The State

VS

- (1) Ibrahim Khan S/o Noor Dad Khan,
 - (2) Muhsin Islam and (3) Salih Islam sons of Ibrahim Khan R/o village Torwarsak, Tehsil Daggar, District Buner
- (accused facing trial)

JUDGMENT:

1. Accused, named above, faced trial in case in hand.

2. Brief facts of the prosecution's case are that on 01.03.2013, complainant Sher Zamin Khan (PW3) in injured condition reported to Wakil Zada SI (PW10) in Emergency Ward, DHO Hospital, Daggar that on the eventful day, he along with his brother Nazneen, Laiq Zada, Nisar Muhammad, Jan Sher Khan were on their way through NCP Motorcar bearing No. 610-PSSS having some private and domestic engagements, they were approaching toward Swari at about 10:15 hours, from the nearby street known as Sahibullah, forthwith appeared accused Ibrahim and his sons Salih Islam, Tariq Islam, Zahoor Islam, Ziaul Islam, and Muhsin Islam, duly armed with their respective pistols, Kalashnikov, started firing on them. Through the firing of accused Tariq Islam, his brother received injuries, while the

DIVISIONAL Forest Officer
Juner Watershed Division
Swari

27.06.18
AZIZ MUHAMMAD
Additional Sessions Judge IZQ-III

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Additional Sessions Judge Buner

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complainant got hit with the firing of Ibrahim. One of the passerby, namely, Abdur Rashid also hit on his head and died on the spot. Motive as set out by the complainant, was ill-will between the parties and registration of criminal case U/s 506 PPC. The deceased was taken to the hospital Shnai, while all other injured were brought to DHQ Hospital, Daggar for treatment. One Gul Nawaz Khan was cited as an eyewitness. Murasila was sent to Police Station Daggar for registration of the case, whereof, case in hand was registered accordingly.

3. After registration of the case, investigation was entrusted to Qasim Jan Khan SI (PW-21). He prepared the site plane ExPB and during spot inspection recovered blood stained earth from the place of deceased Abdur Rashid. He also recovered 16 empties of 7.62 bore and 05 empty shells of 30 MM bore. He took into possession the motorcar owned by Sher Zamin Khan, having bullet marks on its different parts and broken rear screen. He also recovered blood through cotton from front seats, one spent bullet beneath the front seat and prepared recovery memo ExPW18/3. He took into possession the blood stained garments of complainant and injured vide recovery memo ExPW18/4. He took into possession the blood stained garments and sweater of the deceased and prepared recovery memo ExPW21/1. He also recorded the statements of LRs of the deceased U/s 161 Cr. PC. Vide application ExPW21/2, sent the blood stained articles to FSL for chemical analysis and received FSL report Ex PZ and placed on file. Similarly, vide application ExPW21/3, he sent the recovered

Ishtiaq Forest Officer
 Daggar Watershed Division
 Nowari

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 District Judge

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 District Sessions Judge (20-111)

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empties for preservation to FSL. Vide application Ex PW21/4, he applied for obtaining warrant U/s 204 Cr. PC and vide application Ex PW21/5 for proclamation notices U/s 87 Cr. PC against all of the accused. After the completion of above proceedings, placed on file all the warrants U/s 204 Cr. PC and proclamation notices. He vide applications ExPW21/6 and ExPW21/7 applied for recording the statements of PWs Darwaish Khan, Mst. Sanga, Gul Nawaz Khan, Jan She, Liaq Zada and Nisar Muhammad U/s 164 Cr. PC. During investigation, he received the medical reports and placed on file. He recorded the statements of all the concerned PWs U/s 161 Cr. PC. He has also captured the snap shots of the place of occurrence and motorcycle and placed it on case file. After the completion of investigation, handed over the case file to SHO for submission of challan U/s 512 Cr. PC. Accused were proceeded U/s 512 Cr. PC, and had been declared proclaimed offenders by court of competent jurisdiction. Later on, accused facing trial were arrested and after investigation, sent to judicial lockup.

4. On receipt of challan and after observing the legal formalities of S. 265-C Cr. PC, the accused facing trial were formally charged sheeted, but they did not plead guilty and claimed trial. To bring home the guilt of the accused, prosecution produced as many as 21 PWs, the gist of their deposition is given below:

5. PW-1 Gul Nabi has identified and received dead body of Abdur Rashid vide receipt ExPW1/1.

Divisional Forest Officer
Buner Watershed Division
Swat

KAZIM MUHAMMAD
Additional Sessions Judge, 20-10
Buner

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6. PW2 Sahib Khan is marginal witness to recovery memo ExPW2/1, vide which the blood stained garments of deceased had been taken into possession.

7. PW3 Sher Zamin complainant, deposed in line with his initial report however, he made some improvements in his statement and narrated the story in different mode and manner.

8. PW4 Nazneen Khan is eyewitness, who supported the version of complainant. He charged accused Tariq Islam for his injuries.

9. PW5 Jan Sher Khan is also eyewitness, who supported the version of prosecution story.

10. Muhammad Qasim DFC deposed that he was entrusted warrant U/s 204 Cr. PC issued against the accused facing trial Ibrahim, Munsin Islam and Salih Islam residents of village Torwarsak, District Buner. He went on the given address for execution of the warrant and searched the above named accused in their village but it was reported to him that accused had gone into hiding after the commission of crime and were intentionally avoiding their lawful arrest. He handed over warrants to Investigating Officer. Similarly, he was also entrusted with Proclamation Notices U/s 87 Cr. PC issued against above named accused. He accordingly served the same in accordance with law, and returned Investigating Officer.

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Signature: [Signature]

[Signature]
Divisional Force Officer
Buner Watershed Division
Sward

11. PW7 Mst. Gul Sanga, deposed that deceased Abdur Rashid was her husband. They belong to District Dir but had left District Dir for Buner and were living in Shaho, Torwarsak. Her husband was a labourer in Marble mines. On the day of occurrence which was

HAZI MUHAMMAD
2022/11/22/18
[Signature]

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Friday, her husband went for buying household articles, but later on his dead body was brought to her home. The villagers told her that her husband was killed by accused Ibrahim, who was making firing at Sher Zamin. She charged the accused for the murder of her husband.

12. PW8 Nasrullah ASI, deposed that on 16.02.2017, Inspector Akram Khan arrested accused Muhsin Islam. On 17.02.2017 vide application Ex.PW8/1, he got two days police custody. On 18.02.2017 vide pointation memo Ex.PW8/2, the above accused during custody, pointed out place of occurrence. On 18.02.2017, vide recovery memo Ex.PW8/3, he recovered pistol 30 bore alongwith magazine and two cartridges Ex.PA; on the pointation of accused Muhsin Islam. He placed on file pictures of recovery as ExPB to ExPD, while recoveries drawn as ExPW8/4. On 19.02.2017, he produced accused Muhsin Islam for confession vide application Ex.PW8/6, before Judicial Magistrate, where accused refused to confess his guilt and learned Judicial Magistrate sent the accused to judicial lockup. He sent pistol to FSL, vide my application Ex.PW8/5. During investigation, he has also recorded the statements of PWs of recovery memo Ex.PW8/3 and pointation memo Ex.PW8/2. On completion of investigation, against accused Muhsin Islam, handed over case file to SHO for further proceedings.

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Signature: [Signature]

Divisional Forensic Officer
Buner Watershed Division
Swat

13. PW9 Afsar Khan FC, deposed that on 18.02.2017, in his presence on pointation of accused Muhsin Islam, Investigation Officer prepared pointation memo Ex.PW8/2 and recovery sketch Ex.PW8/4. On above mentioned date, in his presence, Investigation Officer also

MUHAMMAD
Sessions Judge
Swat

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recovered pistol 30 bore alongwith magazine alongwith two cartridges
Ex.PW8/3 on pointation of accused Muhsin Islam. He and Sawal
Khan FC are marginal witnesses to the above memos Ex.PW8/2 and
Ex.PW8/3.

14. PW10 Muhammad Khan SI, has conducted supplementary
investigation in the case.

15. PW11 Amin LHC, is the marginal witness to pointation memo
Ex.PW11/1 vide which accused Salih Islam had made pointation of
the place of occurrence.

16. PW12 Hussain Zada SHO, has submitted supplementary
challan against accused Salih Islam and Muhsin Islam.

17. PW13 Jamshid Khan SI, has partially investigated the case in
name He produced accused Salih Islam before the Judicial Magistrate
and obtained 2 days custody. He prepared pointation memo
Ex.PW11/1 on pointation of accused.

18. PW14 Abdul Wakil Khan SHO, has prepared injury sheet,
inquest report, handed over the dead body to uncle of the deceased.
Arrested accused Ibrahim and has submitted supplementary challan
against accused.

19. PW15 Qamar Ali Shah ASI, has scribed FIR in the instant case.

20. PW16 Wakil Zada SI/ASHO, has lodged report in shape of
Murasila. He also obtained consciousness certificate and prepared
injury sheets of the injured.

21. PW17 Hazir Khan ASI, is marginal witness to recovery memo
Ex.PW17/1.

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Divisional Forest Officer
Buner Watershed Division
Swat

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District Magistrate
Buner

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-18-

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22. PW18 Raza Khan TO, deposed that on 01-03-2013 in his presence during spot inspection Investigation Officer took into possession blood stained earth (P2) from the place of deceased Abdur Rashid, vide recovery memo ExPW18/1. Similarly, Investigation Officer took into possession 16 empty shell of 7.62 bore (P3) and 5 empty shell of 30 MM bore ExP4, vide recovery memo Ex. PW18/2, motorcar number 610/SWA, Silver color, which was ownership of one Sher Zamin Khan, Bullet marks were present on said motorcar and back screen was broken. Investigation Officer also took into possession blood stained through cotton (Exp5), (Exp6) from driver seat and front seat. Investigation Officer took into possession one spent bullet ExP7 from beneath of front seat and prepared recovery memo ExPW18/3. On 02.03.2013, in his presence Lal Zada produced blood stained garments (Exp8) of complainant Sher Zamin, blood stained Shilwar (Exp9) of injured Niazmeen Khan, Investigation Officer took into possession vide recovery memo (Ex. PW18/4). Beside me Gul Nawaz Khan is a marginal witness to recovery memo ExPW18/1, ExPW18/2, Jan Sher is witness to recovery memo Ex PW18/3 and Hamyoun Ullah is witness to recovery memo Ex PW18/4.

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Divisional Forest Officer
Buker Watershed Division
Swabi

23. PW19 Dr. Mirza Jehan SMO, has examined the dead body of Abdur Rashid. His report is as under:

Face was giving pale look. Clothes and sweater intact & blood stained. A wound on the left side face involving the left mandible. The left mandible is almost shattered. That was

HAZIZ MUHAMMAD
Additional Sessions Judge (2011)
Buker

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probably the exit wound. Bleeding from the wound was continue. A small pin hole wound was found on the back just below the left scapular region. This was probably the entrance wound.

Time between injury and death

Death was caused immediately after injury because the way of the bullet indicates that it might have struck the heart and important blood vessels and might have lead to immediate circulatory collapse and death.

Time between death and postmortem was less than three hours as body felt warm and flaccid.

Cause of death: Injury to heard and big vessels which might lead to circulatory and cardiac arrest.

Kind of weapon: firearm. His report is EXPW2/1

24. PW20 Dr. Yaseen examined the injured Nazmeen Khan and during examination, found the following wounds

There is one entrance wound about 0.5 cm in diameter on right hypochondria

1. One exit wound about 0.1 cm in diameter below the umbilicus.

2. There is an entrance wound on left paraspinal lumbar region (backside) about 0.1 cm in diameter.

3. There is an entrance wound on anterior aspect of right proximal thigh about 0.5 cm in diameter.

4. There is an exit wound on medial aspect of right thigh about 1.5 cm in diameter.

Patient was admitted in surgical ward for laporatomy (exploration). Final report will be available after discharge of patient.

Weapon used: FAI

Nature of wounds: Jurb Jaifa

His report is EXPW20/1

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Divisional Forensic Officer
Quater, Wazirabad, Division
Swat

KAZIM MUHAMMAD
Additional Sessions Judge (II-III)
Swat

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25. PW21 Qasim Jan Khan SI has conducted investigation and on completion, handed over case file to SHO concerned for submission of challan U/s 512 Cr.PC.

26. Prosecution closed its evidence, therefore, in order to afford an opportunity to explain circumstances appearing in evidence against the accused, they were examined U/s 342 Cr.PC. They had denied all allegations leveled against them, projected their false implication in the case and posed innocence. They neither opted to lead evidence in their defence nor wished to be examined on oath u/s 340(2) Cr.PC.

27. Mr. Bakht Baidar APP for the State assisted by Abdul Aziz and Khyaal Muhammad advocates, learned counsel for complainant, argued that prosecution has proved its case through cogent and reliable evidence. That blood stained earth and empties recovered from the spot which establish the place of occurrence. That injured PWs appeared before the court and fully supported the case of prosecution. That medico-legal reports support the story of prosecution. That weapon of offence has been recovered on the pointation of accused. That motive is established. That all the PWs are consistent on material points. That accused remained absconder for sufficient time for which no plausible explanation has been advanced.

On the other hand Mushtaq Ahmad advocate learned counsel for accused, inter alia, contended that the prosecution has badly failed to prove its case against accused facing trial. That the whole family has been implicated in a false case. That ocular and medical evidence are in conflict. That the PWs have made dishonest improvements in

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Divisional Forest Officer
Buner Watershed Division
Buner

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Additional Sessions Judge (20-11)

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their statements. That abscondance is not a corroborative piece of evidence and cannot be used, when otherwise, case of prosecution is doubtful. That the recoveries are highly doubtful as no independent witness has been associated to the alleged recovery proceeding. That the alleged pointation did not fall within the ambit of article 40 of Qanun-e-Shahadat. That the case of prosecution is full of doubts and the benefit of doubt always goes in favor of accused.

29. I have, given my anxious consideration to the respective arguments of the learned counsel for the parties and scanned the record with their valuable assistance.

30. In the instant case, wherein one person has lost his life, while two have critically been injured, for which accused Ibrahim along with five sons have been charged. According to the initial story of prosecution, on the day of occurrence, complainant along with Nazneen, Liaq Zada, Nisar Muhammad, Jan Sher Khan were on their way in a motorcar, having some private engagement, when they reached the place of occurrence, accused Ibrahim along with five sons appeared with their respective weapons i.e. Kalashnikov, pistols and had fired at them, resultantly, a passerby lost his life, while complainant and his brother received injuries.

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Divisional Police Officer
Swari, Watershed Division

Perusal of the record would show that in support of the prosecution's case, complainant appeared as PW3, whereas eyewitnesses Nazneen Khan and Jansher testified as PW4 and PW5 respectively. They deposed that on the day of occurrence, they along with the aforementioned other persons were going to Swari.

HAZIZ MUHAMMAD
Additional Sessions Judge (2044)
Swari

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when they reached to link road known as "Garanbo" accused Ibrahim, Tariq Islam, Salih Islam, Muhsin Islam and Ziaul Islam appeared from the street, intercepted their motorcar, deboarded Jan Sher Khan, Laiq Zada and Nisar Muhammad; complainant refused to step down and tried to escape, but accused fired on them from the back side, resultantly, from the firing of accused Ibrahim, complainant got injured, while one passerby was also hit and died, while Nazneen Khan received injuries from the firing of accused Tariq Islam. Their motorcar was also collided with a wall. In court, complainant came with totally a different story. The above mentioned facts have neither been disclosed at the time of report nor before the court in proceeding U.S. 302 Cr. PC. He had made dishonest improvements to bring his case in line with other circumstance of the case. Moreover, in FIR, complainant charged six accused for firing, but in court they omitted the name of accused Zahirul Islam. Keeping in view the improvement, omissions, particularly, their complete departure from the contents of FIR, by making dishonest improvements in their statements to strengthen the prosecution story. The rule of safe administration of justice is improvements made by eyewitnesses in order to strengthen the prosecution case, lose their credibility and evidentiary value. Reliance is place on the case titled "Muhammad Mansha vs. the State" reported 2018 SCMR 772, wherein it is held that:

"--S.302-- Qatl-i-amd-- Dishonest improvements in statement of witness in order to bring the case in line with the medical evidence or to strengthen the prosecution case-- Such testimony was not worthy of credence."

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[Handwritten signature]
MUNICIPAL OFFICE
Bauer, Water Road, Dera
Gharo

-22-20-

Another noticeable aspect of the case is that role of coming injuries has been attributed to accused Ibrahim and Tariq Islam. Complainant and his eyewitnesses deposed that they tried to escape from the spot in motorcar, but accused had fired on them. It is not possible for a human that in such situation, to give a photographic account of an occurrence or the details of shots fired by an accused or that with whose shot who was hit. Attributing the fire shots and injuries to each of the accused is against the natural conduct. It is settled law, that only consistency is not required for believing a statement of PW. It must be in consonance with attending circumstances, which is lacking in the case in hand.

31. Another astonishing factum of the case is that the medical officer, who had examined the deceased, has not given dimensions of injuries sustained by deceased. He stated that a small pin hole wound was found on the back joint below the left scapular region. In such a situation, when six persons were charged for firing, having different bore of weapon, giving dimensions of the injuries was necessary to ascertain the number and kind of weapon used. Injured Nazneen Khan was examined by Dr. Yaseen, who entered into witness box, as PW20, had shown three wounds on the body of victim Nazneen Khan of different sizes. Moreover, entry wound No.1 was shown on front side, while according to the case of prosecution, accused had mad firing from the back side. The sizes and locale of the injuries are in conflict with ocular evidence and site plan. Complainant Sher

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Bauer Watershed Division
Swat

MUHAMMAD
Sessions Judge
Swat

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Zamin-Khan was also examined by Dr. Yaseen PW20, he noted one lacerated wound on right side of the skull. In 1st line of cross examination, he stated that injuries of Sher Zamin was due to blunt weapon, while according to the case of complainant, he received bullet injuries at the hands of accused Ibrahim. Whole prosecution case is silent, that how complainant received lacerated injuries due to blunt weapon. Hence, keeping in view the above circumstances, it can safely be held that medical evidence furnished by prosecution is in conflict with prosecution story.

33. The learned counsel for complainant contended that complainant and eyewitnesses received injuries on their persons was established on the spot. True, that the prosecution witnesses bear firearm injuries on their persons and ordinarily, the presence of persons who have stamp of injury on their persons, are accepted, but it is well settled that if the prosecution story does not get corroboration from overall surrounding circumstances of the case, then mere stamp of injuries on the body of a person would not be sufficient to hold that whatever they have testified are whole truth. As the testimony of P.Ws are in conflict with medical evidence and other circumstances, therefore, for the safe administration of justice, I am unable to give any credit to their testimony on the ground that they have firearm injuries.

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34. Though the accused remained absconder for a sufficient time, but it is a settled law that a person cannot be convicted on the basis of abscondence alone. The abscondence of an accused at the most can

Divisional Police Officer
Buner Watershed Division
Swat

HAZIR MUHAMMAD
Additional Sessions Judge, Swat

refusal of the record

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provide corroboration to the direct evidence, but when the direct evidence is failed, circumstantial evidence could not be used. Reliance is placed on 2017 SCMR P. 144 as under,

(c) Criminal Trial-- Conviction-- Abscondence of accused for about ten years-- Such abscondence could not be made sole basis for conviction of accused when the other prosecution evidence was doubtful and riddled with contradictions.

35. During interrogation, the investigation officer allegedly recovered a 30 MM bore pistols on the pointation of accused Ibrahim and Muhsin Islami respectively, sent to FSL alongwith empty recovered from the place of occurrence, FSL report in negative received. Record shows that the alleged recovery has been made after three years of the alleged occurrence. Human produce would not expect that the accused after committing murder, with a weapon would choose to preserve it, for the purpose to be recovered on his pointation after arrest. The investigation officer tried his best to procure ocular as well as circumstantial evidence against accused facing trial, but failed to substantiate the charge against him.

36. Learned counsel for complainant contended that accused have made pointation of the place of occurrence. Record would show that accused have made pointation of the place of occurrence but the same place had already been known to Investigating Officer, therefore, there was no need to confirm on the pointation of accused facing trial, hence, the alleged pointation not falling within the ambit of Article 40 of Qanoon-e-Shahadat Order, 1984, having no evidentiary value.

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Bauer Watershed Division
Swat

AZIZ MUHAMMAD
Additional Sessions Judge (ZO III)
Buner

(145)

37. Perusal of the record would show, that the occurrence has not taken place in the mode and manner as advanced by prosecution. Complainant by widening the net, implicated the whole family. It is not appealable to a prudent mind, that an old father will accompany his five young sons for the commission of such like offences.

38. It is cardinal principle of criminal jurisprudence that accused are assumed to be innocent till their guilt is proved to the hilt. In case of every doubt, they are entitled to benefit of the same. Under these circumstances, prosecution has not been able to establish its case beyond reasonable doubt and as such, accused are entitled to benefit of doubt; accordingly, they are acquitted from the charges leveled against them. Accused Ibrahim Khan is in custody, he be set free, immediately, if not required in any other case, while accused (1) Muhsin Islam and (2) Salih Islam sons of Ibrahim Khan R/o Village Torwarsak, Tehsil Daggar, District Buner are on bail, their sureties are absolved in the liabilities of bonds. Case property kept intact till the arrest/extension of absconding accused.

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39. File be consigned to record room after necessary completion and compilation.

Divisional Forest Officer
Baber Watershed Division
Swat
27.06.2018

AZIZ MUHAMMAD
Additional Sessions Judge/IZQ-III, Buner

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CERTIFICATE

Certified that this judgment consists of 15 pages, each has been read over and signed by me after making necessary corrections therein.



AZIZ MUHAMMAD
Additional Sessions Judge/IZQ-III, Buner

AZIZ MUHAMMAD
Additional Sessions Judge/IZQ-III, Buner

"E"

-26- ~~20~~

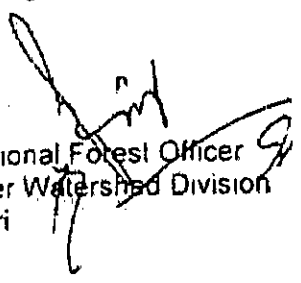
OFFICE ORDER NO. 03 DATED 19/07/2018 ISSUED BY MR. HAZRAT MIR
DIVISIONAL FOREST OFFICER BUNER WATERSHED DIVISION SWARI.

Consequent upon the arrival of Mr. Ibrahim Forest Guard dated 11/07/2018 after willfully absenting himself from official duty for a long period of 05 years, 10 Months and 12 days. he is hereby attached with RFO Chamla Watershed Range till further orders. The absence period will be decided in the light of advice of high ups.

Sd/-
(Hazrat Mir)
Divisional Forest Officer
Buner Watershed Division
Swari

Copy forwarded to the:

1. Conservator of Forests/PD Watershed Management Circle Abbottabad for favour of information, please.
2. Range Forest Officer Chamla Watershed Range for information.
3. Head Clerk Divisional Office for information and necessary action.
4. Official concerned


Divisional Forest Officer
Buner Watershed Division
Swari

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OFFICE OF THE DIVISIONAL FOREST OFFICER WORKING PLAN UNIT VI SAID
U SHARIF (KTS) Swat (Inquiry Committee)

Read with:

- i. DFO Bunir Watershed Division Swarai No: 599/BWS dated 24.01.2019
- ii. Charge sheet and Memo of allegations No: nil dated: issued by Divisional Forest Officer Bunir Watershed Division Swarai
- iii. Reply to charge sheet dated of Ibrahim Forest Guard
- iv. Personal hearing dated: 05.03.2019
- v. Additional documents available on Inquiry file
 - a. Fir No: 460 dated 27.08.2012 under sections: 506/34 PPC
 - b. Fir No: 473 dated 05.09.2012 under sections: 506/34 PPC
 - c. Fir No: 97 dated 01.03.2013 under sections: 302, 324, 148, 149 PPC
 - d. DFO Bunir Watershed letter No: 249/BWS dated 13.11.2014 (ensure presence and explain absence within 7 days)
 - e. DFO Bunir WS office order No: 04 dated 06.09.2012 (suspension from 28.08.2012)
 - f. Range Forest Officer Bunir Watershed No: nil dated 11.11.2014 (absence from 28.8.2012 and where about not known)
 - g. Police Head investigation Bunir letter No: 1369/Inves dated 03.09.2012
 - h. Ibrahim Forest Guard application No: Nil dated: 28.03.2016 for release of his pay.
 - i. DFO Bunir Watershed letter No: 08/BWS dated 13.07.2016
 - j. Complaint of Writ Petition No: 507/M / 2016
 - k. Judgment of Peshawar High Court, Mingora Branch (Dar-rul-Qaza) Swat
 - l. Detail Judgment of Additional District and Session Judge Bunir dated 27.06.2018 in FIR No: 97 dated 01.03.2013 under section 302,324,148 and 149 PPC.
 - m. Order Sheet of Additional District and Session Judge Bunir dated 27.06.2018 in FIR No: 97 dated 01.03.2013, acquittal of Ibrahim Forest Guard.
 - n. Statement of Ibrahim Forest Guard dated: 05.03.2019, regarding reliance on previous reply to charge sheet dated 06.08.2018 attested on 05.03.2019 afresh.
 - o. Personal hearing dated 05.03.2019, attended by Ibrahim Forest Guard (herein after called accused official), M. Naseer HC and M. Saddiq junior clerk on behalf of DFO Bunir watershed Division Swarai (here in after called prosecution).

Brief history of case:

The accused official was booked in three different FIR's dated 27.8.2012, 5.9.2012 and 01.09.2013 due to his personal enmity at village level. From 28.08.2012 to 22.02.2016 (for 41.8 months), the where about of accused were not known. He was placed under suspension as per DFO Bunir Watershed Order No: 04 dated 06.09.2012, on the informatory report of Police Head Investigation Swarai letter No: 1369/Invest dated: 03.09.2012 in FIR No: 460 dated 27.08.2012. He may have been released on bail before 05.09.2012, as he was booked by name in FIR No: 473 dated 05.09.2012 and FIR No: 97 dated 01.03.2013 but the record is silent. Neither he has reported arrival for duty nor the department initiated appropriate action under E&D Rules 2011.

He got his last salary for 02/2013 (9 months period, when where about was not known). He was declared absent from duty from 28.08.2012 and 1st letter No: 249/BWS dated: 13.11.2014 (after 2 years and 2.5 months), followed by 2nd letter, as reminder letter No:

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08/BWS dated 13.07.2016 (after 1year and 8months), was issued in the name of accused official to resume his duty and explain his well full absence from duty, the receipt of which is silent on the file and office record.

From 22.02.2016 to 27.06.2018 (28 months) the accused official remained imprisoned in judicial lock up, then he was acquitted if FIR No: 97 dated 01.03.2013 Ss 302,324,148 and 149 PPC by the court of Additional District & Session Judge Swarai Bunir. The accused official made arrival report dated: 11.07.2018 to DFO Bunir Watershed Swarai, which was accepted and was attached with RFO Chamla Watershed as per DFO Bunir Watershed Swarai office Order No: 03 dated 19.07.2018. Inquiry was initiated as per DFO Bunir Watershed Swarai No. 429/BWS dated 23.11.2018 and Inquiry was interested to Mr. Arshad Ali Khan SDFO. Charge Sheet and Memo of allegation were issued and served on accused official. The Inquiry officer couldn't complete the case and was reassigned to under signed with fresh charge sheet/memo of allegations, almost the same earlier charges.

Proceeding and discussion:

The accused official was asked to show his willingness and trust in under signed before any proceeding and was told in case he is not confident, the Inquiry file will be returned to DFO Bunir Watershed for appointing some other as Inquiry Officer. He sowed his confidence and trust. He also relied on his earlier reply to Charge sheet as per written statement on page 99 of Inquiry file. The prosecution presented some more documents available on record file of DFO Bunir Watershed Division Swarai.

Full day arguments of both parties particularly the accused official was heard. Chances of cross-examination was provided to either side in piece full situation. It was extracted, that accused official took the situation serious and placed on record the facts in his favor in detail and to prove him non guilty of well full absence and the situation was beyond his control. The prosecution also provided necessary documents and stuck to law on the subject and agreed that the situation was beyond the control of accused official, as he was under pressure of his enemies and was out of station. The prosecution also admitted that as per record there is no more documents or official letters to present before Inquiry Officer or make part of hearing.

Facts Surfaced:

After detail discussion, arguments and hearing, following facts were de surfaced.

- i. There are two tenure of period of absentia
 - a. **Period between 28.08.2012 to 21.2.2016 (2 years and 5.77 months)**

During this period three different FIR's No: dated 27.8.2012, 5.9.2012 and 01.09.2013 were chalked against the accused official. The accused official was under arrest in in Judicial lock up from 28.08.2012 to 05.09.2012 (9 days) or earlier. From 06.09.2012 to 22.02.2016 (2 years, 5 months and 16 days), the where about of accused were not known being absconder. During this tenure 1st letter No: 249/BWS dated: 13.11.2014 (after 2 years and 2.5 months), followed by 2nd letter as reminder letter No: 08/BWS dated 13.07.2016 (after 1.67 years), was issued in his name to resume his duty and explain his absence from duty, the receipt of which is silent on the file and office record. Neither the accused official resumed his duty and nor explained his position, nor the department took any other action. As per law controlling this situation the department should have

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- i. Issued various letters in his name at his available address and sent through registered dock.
- ii. Published in leading newspapers his absence report and should have directed him to resume his duty and explain his well full absence.
- iii. Should have taken appropriate action under E&D Rules 2011 in his absentia (i.e. removal or dismissal from service).

There is no such action on record to be placed on Inquiry file initially or during personal hearing dated 05.03.2019. The accused has joined the department on 11.07.2018 and his arrival report accepted by DFO Bunir watershed, attached him with RFO Chamla Watershed and his regular pay is disbursed to him since 11.07.2018.

The fault is on either side. No proper action under E&D Rules 2011 was initiated by Bunir Watershed Division from 28.08.2012 to 21.02.2016. Similarly the accused official has not informed the department in proper way that situation is beyond his control to attend office and official duties. Meanwhile official duty not performed and only two official letter were issued in the name of accused official. Only one letter No: 249/BWS dated: 13.11.2014 (after 2 years and 2.5 months) and one reminder No: 08/BWS dated 13.07.2016 (after 1.67 years), was issued in his name to resume his duty and explain his absence from duty, the receipt of which is too silent on the file and office record, which are not sufficient to declare well full absent.

Therefore, the charge of well full absence not proved with certainty and intervening period can be converted to leave of any kind due on the leave account credit of accused official.

b. Period between 22.02.2016 to 27.07.2018 (2 years, 2 months and 5 days)

During this period the accused official was under arrest in in Judicial lock up. On release he made arrival report to DFO Bunir Watershed Swarai which was accepted and he was attached with RFO Chamla. Regular pay is drawn and disbursed to accused official and there is no complaint about his poor performance or any short coming in duties.

Therefore, the charge of well full absence not proved with certainty and intervening period can be converted suspension from service being involved in criminal case and booked under various FIR's.

c. W.P 507-M/2016

As per decision dated 20.03.2018 (page 35 of Inquiry File) of Peshawar High court Mingora Bench (Darrul Qaza) Swat. The case pending before Peshawar High Court

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Mingora Branch (Darrul Qaza) and is at liberty of accused official to file an application for revival of the case before Peshawar High Court. The court decision is reproduced as


"In light of peculiar circumstances of the case as the criminal case of the petitioner is still subjudice before competent court of law, so, so decision in this case on either way would affect rights of the petitioner, therefore, it will be appropriate to adjourn the case sine die till decision of criminal case. Order accordingly. The petitioner is at liberty to move an application for revival of the case after decision of the criminal case..... Jugge"

--sd--

Divisional Forest Officer
Working Plan Unit VI
KTS Said u Sharif swat

No: 1142 /WP dated Saidu Sharif the 18.03.2019

Case file from page 1 to 141 is returned to Divisional Forest Officer Bunir Watershed Swarai for favor of further course of action in response to his Office Letter No: 599/BWS dated 24.01.2019 accompanied by Charge sheet and Memo of allegations.


Divisional Forest Officer
Working Plan Unit VI
KTS Said u Sharif swat

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OFFICE ORDER NO. 39 DATED 24/04/2019 ISSUED BY MR. HAZRAT MIR
DIVISIONAL FOREST OFFICER BUNER WATERSHED DIVISION SWARI

1. Mr. Ibrahim Forest Guard remained absent from official duty with effect from 28/08/2012 to 21/02/2016 without prior permission from the competent authority. During this period his where about was not known to this office.
2. On 22/02/2016 he was arrested by Law Enforcement Agency and subsequently kept in Judicial Lock up in District Buner at Daggar.
3. On 28/03/2016 he sent an application through his lawyer for the release of pay.
4. Meanwhile he filed writ petition No. 507-M/16 on 19/08/2016 in Peshawar High Court Mingora Bench Dar-ul- Qaza Swat for the release of his pay.
5. On 20/03/2018 the Honorable Court adjourned the case till the conclusion of trial in murder case against the Forest Guard which concluded in the form of his acquittal vide Judgment announced by Additional Session Judge No.III Buner on 27/06/2018.
6. The Forest Guard after acquittal submitted his arrival report on 11/07/2018.
7. An enquiry was conducted against the Forest Guard on account of his long willful absentee from official duty. The inquiry officer has fixed the responsibility of long absentee by Mr. Ibrahim Forest Guard during the period from 28/08/2012 to 21/02/2016 on Divisional office, because no action seems to have been taken by the office of DFO Buner Watershed Division during the period from 28/08/2012 to 21/02/2016.
8. Keeping in view the recommendation of the enquiry officer the period between 28/08/2012 to 21/02/2016 (03 years and 5.77 months) is hereby treated as extra ordinary leave under section 12(3) of revised leave rules, 1981.
9. During personal hearing of the enquiry proceedings the Forest Guard has admitted that he has been paid up to February, 2013 which means that the Forest Guard has been paid for six months during which he did not perform his official duty.
10. The responsibility of this un- authorized payment is fixed on concerned DFO & RFO. Therefore, three months suspension period is converted to full pay and three months pay is ordered to be recovered from the Forest Guard.
11. Furthermore, the Forest Guard remained in Judicial Lock up after being arrested by law enforcement agency during the period from 22/02/2016 to 27/06/2018 (02 years, 04 months and 05 days) and this period is hereby treated as period on duty as per GFR 53 and recommendation of inquiry officer. However, the payment of salaries for this period is subject to the approval of required budget by the competent authority and recovery of 03 months salaries from the Forest Guard as mentioned in above para 10.

Sd/-

Mr. Hazrat Mir
Divisional Forest Officer
Buner Watershed Division
Swari

Copy forwarded to the:

1. Chief Conservator of Forest, Central Southern Forest Region-I KPK Peshawar for favour of information, please.
2. Chief Conservator of Forests, Northern Forest Region-II Abbottabad for favour of information, please.
3. Conservator of Forests/PD Watershed Management Circle Abbottabad for favour of information with reference to his letter No. 6242/E-F, dated 11/04/2019.
4. Section Officer Establishment Govt. of KPK Forestry, Environment & Wildlife Department for information with reference to his letter No. SO(Estt)/FE&WD/1-6/2018/11059-60 dated 18/10/2018, please.
5. Range Forest Officer, Chamla Watershed Range for information.
6. Official Concerned.

Divisional Forest Officer
Buner Watershed Division
Swari

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-32- -32- "HII"

Before the appellate honourable authority (Conservator of Forest (Project director watershed management circle) Abbottabad.

Subject:- Appeal against the office order No. 39 declared by the Divisional Forest Officer Buner watershed Sawari on dated 24-04-1985 and issued to applicant on dated 25-04-1985 to the extent of absence period of applicant being treated without pay.

Ibrahim S/O Noor Dad Khan forest guard watershed project Buner (Appellant)

Respectfully and humbly sheweth as under

A) Facts about the criminal case back-ground of the applicant are:

That the applicant since first day of his appointment ~~since~~ i.e. 17-08-1985 upto 28-02-2013 for a considerable period of 27 years, 4 months and eleven days has performed his duty with full devotion and honesty and as well as remained punctual and obedient of his officers of the department as mentioned above of his service.

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No chance of complaint has been given to his officer during afore said period of employment of applicant of the

B) That unfortunately not only but his five innocent sons were applicant in uncommitted criminal cases against applicant by some malicious and enemies under sections, 302 PPC, 3148, and 149 PPC as evident from FIR attached as (A) to the appeal here by submitted in the authority mentioned above and so FIR - was chalked against the applicant as well as his five sons on dated 01-03-2013 at police station Daggal Bunceras evident from FIR available on record.

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The malicious enemies of an applicant were in collusion with local police to trap the applicant as well as his whole family members and as such to spoil their lives and wealth of applicant and his family members in nothing and meaners.

fact is as my all sons were going to higher education, one of which I had got AT grade in his entire academic period school and colleges and was going to be a doctor in some malicious persons light career reasons.

No chance of employment of applicant. his officer during afore said period of the complaint has been given to

B) That unfortunately not only the applicant

but his five innocent sons were charged along with the

in uncommitted criminal cases along with the

applicant by some malicious and jealous

enemies under sections, 302 PPC, 324 PPC,

148, and 149 PPC as evident from the

FIR attached as (A) to the appeal here

by submitted in the authority mentioned above

and so FIR - was chalked against the

applicant as well as his five sons on dated

01-03-2013 at police station Dargah Bunder

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② The magicians enemies of an applicant were

in collusion with local police to trap the

applicant as well as his whole family members

and as such to spoil their lives and wealth

of applicant and his family members in nefarious

and mean ways.

The fact is that all sons were going to

higher education, one of which has got

in school and colleges and was going to be a doctor

(mothers) some malicious persons

in school and colleges and was going to be a doctor

of his life so upto this extent the opposite and malicious persons succeeded as well in their aims

D) That beside the fact applicant had timely informed the predecessor of this present DFO Hazrat Mir of the emergency situations faced to him which applicant has also explained in detail in the reply of charge sheet as already available in the record case file of an applicant and that is why no correspondence has been made during the absenteeism period of an applicant except single explanation so far as in an impugned letter produced on the record of case file of applicant. Because the predecessor ~~unhonourable~~ DFO was a courteous and modest person and so he might have kept in view the compulsion of applicant and have taken pity on the situation faced to applicant.

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~~Grounds on the basis of which the impugned order and judgement is challenged by an appeal hereby laid:~~ ① That impugned order and the judgement of the DFO Buner watershed project (Sawari) is regardless and is against of law, rules and principles of services and therefore is not valid, sustainable, implem. ~~entabli~~ rights of service of applicant

the suspension period of any employe, the salary and all other benefits, facilities of an employe are delivered as such as to him as if he is on regular duty and can't be deprived of his salary and other relevant back benefits during the suspension period of an employe that as he will be delivered his full salary during his suspension period as to any employe as declared in the amendend rule 53(b) of

fundamental rules of constitution 1973; according to the amendments declared the rule 53 of fundamental rule of constitution 1973 and the judgment of honorable supreme court delivered on dated 15th January 1993 as reported government of NWFP.

(KPK) (Appellant) versus A. Sherwani and others (Respondents). In the judgement mentioned above the reference of the two terms "Gharars" and "Taffiz" being explained in the light of Islamic jurisprudence according to which if any contract of employment gives an absolute power to the employer that at a certain stage he can reduce the amount of salary for a certain period to be determined at his own pleasure; it will fall under the "Gharars" prohibited by this Holy saying of the Holy (PBUH) (p 77) B. Mishkat shariif by

Abu Dawood, Vol II, p. 20 quoted with Urdu translation published at Lahore.

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NO though the word "Taffiz" used in

Short weight" yet, in the "normal usage it covers all the situation where a person gives too little and asks too much, which is prohibited by the Holy Quran. So in the impugned order and judgement of the authority and also quite against the verse of the Holy Quran as well as the Holy Hadith of the Holy prophet (PBUH): and therefore we set aside. Ref: govt of NWFP (Appellant A. Sherwani and others)

2) That the applicant admits partly a fore said judgement (order) declared by the DFO Buner watershed to the extents of the period after arrest of an applicant ~~with~~ declared with pay. otherwise first part of the impugned order of the authority is challenged by the appeal here by filed before this honourable appellate authority: but the impugned order is also not implemented to the extents of the period of the applicant declared with pay for the relief of an applicant to issue him his salary for the period after arrest ~~declared~~ as a right of the applicant. ~~as~~ because when applicant demanded for the back benefits that full salary accompanied all benefits of the period after arrest of an applicant been declared with pay by DFO watershed Buner to be delivered to him! was refused by DFO watershed Buner and excused that applicant was not in the ~~power~~ of judgement declared by the authority and that the applicant was going to challenge the impugned order and judgement declared by the authority in the upper departmental based authority and that ~~is~~ is why the case is in the controversy and therefore couldn't delivered to applicant back benefit etc till the disposal of departmental case - which is very

See on next page (6)

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cruelty and against the law, rule 53 of FR as well as Islamic jurisprudence and therefore is not valid, not sustainable and not affective on the rights of service of an applicant because inspite of being declared after arrest period of the applicant with pay in the said judgement and applicant is yet kept deprived of his areas which is not justice and against of law and rules and principles of service. The applicant is a compelled and tortured person of a society and been tortured physically, mentally as well as financially. Nothing else as a source of income been left which applicant could produce from ~~some~~ ^{food} substances for his family so that is why applicant suffering from hard to mouth financial situation so keeping in view this tough situation the honourable authority is here by prayed to delivered an applicant his areas of the period after ^{his} arrest ~~as the~~ ^{being declared} ~~right~~ as the right of applicant as well as may be immediately disposed ~~up~~ in the ~~favor~~ of applicant to be delivered him other areas of the disputed period that is ~~at~~ ^{before} the arrest of the applicant that is 01-03-2018 upto ~~22-02-2018~~.

3) That as cleared from the case file record the charges been framed against an applicant in the concerned ^{murder} criminal court are that of involvement of an uncommitted case etc, on the basis of that a necessary departmental action was taken against applicant and so applicant was suspended from his service which is an initiative action departmental action against an applicant been taken and that be also too late as cleared from the record of the case file otherwise no initiative steps concerned to department been taken against an applicant.

See on next page (7)

The other charges taken by departmental base against applicant under rule 9, (efficiency and discipline) of (KPK AND rules, 2011) been taken too late that is on dated 15th October 2018 which is a too huge measure of time, exactly five years, seven month and seven days which been framed in the light of instruction given by SO (establishment (secretariat Peshawar) which can not be counted an initiative in proceedings against applicant. The charges been taken in (respect of efficiency and discipline) are on the basis of malafide intention and jealousy and due to mutual collusion of DFO watershed Buner and SO (establishment

Peshawar) because they were demanding for some shares by another side applicant had no financial strength to have paid some share to both of them. So in response of demand his demands the concerned SO (ESWP) along with present DFO by mutual collusion framed the charges in respect of rule 9 (efficiency and discipline) on malafide intention and against of law and rules of services it has no legal status because it has been framed after well thought and reflection to be kept an applicant deprived of his due rights of his arrears of suspension period because an initiative just after FIR was chalked against applicants and his sons is was just that of involvement of in uncommitted murder case. The framing of charge against applicant after as such huge measure of time is just how the applicant could be deprived of his back benefits etc. So in the see on next page (8)

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is just the malafide intention of the DFO watershed Buner.

light of circumstance the charges under efficient and discipline been framed has no legal status in the eyes of law and so not sustainable, implementable on the rights of service applicant. The applicant ~~is~~ cleared from the case file of the applicant was just charged in the murder case which he was honourably ~~is~~ acquitted ^{from} and in this respect an applicant was also charged by his concerned department (DFO, watershed project Buner) so as cleared from the law and that of authority of Supreme court that any accused can't be proceeded ~~in~~ ^{again} under the same charge framed against him because in respect of the same charges framed against applicant once he is acquitted by the honourable court then he can't be ~~re~~proceeded under the same charges by the concerned department in which once he was acquitted. So in the light of the above circumstances the applicant by an appeal here by prays to set aside the impugned order of the DFO Buner watershed and may be acquitted also from the concerned proceedings done by the concerned department that ~~is~~ the

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impugned order be abolished and
the applicant may be declared
deserved for his ^{years} ~~before~~ ^{for} his
absent period ~~after~~ his arrest.

That in the impugned order declared by
DFO watershed Buner the applicant has
been declared to have been absent from
his duty since date 28-08-2012 till the
date of 21 Feb. 2016 which is against of
facts and of the record available there
in because in the date mentioned as before
that is dated 28-08-2012 applicant had been
charged under 506 PPC as cleared from
the FIR available on record and had
been kept just for three, four days in
judicial custody including police station
custody and then by the mercy of
God was released on bail and
after the date of release from judicial
lock up applicant was performing his
regular duty and nothing had come
hurdle in performing applicant's service
and without any hurdle during the
period of his ^{employment} he was
performing his duties in the period as
mentioned before 28-08-2012 to 28 Feb,
2013, the applicant was receiving his salary
with no hurdle - ^{imp} see on next page (10)

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(5)

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~~02~~

That ~~is~~ applicant has received his salary since ~~that~~ the date 28-08-2012 till 28 Feb, 2013 as cleared from the pay bill record of the office concerned been signed by the applicant which is clear and ^{v. imp} strong proof for applicant for his being on his duty in the period mentioned above. So in the light of circumstance the order in which there has been declared to be recovered, the salary of three month from the applicant be withdrawn and be admitted the clerical mistake done from the department side. because there is no fact in respect of the period that applicant had been absent from the date as mentioned before that is 28-08-2012 ~~as~~ as cleared from the pay bill record of the office so in the circumstance above the applicant prays to be set aside the impugned order of the PFO Binner watershed in the light of his confused data declared there in the impugned order.

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That after an applicant submitted an application for his arrival report 11-07-2018 as available on the record of case file of an applicant; so applicant was allowed to serve in Chamla watershed range Buner; in the light of the arrival report applications been approved, and as like that on monthly base of current salary without added any increments and other benefits declared for the absence period of sixty four months, was released on and yet now an applicant is delivered his a fore said monthly current salary, but still an applicant in the record of file case ^B in the suspended status and not been regularised as cleared from monthly current salary given to an applicant without any increments and other benefits, which is against the law, justice and the amendment rule 53(B) of the fundamental rule, 30th June 1993. Because in the impugned judgement, the DFO Buner watershed has admitted an applicant after arrest period as on duty. Because the after arrest period of an applicant been treated as with pay in the impugned judgement declared delivered by DFO Buner watershed; meaning that DFO watershed doesn't implement his order himself to relieve an applicant and therefore commits contempt of his own order. Therefore in the above circumstance an applicant by an appeal hereby humbly request to be issued to an applicant his full salary with allowances and other back benefits since the date of arrival report to the disposal of the departmental case or in other concerned time in which the departmental case to be disposed up.

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Besides the arrears in shape of annual increments and other allowances fixed for government employees, may be delivered to the applicant since the date of arrival report been submitted as well as may be regularised in the service record of an applicant. Because as declared in the Supreme court that ~~after~~ the suspension period and after the an acquittal of an employee he should be given his all back benefits for his ~~time~~ suspension period.

5. That as seems from the record that a suspension order of an applicant in fact is not on dated 08-09-2012 with effects 28-08-12 as given on the record, as evident from the record of case file of applicant that Sp invest letter report been received to DFO Buner watershed on dated 03-09-2013 and applicant was suspended on the date 08-09-12 with effect 28-08-12 besides that the absence letter NO-249 Buner watershed dated 13-11-2014 regarding applicant's absence ~~period~~ from his duty (which ~~an respect~~ according to the of the divisional office been sent to an applicant on his home address on dated 13-11-2014. As cleared from the records, range officer Chamla Buner watershed has reported ~~absent~~ ^{absent} vide his letter NO-nil dated 11-11-2014 to DFO office, in the light of which DFO Buner watershed despatched a letter NO-249 Buner watershed on dated 13-11-2014 on home address of applicant. So in the light of above data available on an official record case file Applicant is in the view when DFO watershed is received a report letter Sp invest, 03-09-13 then ~~how after~~ ^{how after} time before of the mentioned Sp invest report letter dated 03-09-13, how the action of suspension of the applicant can be taken which is too contradictorial and which creates doubts - an action ~~can~~ ^{can} be taken of an occurrence ~~when~~ ^{when} taken place along ~~before~~ ^{time}

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in the mind of applicant because as cleared from the record available that the SP invest letter been received to DFO watershed on dated 03-09-13 and the action of suspension is taken against applicant of 07-06-12 which is exactly of Ruge measure of time of one year. Besides on dated 13-11-14 a letter is despatched from Chamla range office Buner watershed regarding applicant absence from his duty and that in respect of fore said letter from Chamla range office to DFO office Buner watershed a letter from DFO office on dated 13-11-14 is sent on the home address of applicant as a explanation letter to clear applicant his position to the concerned DFO office so if the date in which the applicant been suspended by the concerned DFO as 06-09-12 with respect of 28-08-12. While on the other side the date on the letter sent by DFO office as explanation on home address of applicant is 13-11-14 so as evident from the available record that if the date of suspension letter of an applicant may be subtracted from the date of letter been sent from DFO office to applicant home address so it will be ~~ex~~ come out exactly two years, three months and four days which can not be trusted and quite a confused data it is and quite seems that concerned DFO is confused and does not know any thing else about the emergency situation faced to applicant.

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as it evident from the letter 13-07-2014 one of the copy of which is forwarded to R-O Chamla in which he is directed to clear the cause for not ~~report~~ timely reporting to DFO office. So honourable appellate authority that DFO watershed Buner along time before that as one year before he had come to know about the applicant being suspended. Then how he can ask from the concerned R-O Chamla Buner watershed about applicant whereabouts Besides when applicant was arrested on dated 22-02-2016 applicant contacted the concerned DFO through his lawyer Rahim Khan and through an application reference Nil dated 28-03-16 the concerned DFO was demanded to deliver an applicant his arrears for the time of his absence as well as to be released on monthly based monthly salary of applicant which was rejected through an impugned letter No. 13-07-16. In which applicant was informed from the concerned proceedings that had been done that is the explanation letter call on the applicant home address. So applicant is in the view that first mentioned the whole story to the honourable authority that an applicant came to know through this letter No-8 dated 13-07-16 while applicant was in the judicial custody and was explained by his concerned lawyer Rahim Khan that nothing been done by the department of applicant just explanation call letter written on dated 13-11-14 sent to applicant home address. So your honourable appellate authority that applicant had also not come to know about his suspension till he was received this letter No. 8 BWS dated 13-07-16 by DFO.

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So in the light of above explanation that applicant wants to bring in your honourable notice that all the concerned processes concerned to the applicant seems to be self made, artificial and on mala fide intention and seems to be collusion with the opponent party. Applicant also in the view that all these processes that are the action of suspension through letter dated on 06-09-12, letter from R.O Chamba issued on dated 11-11-14 and then the to applicant on date 13-11-14 on applicant home address, must have been done on the same day. So in the light of the above circumstances the applicant ^{submits} before your honourable authority that all the artificial processes and other proceedings been done against applicant may be set aside and be deserved applicant for his back benefits of his suspension period.

(8) That as it is cleared from the record that in the inquiry stage of the case of an applicant, the names of two persons Sahib and Sharifullah had been given as witnesses in his defence and his reply ~~and~~ his reply ^{and} his reply concerned inquiry officer named Arshad Ali Khan as DFO, Forest Buner and DFO Ismail Swal forest department has been requested.

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the concerned inquiry officers haven't felt any need to have called for recording their statements in inquiry case against applicant; neither the concerned witness senior forest-guard Ahmad Ali was called by the inquiry officer Mr. Ismail DFO to have recorded his statement in the inquiry case concerned; because applicant had given the names of these persons as being the concerned witnesses in the concerned case and their statements could be a strong evidence in the support of applicant (accused); the consequent of which could be an acquittal of an applicant from the charges established against applicant by the forest authorities and that is DFO watershed Buner. So keeping in view the probability of an acquittal of an applicant in the case concerned; that was the main point why the concerned inquiry officer didn't call these concerned witnesses which reflects clearly the mala fide intention, jealousy and some collusion with the opponent party and some other hidden enemies of the applicant so in the honourable appellate authority is humbly requested to keep in view the tactics owned by the concerned inquiry officers as well as DFO Buner watershed with the mutual consultation of Harzal Mir DFO Buner case and make an applicant deprived of his salary along with tolerant back benefits which the applicant is deserved for; so in the light of circumstance the impugned judgement given by the DFO Buner watershed be set aside and be declared an applicant deserved for his salary and other back benefits to be granted to him by the order issued by this appellate authority (Conservator Abbottabad).

① In the time of the inquiry case of an applicant which was subjudice before the honourable inquiry officer DFO Ismail Swat forest department, an applicant some time would call either the concerned Head clerk or any other concerned staff members of the department about his inquiry case.

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to get updates in his inquiry case but one day by chance
 the telephone number of honourable DFO Harrat Mir
 was clicked on by an applicant by having attended
 the call of an applicant, the applicant humbly and
 respectfully with polite sense asked about his
 concerned inquiry case: ~~Dear~~ Sir, sufficient amount
 of time spent after an applicant case been
 referred to inquiry officer DFO Ismail and
 still then his case was not concluded. In response
 of ~~that~~ that sentence of an applicant
 the concerned DFO became angry and told him
 who was ~~an~~ could be an applicant to ask from
 the concerned DFO in about the case there in and
 told the applicant to off his phone: So just that was
 a simple question asked from the concerned DFO.
 then after some days the ~~applicant was~~
 Show cause notice was ~~received~~ received to
 an applicant by the concerned DFO to
 give the reply of Show cause notice in respect
 of his misconduct and misbehaviour thereby
 the reply of which was due respect and with
 civilised manner was submitted in the
 office concerned. The applicant yet ~~was~~
 doesn't know while in the response of Submissive
 reply given by an applicant might have
 been accepted or not. Now the
 applicant has come to know that concerned
 DFO has also forwarded a copy of this
 Show cause notice in the office of your honour as
 well, which just is the reflection of the malafide
 intention of the DFO Bomer washed to make the
 personality of the applicant polluted and dirty and to show
 an applicant in the eye of your honour, the ~~honour~~ ^{ownness} of misbehaviour
 and misconduct.

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because in the time mentioned he did know that applicant will appeal against the impugned order of the DFO and will challenge before the Honourable Conservator of Abbottabad for the case ~~concerned~~ so why he applied these tactics that is of show-cause notice so that the case of ~~the~~ applicant may also be rejected by the Honourable appellate authority as well.

2) That all the concerned documents about the case concerned that is, copy of FIR under 506 PPC,

3) Application of grant of salary dated 28-03-16 submitted by applicant, "Application for salary letter" given as memo to applicant on 13-07-16, "Copy of the letter absence from duty" on date 13-11-14 issued by DFO watershed, "The copy of the chargesheet given by Ismail DFO", "Will full absence from official duty" government of KPK (FEWD) No, 50 (EH) FE & WD, 11-61 2018 Dated Peshawar 18 October 2018

2018 "Reply as a explanation from applicant in respect of the chargesheet given by DFO are here by submitted with the appeal here by. besides there are some authorities delivered by the Honourable Supreme court of Pakistan in respect of all back benefits concerned to employees for which they have been declared deserved to be delivered them as references are with appeal here by submitted in your Honourable appellate authority as:

Ref Divisional Superintendent Pakistan railway Lahore (Appellants) versus 1998 PLC (C.S) 1430

Mohammad Halim through legal Ref and other (Respondents) Appeal No 236, 1996 decided on 22 Oct, 1988

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Ref (2) ⁽¹⁹⁾ Suprentending engineer (EPSCO, Sialkot - Petitioner)
Verses (2007 SCMR 537) (SC of Pakistan)

Muhammad Yousaf (Respondent)
Civil Petition No-1097-L of 2004, decided on 23rd
November 2006.

Ref (3) Muhammad Iqbal Zaman, Vernacular
Clerk, Marwat Canal division Bannu (Appellant)
1999 SCMR 2870 (SC of Pakistan)
Verses

Suprentendent engineer, Southern irrigation circle
Bannu and 4 other (Respondent)
Civil appeal No-1152 of 1995 decided on
11th march, 1999. Divisional suprintendent Pakistan railways Lahore (Appellant)

Ref (4) Muhammad Islam through legal
ref and others

Ref (5) Attavullah Sheikh - Petitioner
WAPDA & others (Respondents)
Civil appeal No-668 of 1988, decided on 20th sept, 2000.
2001 SCMR 269 (SC of Pakistan)

Ref (6) Zahid Rashid (Appellant)
Federation of Pakistan through secretary, Establishment
Government of Pakistan, Islamabad & other (Respondents)
Civil Appeal No-54 of 2002, decided on 24th sept, 2002
2003 SCMR 215 (SC of Pakistan)

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Ref 7 Govt of NWFP - Appellant (20)

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A. Sherwani and other (Respondent)
Shariat appeal No. 4 and 671881 decided on
15th January, 1983

PLD, 1984 (Supreme court 72)

Ref 8 Chairman Agricultural development bank
of Pakistan and another (Appellants)

Mumtaz Khan (Respondent)

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

PLD 2010 (Supreme court 695)

(1) So in the light of the above circumstances
authorities and in the FR 53 "B" rules of
fundamental rules of constitution 1973, the
applicant is deserved for his back benefits
to be delivered him in the light rules 53 "B"
and the above mentioned authorities, the department
that is the judgement (order delivered by the DFO
have no grounds to decide against applicant, no
proofs is against of justice law and malafide
Therefore it is by an ~~applicant~~ ^{app} appeal
hereby is prayed to have the impugned order delivered
by DFO as mentioned ~~the~~ ^{the} appeal ~~be~~ ^{be} abolished
and set aside.

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No a show cause notice, been ~~issued~~ ^{inserted} in the name
of applicant, no, explanation ~~has~~ ^{has} been called and
no charge sheet been ~~is~~ ^{is} inserted in the
news paper during applicant

12) That after an applicant was charged in the uncommitted murder case and an FIR was charged the applicant along with his sons left out from his home to search a place as such station in which applicant along with his sons could be secured after the incident happened to the applicant had adopted his living in tribal area situated just on boundary of Buner named Targhar. In those days in the time of occurrence faced to applicant it used to be a tribal area, the people of this tribal area that is Targhar and Buner used to come to ~~come~~ each other area to attend the marriage ceremony and burial ceremonies besides after the incident faced to applicant some friends and relatives also ~~used to~~ come to meet the applicant. So applicant is in the view that he along with his family had not kept themselves hidden from the people of any area but otherwise every body belonging to the locality of the applicant did know well about the residence of applicant which was in Targhar the tribal area. So applicant also in the view of this point that some individuals belonging to the department of applicant also did know about the residence of applicant besides the applicant had not left his station.

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due to non performing his duty ~~as~~^{or} that the applicant was not able to have performed his duty properly but as cleared from the case file that suddenly he was faced the incident as mentioned before and had to leave his station so that was the very sensitive time and very risky situation and any thing could happen to the lives of applicant and his sons so that is why keeping in view the risky and sensitive situation for some time he had to leave his locality. During that time when the applicant was in mentioned locality that is in Toghra the applicant and one of my son Tariq had contacted some staff members of the department that is specially Hajir Zamin gul was often in contact with the son mentioned of the applicant. Besides a fellow of an applicant named Sahib had also been sent to the concerned department and had been told the concerned fellows that he should have got some updates concerning to the applicant service involvement that what applicant should do in this tough situation in respect of his service matter but anybody else of the concerned department that as DFO of the department nor anybody

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(23)
 else had given a positive response to the fellow Sahib sent to the department concerned. So applicant wants to bring in the notice of your honourable authority that applicant did not escape himself from the departmental duty but there was risk to the lives of applicant and his sons and he had left the area mentioned, and at that time there were some malicious and hidden enemies these could be a possible danger and loss to the applicant & his sons and that is why he was unable to attend his duty in that risky time. So the charges applied by the department against applicant these has no weight that the applicant had ~~not~~ during the time of occurrence had not informed his concerned department. So a human mind can decide or can think that in the time of such sensitive situations any one can search his department staff to tell about the incident or it couldn't be possible as every body by common sense can know so in the light of circumstance that was the compulsion of the applicant not intentionally to have left his locality as well as had been absent for some time from his

duty - documents which the applicant rely with the other permitted of honourable appellate authority will be submitted in the time of arguments if was required.

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OFFICE ORDER NO. 01 DATED ABBOTTABAD 15 /07/2019
ISSUED BY MR. SAGHEER AHMAD MALIK, CONSERVATOR OF FORESTS,
WATERSHED MANAGEMENT CIRCLE ABBOTTABAD.

Mr. Ibrahim Forest Guard of Buner Watershed Division Swari absented himself willfully with effect from 28:08:2012 to 21:02:2016 without prior permission from competent authority. During the said period neither his where abouts were known to his controlling office nor he attempted to request and report for any kind of leave admissible under the rules.

On 22:02:2016, he was arrested by Law Enforcing Agencies and kept in Daggar Jail.

Whereas, he should have surrendered himself to Law Enforcing Agency after being charged in murder case which he did not.

Whereas, on 27:06:2018 he was acquitted after being trialed in Murder case.

Whereas, on the direction of Administrative Department an enquiry was conducted against him under E&D rules 2011 and DFO Buner Watershed issued office order No.39 dated 24:04:2019 wherein the period wef 28:08:2012 to 21:02:2016 (3 years and 5 months 23 days) was declared as Extra Ordinary Leave and the period which he spent in Jail was considered as period on duty.

Whereas, the Forest Guard, aggrieved with the order of DFO Buner Watershed filed an appeal before the undersigned, which was sent to DFO Buner (Competent Authority) for comments.

Whereas, DFO Buner Watershed has furnished, his comments vide his office letter No.1220/BWS dated 14:06:2019, which were perused and available on record. The comments of DFO Buner Watershed were found lawful and justified. Though there exist gaps on the part of office of DFO Buner Watershed Division Swari, yet the period of willful absence on abscondance cannot be over looked, which is above the law.

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Whereas on 09:07:2019 the Forest Guard was called for personal hearing who appeared in person and was given ample opportunity to argue and elaborate his stance presented in appeal. For the satisfaction and exercising the Justice, during personal hearing the Forest Guard was questioned and cross-examined so that the ground realities can be seen indepth.

And

Whereas, keeping in view the above exposition, comments furnished by DFO Buner Watershed and other relevant material on record I Sagheer Ahmad Malik, Conservator of Forests, Watershed Management Circle in the capacity of appellat authority under rule 17 (2) (a) of E&D rules 2011 am not convinced with the clarification of Forest Guard and do hereby reject the appeal of the Forest Guard and allow the implementation of office order No. 39 dated 24:04:2019 issued by DFO Buner Watershed Division Swari.

sd/-
(Sagheer Ahmad Malik)
Conservator of Forests
Watershed Management Circle
Abbottabad.

No. 4570-45 /E-F

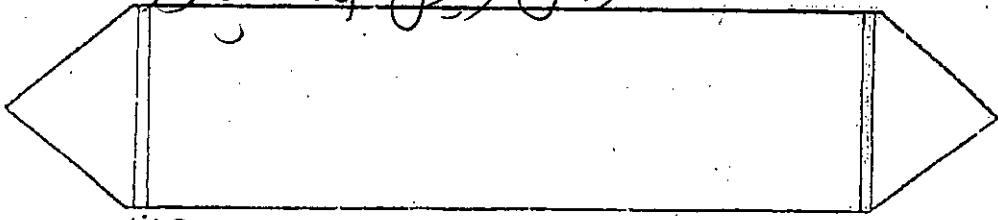
Copy with reference to DFO Buner Watershed, Office Order No.39 dated 24:04:2019 forwarded to:

- ✓ 1- The Chief Conservator of Forests Central Southern Forest Region-I Peshawar.
- 2- The Chief Conservator of Forests Northern Forest Region-II Abbottabad.
- 3- The Section Officer (Establishment) FE&WL Department, Peshawar.
- 4- The DFO Buner Watershed Division at Swari for information and further needful with reference to his letter No.1220/BWS dated 14/6/2019. The Enquiry file(in original) from page 01 to 142 is returned herewith. Acknowledge receipt.
- ✓ 5- Mr. Ibrahim Khan Forest Guard C/O DFO Buner Watershed Swari for information with reference to his appeal dated nil and received in the office on 23:05:2019. DFO Buner to deliver this office order to the official concerned, get acknowledgement receipt from him and submit to this office for record.

Conservator of Forests
Watershed Management Circle
Abbottabad.

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بعدالت سرسین ٹریبونل کا سبب



2 مخائب
الہدایہ خان بنام کنز و عدو عدو

موزخہ
مقدمہ
دعویٰ
ہرم

باعث تحریر آئندہ

مقدمہ مندرجہ بالا میں اپنی طرف سے واسطے پیروی کی وجوہات دیں اور کارروائی متعلقہ
آج کے مقام لسبب کیلئے مفضل شاہ سمند A.S.C

مقررہ کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کرنے و تقررات و فیصلہ برحلف دینے جو اب وہی اور تباہ دعویٰ اور
بند و رت ڈگری کرنے اجراء اور صولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی
نیز دائر کرنے اپیل ٹرائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لانا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا سہا
بر واخذہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

لسبب

الہدایہ خان

الرتبہ _____ ماہ _____ 2019

العبد _____ واہ العبد _____

بہ تمام _____ لسبب _____ کے لئے منظور ہے۔

Accepted at (Adu)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1082/2019

Ibrahim Khan.....**Appellant.**

V E R S U S

Conservator & Others.....**Respondents**

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, the appellant has approached this honorable tribunal with clean hands and instant appeal is well within time. Instant appeal is maintainable in its present form in which all necessary parties have been impleaded and this appeal is not hit by principles of estoppel as the appellant has done nothing of the sort.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have admitted that the proceedings were initiated due to involvement of the appellant in criminal case from which he has been acquitted and thus is entitled to all service benefits. The appellant approached various For as for the redressal of his grievances and he had duly informed his high ups regarding his involvement in criminal case. Respondents have also admitted that after being involved in criminal case he was suspended, so after suspension respondents were required to have waited till the decision of criminal case but instead the appellant was awarded major penalty. Even during inquiry the appellant was not provided opportunity of cross examination in violation of principles of natural justice besides law on the subject. Even as per inquiry report the charge of willful absence has not been proved, in the circumstances the appellant could not be deprived of the service benefits of the same period. The intervening

period as per the recommendations of inquiry officer has not been treated as leave of the kind due.

Respondents have tried to twist the facts, and tried to cover their, omissions, commissions and lacunas. The valuable rights of the appellant are involved from which he cannot be deprived. The appellant could not be made to suffer for the fault of others as no one could be punished for the fault of others. In the circumstances the appellant has not been treated according to law and rules being his fundamental right.

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

Dated:-12-08-2021

Ibrahim
Appellant

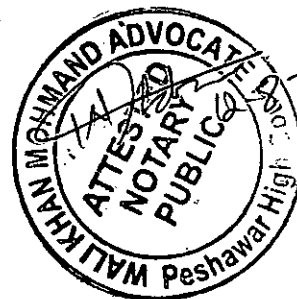
Through

Fazal Shah Mohmand
FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

AFFIDAVIT

I, Ibrahim Khan, Forest Guard, Buner Watershed Division Swari Buner, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Ibrahim
DEPONENT



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1082/2019

Ibrahim Khan.....**Appellant.**

V E R S U S

Conservator & Others.....**Respondents**

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, the appellant has approached this honorable tribunal with clean hands and instant appeal is well within time. Instant appeal is maintainable in its present form in which all necessary parties have been impleaded and this appeal is not hit by principles of estoppel as the appellant has done nothing of the sort.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have admitted that the proceedings were initiated due to involvement of the appellant in criminal case from which he has been acquitted and thus is entitled to all service benefits. The appellant approached various For as for the redressal of his grievances and he had duly informed his high ups regarding his involvement in criminal case. Respondents have also admitted that after being involved in criminal case he was suspended, so after suspension respondents were required to have waited till the decision of criminal case but instead the appellant was awarded major penalty. Even during inquiry the appellant was not provided opportunity of cross examination in violation of principles of natural justice besides law on the subject. Even as per inquiry report the charge of willful absence has not been proved, in the circumstances the appellant could not be deprived of the service benefits of the same period. The intervening

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

Dated:-12-08-2021

Through

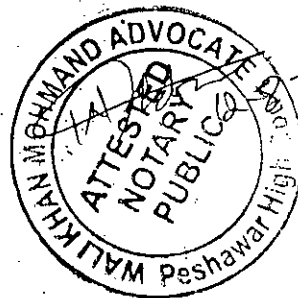
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ADVOCATE,
SUPREME COURT OF PAKISTAN.

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Ibrahim Khan.....Appellant.

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Dated:-12-08-2021

Through

Ibrahim
Appellant

Fazal Shah Mohmand
FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

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DEPONENT



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1082/2019

Ibrahim Khan.....**Appellant.**

VERSUS

Conservator & Others.....**Respondents**

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Dated:-12-08-2021

Ibrahim
Appellant

Through

Fazal Shah Mohmand
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ADVOCATE,
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Ibrahim
DEPONENT

