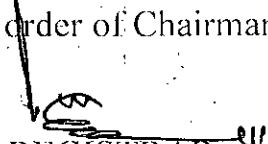


FORM OF ORDER SHEET

Court of _____

Case No. - 1792/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/12/2022	<p>The appeal of Mr. Jangraiz Khan presented today by Mr. Inayatullah Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE SERVICES TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Appeal No. 1792/2022

Jangraiz Khan.....Appellant

V E R S U S

Secretary, Health Department and others

.....Respondents

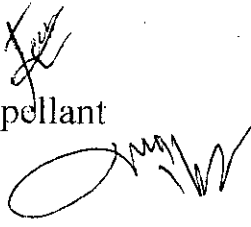
I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal along with	*	1-7
2.	Affidavit	*	8
3.	Addresses of Parties	*	9
4.	Copy of FIR	A	10
5.	Copy of officer order dated 24/04/2019	B	11
6.	Copy of reinstatement order dated 24/01/2022	C	12
7.	Copy of judgment dated 31/11/2021 of Peshawar High Court, Bannu Bench	D	13-28
8.	Copy of service book	E	29-35
9.	Copy of departmental appeal dated 17/09/2022 along with receipts	F	36-39
10	Wakalatnama	*	40

Through

Appellant

Date: 17/12/2022


Inayatullah Khan
Advocate Supreme
Court of Pakistan
LL.M (UK)
Cell# 0333-9227736

①

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

Appeal No. 1792/2022

Jangraiz Khan S/o Saifullah Khan R/o P.O Torka Bazar, Bazida
Kokal Khel Surani, Tehsil & District Bannu

(Ward Orderly, BPS-05) at the office of Additional Hospital Director
DHQ, Teaching Hospital, Bannu).....**Appellant**

V E R S U S

1. Secretary, Health Department, Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. Director General Health, Govt. of Khyber Pakhtunkhwa,
Peshawar.
3. Additional Hospital Director, DHQ, Teaching Hospital, Bannu.
4. District Accounts Officer, District Bannu.

.....**Respondents**

**APPEAL UNDER SECTION 4 OF KP
SERVICES TRIBUNAL ACT 1974 FOR
GRANT OF BACK BENEFITS W.E.F
01/02/2017 TO 23/01/2022 FOR A PERIOD
OF 5 YEARS AND 23 DAYS.**

**AS THE APPELLANT WAS ACQUITTED
FROM THE CRIMINAL CHARGES BY THE
HON'BLE PESHAWAR HIGH COURT,
BANNU BENCH VIDE ORDER DATED
03/11/2021 PASSED IN CRIMINAL APPEAL
NO. 57-B/2019.**

THE APPELLANT FILED
DEPARTMENTAL APPEAL DATED
17/09/2022 TO RESPONDENT NO.2 WITH A
COPY TO RESPONDENT NO.1 FOR
GRANT OF BACK BENEFITS BUT THE
SAME HAS NOT BEEN RESPONDED
DESPITE LAPSE OF STATUTORY PERIOD
OF 90 DAYS. HENCE CONSTRAINED TO
FILE THE INSTANT SERVICE APPEAL
BEFORE THIS HON'BLE TRIBUNAL
WITHIN 30 DAYS WHICH IS WELL
WITHIN TIME.

Prayer in Appeal:

On acceptance of this service appeal, with directions to the officials respondents to forthwith pay back benefits/arrears of pay, increments and promotion for the intervening period w.e.f 01/02/2017 to 23/01/2022 for a period of 5 years and 23 days as the appellant was trapped in a false and concocted case on the basis of trumped up charges in the light of Fundamental Rule 54 and reports judgments of the Apex Courts i.e. "2021 SCMR 962", "2011 TD Service 179 (D) Federal Service Tribunal, 2003 SCMR 291, 2013 SCMR 752".

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Respectfully Sheweth:

Brief fact giving rise to the instant Service Appeal for grant of back benefits, areas of pay, increments and promotion if due are as under:

1. That the appellant is the permanent employee of office of Director General Health Khyber Pakhtunkhwa, Peshawar and as such performing his duties as Ward Orderly (BPS-05) at the office of Additional Hospital Director, DHQ, Teaching Hospital Bannu.

2. That the appellant was charged in Case FIR No. 619, dated 12/11/2017, Under Sections 302, 324, 295, r/w 34 PPC, Police Station, Basya Khel, District Bannu.

(Copy of FIR is attached as Annexure-A)

3. That the appellant was convicted by the Court of Additional Sessions Judge-I, Bannu, vide judgment dated 05/03/2019 and thereafter he was dismissed from service vide office order dated 24/04/2019.

(Copy of office order dated 24/04/2019 is attached as Annexure-B)

4. That the appellant was acquitted by the Hon'ble Peshawar High Court, Bannu Bench vide judgment dated 30/11/2021 by allowing Criminal Appeal No. 57-B/2019, hence the department reinstated/restored him in service in the light of above referred judgment vide order dated 24/01/2022.

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(Copy of reinstatement order dated 24/01/2022 is attached as Annexure-C and judgment dated 31/11/2021 of Peshawar High Court, Bannu Bench is attached as Annexure-D)

5. That the appellant also applied for leave for a period of 365 days w.e.f 01/02/2017 which was allowed by the department as evident from his service book but no salary was paid to him w.e.f 01/02/2017 till his reinstatement order dated 24/01/2022.

It is pertinent to mention here that the appellant was falsely implicated in a baseless, concocted criminal case from which he has been acquitted by the Hon'ble Peshawar High Court, Bannu Bench.

(Copy of service book is attached as Annexure-E)

6. That the appellant has been reinstated/restored in service vide order dated 24/01/2022 but without paying him a single penny w.e.f 01/02/2017 to 23/01/2022 for intervening period which is calculated as 5 years and 23 days. That the appellant remained in jail since his arrest.
7. That the appellant filed departmental appeal dated 17/09/2022 for grant of back benefits before the respondent No.2 with a copy to respondent No.1 but the same has not been responded despite lapse of statutory period of 90 days.

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It is pertinent to mention that the matters relating to back benefits is a continuous cause of action as per reported judgments of Superior Courts.

(Copy of departmental appeal dated 17/09/2022 is attached as Annexure-F)

8. That the appellant feeling aggrieved, though filed departmental appeal for grant of back benefits before the respondents but the same has not been responded therefore constrained to approach this Hon'ble Tribunal inter alia on the following grounds:

G R O U N D S :

- A. That the appellant is entitled to full pay, back benefits/arrears of pay along with increments and promotion if due in the light of **Fundamental Rule 54** and reported judgment of the Apex Court "**2021 SCMR 962**" wherein it has been held that upon unconditional reinstatement in service the Civil Servant is entitled to full pay if he is not reemployed elsewhere in the intervening period. Since the appellant remained in jail, therefore, there was no chance to work elsewhere or gain financially.
- B. That it would be unjust to deprive the Civil Servant of back benefits for the intervening period, he remained out of job without any fault on his part in the light of reported

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judgments "2011 TD Service 179 (D) Federal Service Tribunal, 2003 SCMR 291, 2013 SCMR 752".

- C. That the August Supreme Court of Pakistan in a reported judgment "2013 SCMR 752", wherein it was held that back benefits includes salaries, increments and promotion to which the Civil Servant is entitled during the intervening period upon his reinstatement.
- D. That the appellant having 27 years unblemished service at his credit and always performed his duties to the entire satisfaction of his immediate superiors without any complaint against him, therefore, keeping in view his good track record, he is legally speaking, fully entitled to back benefits, arrears of pay, increments and promotion.
- E. That the appellant having 3 boys and a girl, all studying in their respective schools and he is the only source of income, also make him entitle for grant of full back benefits to look after his family who was falsely implicated in a concocted case on the basis of trumped up charges.

Keeping in view, what has been stated above, it is, therefore, humbly prayed to allow this Service Appeal with directions to the officials respondents to forthwith pay back benefits/arrears of pay, increments and promotion for the intervening period w.e.f 01/02/2017 to 23/01/2022 for a period of 5 years and 23 days as the appellant was trapped in a false and concocted case on the basis of trumped up charges in the

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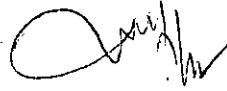
light of Fundamental Rule 54 and reports judgments of the Apex Courts i.e. "2021 SCMR 962", "2011 TD Service 179 (D) Federal Service Tribunal, 2003 SCMR 291, 2013 SCMR 752".

OR

Any other relief to whom the appellant found entitled in the given facts and circumstances and not specifically asked for may also be granted.


Appellant

Through



17/12/22
Date: 17/12/2022

Inayatullah Khan
Advocate Supreme
Court of Pakistan
LL.M (UK)

8

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

Appeal No. _____/2022

Jangraiz Khan.....Appellant

VERSUS

Secretary, Health Department and others

.....Respondents

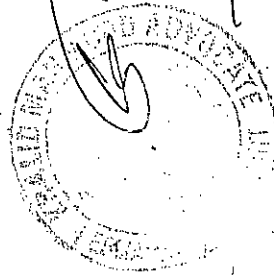
AFFIDAVIT

I, Jangraiz Khan S/o Saifullah Khan R/o P.O Torka Bazar, Bazida Kokal Khel Surani, Tehsil & District Bannu (Ward Orderly, BPS-05) at the office of Additional Hospital Director DHQ, Teaching Hospital, Bannu), do hereby solemnly affirm and declare on oath that the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

Identified by:

DEPONENT

Inayatullah Khan
Advocate Supreme Court of Pakistan
LL.M (UK)



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

Appeal No. _____/2022

Jangraiz Khan.....Appellant

V E R S U S

Secretary, Health Department and others

.....Respondents

ADDRESSES OF PARTIES

APPELLANT

Jangraiz Khan S/o Saifullah Khan R/o P.O Torka Bazar, Bazida
Kokal Khel Surani, Tehsil & District Bannu
(Ward Orderly, BPS-05) at the office of Additional Hospital Director
DHQ, Teaching Hospital, Bannu)

RESPONDENTS

1. Secretary, Health Department, Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. Director General Health, Govt. of Khyber Pakhtunkhwa,
Peshawar.
3. Additional Hospital Director, DHQ, Teaching Hospital, Bannu.
4. District Accounts Officer, District Bannu.


Appellant

Through

Date: 17/12/2022

Inayatullah Khan
Advocate Supreme
Court of Pakistan
LL.M (UK)

(11)

ANNEXURE B

**ADDITIONAL HOSPITAL DIRECTOR
DISTT; HEADQUARTER MTI, BANNU.**

Ph & Fax No: 0935-9370180 Email: dhqhbannu@gnaptc.com Dated: 24/04/2019

OFFICE ORDER.

Mr. Jangrez Khan, Wardorderly District Headquarter Medical Teaching Institution Bannu is convicted by the Honourable Addl. Session Judge-I Bannu on 05-03-2019. Now after conviction Mr. Jangrez Khan, Wardorderly Distt. Headquarter Hospital, Bannu is hereby dismissed from service from the date of Judgment of the Honourable Additional Session Judge-I, Bannu.

Additional Hospital Director
DHQ MTI, Bannu.

No. 1061 / dated Bannu the 24 / 04/2019

Copy to the:-
Secretary Board of Governors Medical Teaching Institutions Bannu
Director Finance Medical Teaching Institutions Bannu
Accountant Distt. Headquarter Medical Teaching Institution Bannu
Jangrez Khan, Wardorderly DHQ MTI Bannu.

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[Signature]
Additional Hospital Director
DHQ MTI, Bannu.

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**OFFICE OF THE ADDITIONAL HOSPITAL DIRECTOR
DHQ, TEACHING HOSPITAL (MTI) BANNU.**

Khyber Pakhtunkhwa, Pakistan

Ph: & Fax No. 0928-9270280

Email: dhqthbannu@gmail.com

No. _____ /

Dated: 24/01/2022


OFFICE ORDER.

In response to the notification issued vide order no. 2049 dated 24/04/2019 ward orderly Mr. Jangraz Khan designated as ward orderly immediately restored as in the light of judgement of honorable Peshawar High Court Bannu Bench Bannu till further orders.

Additional Hospital Director
DHQTH MTI Bannu

No. 297 / DHQTHDated 24 /01/2022**Copy to:**

1. Medical Director, KGNTN MTI Bannu
2. Hospital Director, KGNTN MTI Bannu
3. Secretary BoG, KGNTN MTI Bannu
4. Director Finance, KGNTN MTI Bannu
5. Accounts Officer, DHQTH MTI Bannu
6. Assistant HR, DHQTH MTI Bannu
7. Concerned Official (Mr. Jangraz Khan Ward Orderly, DHQTH MTI Bannu).


Additional Hospital Director
DHQTH MTI Bannu


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ANNEXURE D

Judgment Sheet
PESHAWAR HIGH COURT, BANNU BENCH.
[Judicial Department]

Cr.A. No.57-B/2019

Waheed Khan and others.

Vs.

The State etc.

JUDGMENT

For Appellants: Mr. Anwar-ul-Haq advocate

For State: Mr. Saif-ur-Rehman Addl. A.G

For Respondents: Muhammad Rashid Khan Dirma
Khel advocate.

Date of hearing: 30.11.2021

SAHIBZADA ASADULLAH, J.— The appellants have assailed the judgment dated 05.03.2019, rendered by learned Additional Sessions Judge-I, Bannu, whereby the appellants involved in case F.I.R No. 619 dated 12.11.2017 registered at Police Station Basia Khel, District Bannu, were convicted under section 302(b) P.P.C and sentenced to imprisonment for life along with compensation of Rs.5,00,000/- under section 544-A Cr.P.C to be paid to the legal heirs of deceased or in default thereof, to suffer six month simple imprisonment. They were further convicted under section 324 P.P.C, and sentenced to three.

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years imprisonment with fine of Rs. 1,00,000/- or in default thereof to further undergo three months simple imprisonment. All the sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C was extended to the convicts/appellants.

2. The concise facts as gleaned from the F.I.R are that on 12.11.2017 at 22:45 hours, the complainant Shah Khalid (PW-07), while present with the dead-bodies of Yasir Khan and Zeeshan, reported the matter in emergency room Civil Hospital, Bannu, to the effect that he alongwith Yasir Khan and Zeeshan had prepared *sobat Panda* in his Baithak and after eating meal, Yasir Khan and Zeeshan were going towards their house, while he (the complainant) was going to the house of his uncle, so all the three riding on motorcycle driven by Yasir Khan, while he and Zeeshan was on pillion, when they reached on main road, meanwhile, they noticed accused Waheed, Jangrez and Saifullah, duly armed with Kalashnikovs on one side of the road, while Afnan and Israr Ali alias Malik, duly armed with Kalashnikovs on other side of the road were present. The accused on seeing the complainant party, started firing at them, as a result, Yasir Khan and Zeeshan were hit and all the three fell down from motorcycle. Accused after

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commission of the occurrence decamped from the spot. When he attended both the injured, they had expired. Motive for the offence was stated to be previous blood-feud. The report of complainant was reduced in shape of Murasila (Ex: PW 1/1) by Noor Liaq Khan ASI and sent the same to the Police Station through constable Waseem No.198, which was culminated into F.I.R (Ex: PW 3/1), ibid. Noor Liaq Khan ASI (PW-01) prepared injury sheets of the deceased and inquest reports (Ex: PW 1/2 to Ex: PW 1/5) and dispatched the dead-bodies to the doctor for postmortem examination under the escort of constable, Shahid Khan No.1585 (PW 06).

3. On completion of investigation complete challan was submitted against the accused before the Court, where at the commencement of trial, the produced and examined as many as nine (09) witnesses, whereafter, statements of accused were recorded under section 342 Cr.P.C, wherein they denied the allegations and professed innocence, however, all the three accused/ appellants opted to be examined on oath as provided under section 340(2) Cr.P.C and to produce defence evidence. The accused produced Khan Muhammad, as DW-1 and Ihsanullah as

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DW-02, however, they did not opt to be examined on oath under section 340 (2) Cr.P.C. The learned trial Court after hearing arguments of learned counsel for the parties, vide impugned judgment dated 05.03.2019, convicted the accused and sentenced them, as mentioned above. The convict/ appellants preferred instant criminal appeal, while the complainant moved criminal revision petition No.21 -B of 2019 for enhancement of sentence; as both the appeal and revision petition are the outcome of one and the same impugned judgment, therefore, are going to be decided through this common judgment.

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4. Arguments of learned counsel for the parties assisted by learned Addl. A.G representing the State heard and record gone through with their valuable assistance.

5. Though the matter was comprehensively dealt with by the learned trial Court and the learned trial Court while passing the impugned judgment did apply its judicial mind to the facts, circumstance and the evidence available on file, but this being the Court of appeal is under the obligation to reassess the already assessed evidence and to see; as to whether the impugned judgment qualifies the test under section 367 (5) of the Code of Criminal

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Procedure and as to whether the reasoning advanced by the learned trial Court suits the situation and the circumstances of the case.

There is no denial to the fact that in the incident two young boys were done to death which led to a charge against the appellants and others, but equally true that the Courts must not be swayed by the influence and the attending circumstances of the cases, rather the Courts seized of the matter must walk with care and caution, as these are the custodians of the rights of the parties involved in the episode.

6. The tragic incident occurred on 12.11.2017 at 20:45 hours, when the deceased in the company of the complainant were fired at, which led to the death of the deceased Zeeshan and Yasir Khan, whereas the complainant escaped unhurt. The matter was reported by the complainant to the local police in the Emergency Room of Civil Hospital, Bannu, where the appellants alongwith others were charged for the murder of the deceased and ineffective firing upon the complainant. After drafting the murasila, the inquest reports and injury sheets were prepared and after doing the needful, the dead-bodies were sent to the doctor for postmortem examination.

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7. The Investigation Officer visited the spot on the night of occurrence, where blood-stained earth from respective places of the deceased was taken into possession and also 20-empties of 7.62 bore near from the places of the accused were taken into possession. It is pertinent to mention that out of the empties, four recovered near from the place of absconding co-accused Afnan, were sent to the Firearms Expert alongwith a Kalashnikov recovered from the house of the absconding co-accused Afnan, which after examination, was found wedded with the recovered empties. On the next day of the incident i.e. early in the morning, the Investigating Officer prepared the site-plan on the pointation of the complainant and also took into possession the motorcycle used by the deceased for travelling to their houses. The accused/ appellants, soon after the incident volunteered their arrest in the shape of bail before arrest, which did not find favour with the learned Court below and was dismissed, which resulted into arrest of the accused/ appellants.

8. The questions to be decided by this Court are; as to whether the incident occurred in the mode and manner and at the stated time; as to whether the accused/appellants were duly

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identified, that too, in the headlights of the motorcycle; as to whether the complainant succeeded in establishing his presence on the spot at the time of incident and as to whether the motive advanced by the complainant was the urging factor with the appellants to kill the deceased.

9. The complainant was examined as PW-07, who stated that during the days of occurrence, he was serving in police department and was posted at Bannu. It was on getting leave for seven days from his duties that he came to his house and that on the night of incident he invited his friends i.e. the deceased for *Sobat/paimda*, to his Baithak and that after taking the meal, when the deceased were leaving for their village, he too accompanied them to visit the house of his uncle. He further stated that on reaching to the place of incident, the accused/appellants were present duly armed, who on seeing the deceased started firing at them, which resulted into the death of the deceased and he escaped unhurt. The complainant was examined on material aspects of the case. There is no denial to the fact that the complainant had blood feud with the accused/ appellants and that the deceased had nothing to do with the motive, and that the ruthless killing of the deceased,

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that too, when the complainant did not receive even a single injury, belies the stance of the complainant to a greater extent notwithstanding the fact that allegedly he was seated with them on their pillion. Had the complainant been present, being the prime target, he would not have been spared by the appellants, instead of killing the disinterested persons. The record tells that at the time of incident darkness had prevailed and that there was no electricity available at the spot, though the complainant stated that the bulbs were lit on the walls of the mosque, but in the same breath he admitted that the only and only source of identification was the headlight of the motorcycle. On this particular aspect of the case, Zabibur Rahman SI, the Investigating Officer, who appeared as PW-08, stated that when he visited the spot, he did not see the provision of electricity and even he did not find any bulb available at the place of incident. When the statements of the two are read together, they contradicted each other to a greater extent, even otherwise, there is no denial to the fact that both the witnesses

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assailants and that at the time of incident the headlight of the motorcycle was in working condition. This being an important piece of evidence was not investigated by the Investigating Officer and even no reports from an auto electrician was received in that respect, even otherwise, to identify assailants in the headlight of a motorcycle, who were standing at a considerable distance, is hardly believable. The complainant stated that he was sitting on the rear seat i.e. on the 3rd position on the motorcycle and in that eventuality, when he was having the hindrance of the deceased sitting in front, it turns nearly impossible to identify the assailants standing in the darkness. The complainant could not establish the identity of the appellants on record so to proceed further, in order to determine fate of the appellants, that too, on the statement of the sole interested witness extraordinary care and caution is needed.

10. Another important aspect of the case is that the incident occurred at 20:45 hours, whereas the matter was reported to the local police at 22:45 hours, in the emergency room of the Civil Hospital, Bannu, after a considerable delay of two hours, which the prosecution could not explain. It is pertinent to mention that the doctor, while conducting the postmortem examination

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Magistrate's Court
Bannu Bench

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mentioned the time between death and injury in case of the deceased Zeeshan as 30-minutes to one hour, meaning thereby that after receiving the firearm injuries the deceased Zeeshan survived for long 30-minutes to one hour, but no efforts were made either by the complainant or people of the locality to shift him to the hospital to save his life. The distance between the spot and Police Station Basia Keel has been given as 5/6 kilometers, but the dead-bodies reached to the hospital after a considerable delay, which tells otherwise regarding presence of the complainant at the time of incident. The presence of the complainant is further doubted that neither he identified the dead-bodies before the police nor before the doctor at the time of postmortem examination; so much so, in the relevant column of inquest report the complainant figures nowhere.

11. Zabibur Rahman SI, the Investigating Officer was examined as PW-08, who was questioned on material aspects of the case, who stated that he recovered empties along with blood stained earth from the place of incident on the night of incident, but the record tells that the site-plan was prepared on the next day of the incident. The prosecution is to tell that why the site-plan was not

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prepared on the very night of the incident and that why the motorcycle was not taken into possession from the spot, when the Investigating Officer firstly arrived to the place of incident. The site-plan depicts that near the place of incident there was a guava orchard, though the complainant admitted the same but stated that, that was situated at a considerable distance, whereas the Investigating Officer stated that the same was available near the place of incident. Had the accused been with the intention to kill, then they would have accomplished their task from the same and would have easily concealed their identity, but the circumstances tell that the incident did not occur in the mode and manner. The complainant could not produce anything on record regarding his leave from the department and even no daily diary report was
... occurred, so much so, the Investigating

the deceased was 21/22 years of age and the other only 17. The relationship between the three does not appeal to a prudent mind, even the Investigating Officer did not visit the Baithak of the complainant to get it confirmed, as to whether in fact all the three had dined together and even the Investigating Officer did not enquire from the father of the complainant regarding presence of the deceased at the time before the incident in the Baithak of his house. The attitude displayed by the complainant is not only unusual but abnormal as well, as he admitted that they had blood feud with the appellants and others in the village and that in routine he used an alternate route to visit his old house, and that often avoid using the present path. Despite the fact, that the complainant had enmities in the village, he did not keep in possession weapon for his defence. The record tells that the complainant had numerous enmities in the village and that he had blood-feud with the appellants but surprisingly, he was not killed despite the fact he was at mercy of the appellants. The statement of the complainant tells that there was ample opportunity for the appellants to kill, but his escaping unhurt confirms that he was not present at the time of incident. We are surprised to note that why the complainant joined

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the deceased while they were leaving for their homes and that when the complainant had to visit the house of his uncle, then why he did not opt for his own motorcycle, as he was to come back, it tells nothing but that an abnormal attempt was made to establish his presence on the spot, but the complainant did not succeed in persuading us to travel that way.

13. The medical evidence does not support the case of the prosecution, as the assailants were standing in front of the deceased to either side of the road and that one of the deceased received firearm injuries on his back. When all the three were sitting packed, then in that eventuality, there was no occasion for the complainant to have escaped unhurt, rather after making its exit the bullets must have struck the complainant. The seat of injuries on person of the deceased, when read with the site-plan, it does not get support from there and even the medical evidence does not support the case of prosecution. The conflict between the two has damaged the prosecution case to a greater extent. True, that the medical evidence is confirmatory in nature and in presence of trustworthy ocular account, the same cannot overshadow the prosecution case, but when the eyewitness account suffers from

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infirmities, then in that eventuality recourse can be made to the medical evidence and the present case is no exception. The conflict between the medical evidence and ocular account has damaged the prosecution case beyond repair.

14. Though the complainant charged the appellants for the murders of the deceased but none from the house of the deceased supported the claim of the complainant against the appellants, which is another factor which cannot be lightly ignored. The record tells that the accused/ appellants had no motive against the deceased and that the prosecution did not succeed in linking the appellants with the murders of the deceased. Though motive was advanced by the complainant to be a blood-feud between the sides, but the Investigating Officer did not collect anything on record to substantiate the claim of the complainant. The motive was only and only with the complainant and that the appellants had no reason to kill. True, that absence or weakness of motive will not spoil the prosecution case, but equally true that when the motive is alleged, the prosecution is under the bounden duty to establish the same, but in the present case the safe exit of the complainant belies the stance of the complainant.

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15. The appellants soon after gaining the knowledge of their involvement in the matter volunteered their arrest by applying to the Court of competent jurisdiction and that they did not opt to abscond, despite the fact they had a serious charge against them. Even the Investigating Officer investigated the case in respect of their plea of alibi and the Investigating Officer admitted that the call data record collected tells that one of the accused was present at Peshawar. Even otherwise, the appellants opt to produce defence and they produced two witnesses in that respect, to establish their innocence on record, though the defence produced was not up to the mark and the learned counsel representing the complainant submitted that when the appellants produced defence and when they failed to establish their innocence through their own witnesses, then these were the appellants to be burdened, but we are not persuaded with the submissions of the learned counsel, as in all eventualities, this is the prosecution to prove its case to the hilt and if the accused takes a plea and if he does not succeed in establishing his innocence, even then the prosecution is under the bounden duty to establish his case beyond reasonable doubt. The

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burden only shifts when the accused takes a specific plea which is not the case in hand.

16. After evaluating the evidence from all angles, this Court reaches to an inescapable conclusion that the prosecution did not succeed in bringing home guilt against the appellants and that the impugned judgment is suffering from inherent defects and is devoid of reasons, which calls for no interference, resultantly, the instant criminal appeal is allowed, the impugned judgment is set aside and the appellants are acquitted from the charges, they shall be released forthwith if not required to be detained in connection with any other criminal case. As the instant criminal appeal against conviction has succeed and the impugned judgment has been set aside, so the connected criminal revision No. 21-B/2019 cannot proceed further, which being bereft of merit, is hereby dismissed.

Above are the detailed reasons of our short order of

the even date

Announced
30.11.2021
Azam P.S.

CERTIFIED TO BE TRUE COPY
[Signature] 04/12/2021
For and on behalf of the Bench
of
The Lahore High Court Ordinance 1984

[Handwritten signature]
12/12

(D.B)
Hon'ble Mr. Justice S.M. Atiqur Shah &
Hon'ble Mr. Justice Sahibzada Asadullah

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(پہرانا)

(29)

ANNEXURE E

Name (نام)

محمد علی کلان

Nationality and Religion (قومیت اور مذہب)

Muslim

Residence (مستقل رہائش)

Mill. Bazar, Kukul, Kukul, Kukul

Father's name and residence (والد کا نام اور پتہ)

M. I. Bazar

Date of birth by Christian era as nearly as can be ascertained (تاریخ پیدائش مطابق سن مسیحی)

19-5-1976

Exact height by measurement (قد و قامت)

5-8

Personal mark for identification (ظان نشانات)

Scar on left knee joint

Left hand/right hand thumb and finger impressions of (Non-gazetted) officer (مردی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger (چھٹا) Ring Finger (چھٹیا کے ساتھ کی انگلی) Middle Finger (انگلی ہلالہ)

Fore Finger (انگلی شانات) Thumb (انگوٹھا)

Signature of Government servant (سرکاری ملازم کے دستخط)

Jung Jung

Signature and designation of the Head of the Office, or other Attesting Officer (تصدیق کنندہ افسر کے دستخط اور سر)

[Signature]

The entries in this page should be renewed or re-attested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under this rule.

اس صفحہ کے مندرجات کم از کم پانچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر 9-10 میں دستخطوں کے نیچے تاریخ ہونی چاہئے۔ انگلیوں کے نشانات کے لئے ہر کے بعد تصدیق کی ضرورت نہیں۔

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- 1. Name (نام) Mr. Chaudhary Khair
- 2. Nationality and Religion Muslim / Islam
(قومیت اور مذہب)
- 3. Residence Village Buda Buda Taluk Muzaffargarh
(مستقل رہائش)
- 4. Father's Name and Residence Saidullah Khan
(والد کا نام اور رہائش)
- 5. Date of birth Christian era as nearly as can be ascertained 19-05-1976
(تاریخ پیدائش مطابق سن عیسوی)
- 6. Exact height by measurement 5-8
(قد و قامت)
- 7. Personal mark of identification Star on forehead
(نشانی شناخت)

8. Left hand/right hand thumb and finger impressions of (Non-gazetted officer)
(مزدوری صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger (بچنگلی) Ring Finger (چھنگلیا کے ساتھ کی انگلی) Middle Finger (اگلیت میاں)

Fore Finger (اگلیت شہادت) Thumb (انگوٹھا)

9. Signature of Govt. Servant (سرکاری ملازم کے دستخط) dyz
Attested to be True Copy

10. Signature and designation of the Head of the Officer or other Attesting Officer
(تصدیق کنندہ افسر کے دستخط اور مہر)

Note: The entries in this page should be renewed or re-aggested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under this rule.

اس صفحے کے متعلقہ تمام اوزار ہر پانچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر 9 اور 10 میں دستخطوں کے ساتھ تاریخ لکھنی چاہیے۔ انگلیوں کے نشانات کے لئے ہر پانچ سال کے بعد تصدیق کی ضرورت نہیں۔

ANNEXURE F

36

To

The Director General Health,
Govt of Khyber Pakhtunkhwa, Peshawar.

Subject:

DEPARTMENTAL APPEAL FOR GRANT OF BACK
BENEFITS WITH EFFECT FROM 01.02.2017 TILL
23.01.2022 FOR A PERIOD OF 5 YEARS AND 23 DAYS
AS THE APPELLANT WAS ACQUITTED FROM
CRIMINAL CHARGES BY THE HON'BLE
PESHAWAR HIGH COURT BANNU BENCH VIDE
JUDGMENT DATED 30.11.2021 PASSED IN
CRIMINAL APPEAL NO.57-B/2019.

Sir,

Brief facts giving rise to this Departmental Appeal for grant of back benefits, arrears of pay, increments and (promotion if due), are as under:-

1. That the appellant is the permanent employee of office of Director General Health Khyber Pakhtunkhwa, Peshawar and as such performing his duties as Ward Orderly (BPS-05) at office of Additional Hospital Director DHQ, Teaching Hospital (MTI) Bannu.
2. That the appellant was charged in case FIR No.619 dated 12.11.2017 Under Sections. 302, 324, 295 R/w 34 PPC Police Station Basya Khel District Bannu.
3. That the appellant was convicted by the Court of Additional District & Sessions Judge-I Bannu vide Judgment dated 05.03.2019 and thereafter he was dismissed from service vide impugned Office Order dated 24.04.2019.
4. That the appellant was acquitted by the Hon'ble Peshawar High Court Bannu Bench vide Judgment dated 30.11.2021 by allowing criminal appeal No.57-B/2019, hence the department re-instated/

[Signature]
10/10/21
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restored him in service in the light of above referred judgment vide Order dated: 24.01.2022.

5. That the appellant also applied for leave for a period of 365 days w.e.f 01.02.2017 as evident from his service book but no salary was paid to him w.e.f 01.02.2017 till 23.01.2022 due to his false implication in a baseless criminal case from which he has been acquitted by the Hon'ble Peshawar High Court Bannu Bench.
6. That the appellant has been re-instated/ restored in service vide order dated 24.01.2022 but without paying him a single penny w.e.f 01.02.2017 to 23.01.2022 for intervening period which has been calculated as 5 years and 23 days.
7. That the appellant is entitled to full pay, back benefits/ arrears of pay alongwith increments and promotion if due in the light of Fundamental Rule 54 and in the light of reported judgment "2021 SCMR 962" wherein it has been held that upon unconditional re-instatement in service the civil servant is entitled to full pay if he is not re-employed elsewhere in the intervening period.

It is pertinent to mention that the appellant since his involvement in a criminal case remained behind the bar and was acquitted vide judgment dated 30.11.2021 and re-instated/ restored unconditionally in service on 24.01.2022.

8. That it would be unjust to deprive a civil servant of back benefits for the intervening period he remained out of job without any fault on his part in the light of reported judgments 2011 TD Service 179 (D) Federal Service Tribunal. 2003 SCMR 291, 2013 SCMR 752.
9. That the August Supreme Court of Pakistan in a reported judgment 2013 SCMR Page 752 it was held, that back benefits includes salary,

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increments and promotion to which the civil servant is entitled upon his re-instatement.

10. That the appellant having 27 years unblemished service at his credit and always performed his duties to the entire satisfaction of his immediate superiors without any complaint, therefore, keeping in view his good track record he is legally speaking fully entitled to back benefits, arrears of pay, increments and promotion.

11. That the appellant having 3 boys and a girl all studying in their schools and he is the only source of income also make him entitle to grant of full back benefits including increments to look after his family.

Keeping in view what has been stated above, it is therefore, earnestly prayed to allow this departmental appeal and award back benefits/ arrears of pay/increments and promotion in the light of relevant rules and reported judgments of the August Supreme Court of Pakistan as referred in the body of this departmental appeal.

Any other relief to which the appellant found entitle and not specifically asked for may also be granted.



Jangraiz Khan
Ward Orderly (BS-05)
Office of Additional Hospital Director
DHQ, Teaching Hospital (MTI) Bannu.

Dated: 17.09.2022

CC to:

1. Secretary Health, Khyber Pakhtunkhwa at civil Secretariat Peshawar.

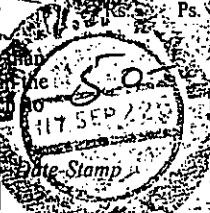


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No. 1005

For Insurance RGL94734391 Ps.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.



Received a registered
addressed to Secretary

Initials of Receiving Office SP *Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.

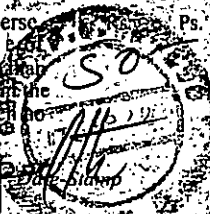
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Insurance fee Rs. 10 Ps. ten Weight 100 Kilo Grams

Name and address of sender

No. 1006

For Insurance RGL94734392 Ps.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.



Received a registered
addressed to Secretary

Initials of Receiving Office SP *Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.

Insured for Rs. (in figures) 100 (in words) one hundred

Insurance fee Rs. 10 Ps. ten Weight 100 Kilo Grams

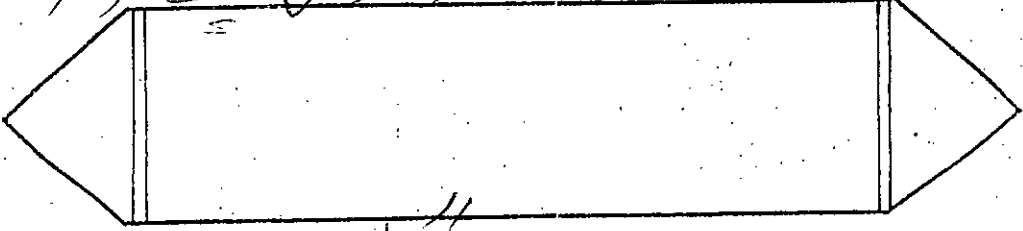
Name and address of sender

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بعدالت سرکاری ٹریبیونل شاہراہ



محمد نیر خان 2 منجانب

بنام سیدی سلوہ ونیرہ

موزخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ ^{مدو لیب} آئن مقام شاہراہ کیلئے محمد نیر خان مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر حالتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ 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 مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

المرقوم _____ ماہ _____ 20 _____

_____ واہ العی _____

03339059746 کے لئے منظور ہے۔

0333 9227736

Attest
accepted
by

Inayat Ullah
Ishaan
ASL

LLM
(UK)

مقام
