

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1292/2018

Date of Institution ... 11.10.2018

Date of Decision ... 12/01/2022

Sahibzada son of Gul Zada (Ex-PST) resident of village Jālala Takht Bhai District Mardan. ... (Appellant)

VERSUS

The Secretary, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar and others. ... (Respondents)

Present.

Mr. Adam Khan, Advocate ... For appellant.

Mr. Kabirullah Khattak,
Addl. Advocate General, ... For respondents.MR. AHMAD SULTAN TAREEN ... CHAIRMAN
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER(E)JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading with the prayer as copied below:-

“On acceptance of this appeal, the impugned order may be set aside and the appellant may be ordered to be reinstated into service with back service benefits alongwith any other relief, deemed appropriate by this Hon’ble Tribunal with costs.”

2. Facts of appeal in nutshell are that the appellant was appointed as PST and posted in Government Primary School No. 1 Sher Garh Mardan vide order dated 23.06.1997; that he was falsely charged in a murder case alongwith other family members vide FIR No. 517 dated 27.06.2007 P.S Shergarh District

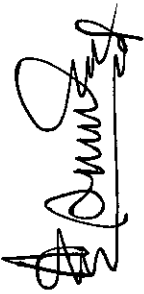


Mardan. The appellant was acquitted from the said charge vide judgment dated 05.06.2018 and attended the office of D.E.O/respondent No. 2 on 20.06.2018 for resumption of duty, where he learnt that he had been removed from service vide order dated 23.06.2008. Feeling aggrieved, the appellant preferred representation to the Director, E&SE (respondent No. 3) on 26.06.2018, which was not responded within the stipulated period, hence the present appeal on 11.10.2018.


3. After admission of the appeal for regular hearing, the respondents were given notices. They after attending the proceedings have filed their written reply, raising several factual and legal objections, refuting the claim of the appellant and asserted for dismissal of appeal with cost.

4. We have heard the arguments and perused the record

5. The copy of impugned order dated 23.06.2008 as annexed with the appeal discloses that an enquiry committee headed by Mr. Shah Nazar Khan DDO (M/P) Takht Bhai was constituted to conduct enquiry against the accused for the charges levelled against the appellant. The enquiry committee after having examined the charges and evidence on record submitted the report, where-after a show cause notice in the Daily "Mashriq" dated 24.05.2008 was served upon the appellant to explain his absence from duty otherwise *ex-parte* action should be taken against him but he failed. Consequently, major penalty of removal from service w.e.f. 27.06.2007 was imposed upon the appellant in exercise of power conferred by the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000. The appellant preferred departmental appeal on 25.06.2018 wherein, while showing cause of his absence, he stated that his absence was not intentional but because of implication in false case of murder reported vide FIR No. 517 dated 27.06.2007 of P.S Sher Garh District Mardan. He further stated that he was acquitted of the charge of murder on 05.06.2018



by the Additional Sessions Judge-II, Takht Bhai. It was mentioned in the service appeal that the departmental representation remained un-responded. It is there in the grounds of service appeal that the appellant alongwith his family members was falsely charged on malafide intention on account of previous enmity which is evident from judgment dated 27.07.2016 acquitting Mr. Umar Zada, brother of the appellant in the same case. It was also stated as ground of appeal that the material point was not taken into consideration that the appellant could not come out of his house as his life was at risk on account of blood feud enmity. The appellant was acquitted from the criminal charge by competent court of law and the copy of acquittal judgment in favour of the appellant as annexed with the appeal is available on file. It is there in the said judgment that the case was investigated and after completion of investigation, complete challan u/s 512 Cr.P.C was sent for trial against the accused and after completion of proceedings u/s 512 Cr.P.C, accused were declared proclaimed offenders vide order dated 19.06.2008. It appears from the said observations in the acquittal judgment that the appellant remained proclaimed offender because of his having gone into hiding after registration of case against him. According to arrest card of the appellant issued by the police officer, he is shown to have himself surrendered to the police on 10.05.2017 and was properly arrested. The copy of arrest card as produced during arguments is placed on file. Before dilating upon the impact of declaration of the appellant as proclaimed offender since registration of the case till his arrest, it is deemed appropriate to discuss the impact of registration of the criminal case against a government servant on account of occurrence having no nexus with his official position. Article 194 of Civil Service Regulation provides that a Government servant who has been charged for a criminal offence or debt and is committed to prison to be considered as under



suspension from the date of his arrest. In case such a government servant is not arrested or is released on bail, the competent authority may suspend him, by specific order, if the charge against him is connected with his position as government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. It is a matter of fact that the appellant was not arrested since his nomination in the FIR on 27.06.2007 till 10.05.2017 and during this period he remained into hiding because of threat to his life as admitted by him in his departmental as well as service appeals. This period of absence of the appellant from duty at the most could be considered as willful absence. The procedure for disciplinary action on account of willful absence at the relevant time was governed by Rule 8-A of the NWFP Government Servants (E&D) Rules, 1973. Accordingly, in case of willful absence from duty by a government servant, a notice shall be issued through registered acknowledgment due cover on his home address directing him to resume duty forthwith. If the same is received back as undelivered or no response is received from the absentee within the stipulated time, a notice shall published in at least two leading newspapers directing him to resume duty within 15 days of the publication of that notice, failing which an *ex-parte* decision will be taken against him. On expiry of the stipulated period given in the notice, the authorize officer shall recommend his case to the authority for imposition of major penalty of removal from service. Obviously, the said procedure was not complied with with particular reference to Rule 8-A *ibid* but otherwise show cause notice was published in the newspaper daily "Mashriq" on 24.05.2008 copy whereof has been annexed with the comments of the respondents.

6. Now the question for determination is whether the appellant is entitled for reinstatement into service after his acquittal from the charge of criminal case excluding at the moment the fact of appellant having remained

proclaimed offender for a long period; The acquittal of a government servant from the charge of an offence having no nexus with his position as government servant does entitle him for reinstatement. However, the particular fact that the appellant remained as proclaimed offender since registration of the case on 27.06.2017 till his arrest on 10.05.2017 need to be dealt with a lenient view when according to his arrest card he himself surrendered to the police and also gave explanation of his remaining into hiding as life threat due to blood feud enmity. However, he cannot claim advantage of the financial benefit for such period as his absence for such a long period was unauthorized.

7. For what has gone above, the instant appeal is accepted, the impugned order dated 23.06.2008 as to imposition of major penalty of removal from service upon the appellant is set aside. He is reinstated into service w.e.f. 27.06.2007. The intervening period in-between 27.06.2007 till arrest of the appellant on 10.05.2017 is treated as without pay. The period from the date of his arrest till the date of his acquittal i.e. 05.06.2018 and onward till the date of this judgment is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.





(ATIQU-UR-REHMAN WAZIR)
Member(E)



(AHMAD SULTAN TAREEN)
Chairman

ANNOUNCED
12.01.2022

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	12.01.2022	<p><u>Present.</u></p> <p>Mr. Adam Khan, ... For appellant Advocate</p> <p>Mr. Kabirullah Khattak, ... For respondents. Addl. Advocate General</p> <p>Vide our detailed judgment, the instant appeal is accepted, the impugned order dated 23.06.2008 as to imposition of major penalty of removal from service upon the appellant is set aside. He is reinstated into service w.e.f. 27.06.2007. The intervening period in-between 27.06.2007 till arrest of the appellant on 10.05.2017 is treated as without pay. The period from the date of his arrest till the date of his acquittal i.e. 05.06.2018 and onward till the date of this judgment is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.</p> <p> (ATIQ-UR-REHMAN WAZIR) Member(E)</p> <p> CHAIRMAN</p> <p><u>ANNOUNCED</u> 12.01.2022</p>

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Place on file
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02.09.2021

Due to summer vacations, the case is adjourned to
12.01.2022 for the same as before.


READER

23.11.2020

Counsel for the appellant and Addl. AG for the respondents present.

As the proposition has not been settled by the Larger Bench in other cases, instant matter is, therefore, adjourned to 10.02.2021 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

10.02.2021

Appellant in person and Addl. AG alongwith Arif Saleem, Stenographer for the respondents present.

The appellant has submitted Wakalatnama in favour of M/s. Khalid Rehman & Muhammad Amin Ayub, Advocates. Placed on file.

The proposition regarding retrospectivity of penalty has not yet been decided by the Larger Bench. This appeal is; therefore, adjourned to 24.05.2021 for hearing before the D.B.


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


Chairman

24.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 02.09.2021 for the same as before.


Reader

16.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 16.07.2020 before D.B.




Reader

16.07.2020


Appellant present in person.

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

Appellant requested for adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 02.09.2020 before D.B



(Attiq ur Rehman)
Member (E)



(Rozina Rehman)
Member (J)


02.09.2020

Counsel for appellant present.


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

Learned counsel for appellant seeks adjournment as issue involved in the present case is pending before Larger Bench of this Tribunal.

Adjourned to 23.11.2020 for arguments, before D.B.



(Attiq ur Rehman)
Member (E)



(Rozina Rehman)
Member (J)

06.08.2019

Appellant in person and Mr. Muhammad Jan, DDA for respondents present.

Appellant submitted rejoinder which is placed on file

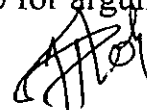
To come up for arguments on 30.10.2019 before D.B.


Member


Chairman

30.10.2019


Arshid Iqbal Advocate on behalf of learned counsel for the appellant present and seeks adjournment. Mr. Zia Ullah learned Deputy District Attorney present. Adjourn. To come up for arguments on 02.01.2020 before D.B.



Member


Member

02.01.2020

Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 24.02.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

24.02.2020

Learned counsel for the appellant and seeks adjournment. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requested that the present service appeal may be fixed after 15.04.2020. Request accepted. Adjourn. To come up for arguments on 16.04.2020 before D.B.


Member.


Member

26.03.2019

Appellant in person present. Written reply not submitted. Hayat AD representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments 26.04.2019 before S.B.



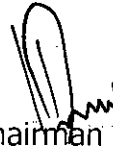
Member

26.04.2019

Appellant in person and Addl. AG alongwith Abdul Jamil, Asstt. for the respondents present.

Representative of respondents requests for adjournment.

Adjourned to 19.06.2019 on which date written reply/comments shall positively be submitted.



Chairman

19.06.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sajid Khan, ADO (Litigation) for the respondents present. Representative of the department submitted joint para-wise comments on behalf of respondents No. 1 to 3. Case to come up for rejoinder and arguments on 06.08.2019 before D.B.



(Muhammad Amin Khan Kundi)

Member

27.12.2018

Learned counsel for the appellant present and seeks adjournment to render proper assistance as to for how long the appellant remained absconder in the criminal case against him. Adjourn. To come up for preliminary hearing on 30.01.2019 before S.B.

30.01.2019

Counsel for the appellant Sahib Zada present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Education Department as Primary School Teacher. He was imposed major penalty of removal from service vide order dated 23.06.2008 by the competent authority on the allegation of absence from duty. It was further contended that since the appellant was involved in false criminal case vide FIR No. 517 dated 27.06.2007 under sections 302/34 PPC PS Sher Ghar therefore, it was beyond the control of appellant to attend the duty. It was further contended that the appellant was acquitted by the competent court vide order dated 05.06.2018 and on acquittal, the appellant filed departmental appeal on 25.06.2018 but the same was not decided, hence, the present service appeal on 11.10.2018. It was further contended that the absence of the appellant was not intentional but was due to involvement in false criminal case. It was further contended that there is some delay in filing of departmental appeal but the appellant filed departmental appeal just after his acquittal in the aforesaid criminal case and neither the absence notice was issued to the appellant nor proper inquiry was conducted therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 26.03.2019 before S.B.

Appellant Deposited
Security & Process Fee

(Muhammad Amin Khan Kundi)

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1292/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/10/2018	<p>The appeal of Mr. Sahib Zada presented today by Mr. Muhammad Adam Khan 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 11/10/18.</p>
2-	12-10-18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>8/11/2018</u></p>
	8-11-2018	<p style="text-align: right;">Member</p> <p>Due to Retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 27-12-2018</p> <p style="text-align: right;"><i>[Signature]</i> Reader</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1292/2018

Sahib zada VS The Secretary, etc;

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4	FIR No.715/	"B"	11 -- 12
5	Judgement dated 05-06-2018	"C"	13 -- 14
6	Impugned order.	"D"	15
7	Copy of Deptl; Appeal & Postal & A.D. Card.	"E" to "G"	16 -- 18
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Total:-


52

Dated:-10-10-2018.

APPELLANT


(Sahib zada)

Through;


Muhammad Adam Khan
Advocate Mardan

Before The Service Tribunal KPK Peshawar.

Service Appeal No. / 2018.

**Sahibzada S/o Gul Zada (Ex-PST) Resident of Village
Jalala Takht Bhai District Mardan.**

Appellant.

Member Pachtunkhwa
Service Tribunal

Diary No. 1524

Dated 11-10-2018

Versus

1. The Secretary, Elementary & Secondary Education
Deptt; KPK Peshawar.
2. The Executive District Officer, E.S & E Deptt;
(Male) Mardan.
3. The Director Elementary & Secondary Education
Deppt; KPK Peshawar.

Respondents.

Appeal under Section-4 of the
Service Tribunal Act, 1974, against the order
of The E.D.O/Respondent No.2 contained in
Letter No.10253/G Dated 23/06/2008, removing
the Appellant from service.

Filed to-day

Registrar

11/10/18

1. That the Appellant was appointed as P.S.T and
posted at the Govt; Primary School No.1 Sher Garh
Mardan, vide order dated 23-06-1997.

(Copy Annexure:- "A").

2. that the Appellant was falsely charged in a murder
case alongwith his other family members vide FIR
No. 517 dated 27-06-2007 of P.s Shergarh District
Mardan.

(Copy Annexure:- "B").

3.that the Appellant was acquitted from the said charge vide Judgment dated 05-06-2018.

(Copy Annexure-"C").

4.that on acquittal, the Appellant attended office of The E.D.O / Respondent No.2 on 20-06-2018 for resumption of duty, where he learnt that he is removed from service vide order dated 23-06-2008.

(Copy Annexure- "D").

5.That aggrieved therefrom the Appellant preferred Representation dated 25-06-2018 there against to the Director/ Respondent No.3 on 26-06-2018, through registered A.D. post.

(Copies Annexure- "D" & "E").

6.That the representation is still unresponded.

GROUNDS :-

The impugned order is incorrect, illegal, void and against the principles of natural justice and the same is liable to be set-aside, on the following amongst many other grounds:-

- i. That the material point is kept out of consideration that the Appellant alongwith his family member was falsely charged on malafide intension, on account of previous enmity, which is evident from the Judgment dated 27-07-2016, acquitting Mr Umar Zada, the brother of the Appellant in the same case.

(Copy Annexure-"H").

- ii. That the impugned order was not communicated to the Appellant on his home address.
- iii. That no proceedings were carried-out against the Appellant under the relevant rules.
- iv. That no show cause notice or statement of allegation was served on Appellant.
- v. That the material point is not taken into consideration that the Appellant could not come out of his house, as his life was at risk, on account of blood-shed enmity.
- vi. that the Appellant was acquitted from criminal charge by the court of law.
- vii. that no evidence was recorded in the presence of Appellant, enabling him to disprove the charge, as leveled against him.
- viii. that acquittal of any nature, is held to be acquittal honourably, as per judgements reported as 1998 SCMR page-1993, PLD 2010 Supreme Court Page-695 and many others.
(Copies Annexure- "I" & "J").
- ix. that the Appellant has been jobless, after his acquittal.

x. that the Appellant seeks the leave of this Honourable Tribunal to claim further grounds also.

It is prayed that on acceptance of this Appeal, the impugned order may be set-aside and the Appellant may be ordered to be re-instated into service with back service benefits alongwith any other relief, deemed appropriate by this Hon'ble Tribunal.

The cost of this appeal may be awarded in favour of Appellant against Respondents.

Dated:-

Appellant

[Signature]
(Sahibzada)

Through:-

[Signature]

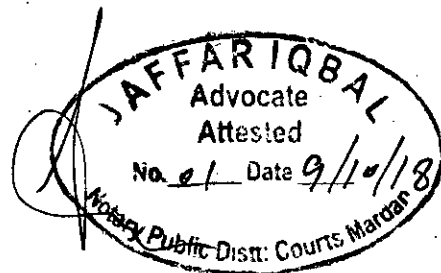
Muhammad Adam Khan
Advocate, Mardan.

AFFIDAVIT

I, Sahibzada S/o Gul Zada /the Appellant, do hereby state on solemn affirmation that the contents of this appeal are true and correct to the best of my knowledge and belief.

Deponent

[Signature]
(Sahibzada)



Before The Service Tribunal Peshawar.

Appeal No. /2018.

Said Shah v/s The Education Deptt; etc;

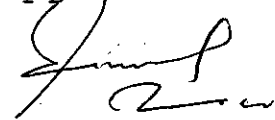
Application for condonation of delay:-

1. that the captioned Appeal is instituted today.
2. That the impugned order was not communicated to Appellant. He learnt about the same on 20-06-2018, when he contacted the office of the E.D.O / Respondent No.2 for resumption of duty and preferred the Representation on 26-06-2018 and thereafter the captioned Appeal within time.
3. That the delay in question was beyond the control of Appellant for want of knowledge about the impugned order.
4. That Valuable rights of Appellant are involved in the captioned Appeal.
5. That the law prefers adjudication of the case on merits.

It is prayed the delay, in question may kindly be condoned in favour of Appellant.

Dated:-

Appellant



(Sahibzada)

Through:-



Muhammad Adam Khan

Advocate Mardan.

Before The Service Tribunal Peshawar.

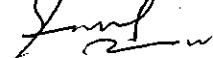
Appeal No. /2018.

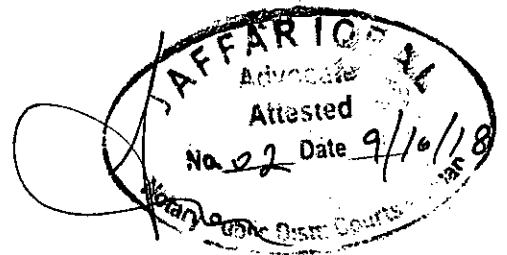
Sahib Zada v/s The Education Deptt; etc;

AFFIDAVIT:-

I, Sahibzada S/o Gul Zada /the Appellant, do hereby state on solemn affirmation that the contents of this application are true and correct to the best of my knowledge and belief.

Deponent,


(Sahibzada)



OFFICE OF THE DISTRICT EDUCATION OFFICER (M) PRA MARDAN.

NOTIFICATION

Annexure - A

Consequent upon their selection by the Deptt. selection committee, the District Education officer, (M) PRA MARDAN has been pleased to appoint the following trained FPO Candidates at the school noted against their names in BPS-7 (Rs: 1480-21-2695) plus usual allowances as admissible to them under the rules with immediate effect subject to the existing terms and conditions:-

S.No.	Name, Father's Name/Address:	No. & Merit list.	School where Posted.	Remarks.
1	2	3	4	5
OPEN MERIT.				
1.	Mohd: Abaleeq S/O Mohd: Ismail R/O Dera Hoti.	1/18	G.S, No. 1, Kass Kurcna.	Vice Nasir Khan Term:
2.	Sajid Ali S/O Mirzad Gul R/O Tariq Colony Mardan.	2/18	,, Sharqi Hoti.	Vice Salim Shah.
3.	Otaibullah S/O Mohd: Arif R/O Naw Bahadra.	3/18	G.P.S, Sharqi Hoti.	Vice Abid Shah Ter:
4.	Abdul Akber S/O Sherzai R/O Parichan Mardan.	4/18	,, Hoti.	Vice Zubair Ali Ter:
5.	Dilawar Khan S/O Ghulam Qadir R/O Shahi Bugh Hoti.	5/18	,, Karwan Road.	Vice Sajid Jamal Ter:
6.	Mushtaq Ahmed S/O Gul Zarin R/O Duran Abad.	6/18	,, Shah Dandh No. 1.	Post already occupied.
7.	Sardar Hussain S/O Imtiazullah R/O Babu M. Hailah Mardan.	7/18	,, Railway Station	already occupied.
8.	Asif Sultana S/O Faqir Hussain Mohd: Muslim Abd Mardan.	8/18	,, Surkh Dhari Mardan.	-do-
9.	Ahmed Ali S/O Ghulam Jilani R/O Ahksoor Manzil.	9/18	,, Baricham.	Vice Hazrat Ali Ter:
10.	Mohd: Ullah S/O Iqbar R/O Hoti Mardan.	10/18	,, Kashmir Abad.	,, Nasir Khan.
11.	Mohd: Javed S/O Sher Mohd: R/O Fale Shah Mardan.	11/18	,, No. 1, MARDAN.	,, Awais Khan.
12.	Sher Wali Khan S/O Sher Jang R/O Jazona Ground.	1/19	G.M.P.S, Fazel Shah Farah.	Already occupied.
13.	Yahya Khan S/O Amir Mohd: R/O Seddi. Khel. G. Kapoora.	2/19	,, Sufaid Khan.	Vice Khair- Mohd: Teru:
14.	Wazirullah S/O Waza Gul R/O Ghazib Abad.	3/19	,, Uzair Kandar.	Vice Nawab- Ali Term:
15.	S. Anwar Hussain Khan S/O S. Ahmed Hussain R/O G. Kapoora.	4/19	,, Spin Jumat.	Vice Badar- Khan Term:
16.	Imyatullah S/O Mohd: Israas R/O Shabbag Garhi.	5/19	,, Khatako Korogh.	Already occupied.
17.	Abdul Ghafar S/O Sanobar Khan R/O Bazar.	5/19	G.P.S, Bazar No. 2.	Vice M. Hayat Hayat
18.	Nazirullah S/O Fakbar ullah R/O G. Kapoora Mardan.	5/19	G.M.P.S, Anar Saig.	,, Mohd Shari term:
19.	Ali Akhtar S/O Mir Akbar, R/O Garhi Kapura	8/19	G.P.S, Saandir.	Vice, Marcud Khan Term:
20.	Mohd: Anwar S/O Amir Nosh R/O Karbar.	9/19	G.P.S, Gumbat,	Already Occupied.
21/	Sufaid Khan S/O Ghulam Rahman R/O D.G. Sai.	10/19	G.P.S, Qari Abad.	Vice: Mohd: Tofail Ter:
22.	Abid Ali S/O Khan Said R/O Mohd: Tanda	11/19	G.M.P.S, Muqbara Jumat.	Post Already Occupied.

(Cont: Page... 2)

23.	Intiaz Ahmad S/O Mohd:Shah R/O G.I.Zai	12/19	GPS, Kess Kili	Vice Malik Amar Ter:
24.	Safar Ahmad S/O Saifurrahman R/O A.I.Zai.	13/19	GMPS, May Khalil	Vice Ha Jon Ahan Term:
25.	Ibrahim Ahmad S/O Wali Ullah R/O Mayar.	14/19	GPS, Kess Kili SAP	Vice Shakil Ahmed Term:
26.	Mohd:Yaz S/O Masafar Khan R/O Safi Abed.	15/19	GPS, Gumbat SAP	Vice Abdul Gaffar Term:
27.	Hazrat Hussain S/O Hamaishgul R/O Merdan.	3/6	GPS, Parhati No.1	Already Occupaid
28.	Shah Fazil Ud Din S/O S;Burhan Ud Din R/O Mustaz.	2/6	GPS, Ghulam Sarwar Korena.	-do-
29.	Mukamil Shah S/O Mohd:Inam R/O Ijera Ali	5/6	GPS, Shinday	-do-
30.	Mohd:Ikram S/O Khan Bahadar R/O Mustaz.	1/20	GMPS, Salim Khan	-do-
31.	Murad Ali Shah S/O Hasham Khan R/O Qamar Gai	2/20	GMPS, Qamar Gay.	Vice Muslim Khan Term:
32.	Mohd:Tariq S/O Mohd:Sharin R/O Garyala.	3/20	GPS, Garyal Khas V;	Mohd:Arif Term:
33.	Hidayatur Rahman S/O Abdul Qados R/O Pal; Dhaki	4/20	GMPS, H:Ahmed Khan	Vice Hakim Khan Term:
34.	Mohd:Yousaf S/O Shamsustarais R/O Shah Baz Garhi	5/20	GPS, Baghicha Dheri	V: Safaid Mohd:Term:
35.	Mohd:Imtaiz S/O Mohd:Yaz R/O Mustaz.	6/20	GMPS, Adda Masjid	V: Mohd: Shaib Term:
36.	Sajid Ali S/O Abdur Rashid R/O Rustam	7/20	GPS, Khant K. tx. Chanoang Khat	V: Hafiz Mohd: Israr Term:
37.	Mohd:Usman S/O Mohd:Harsh R/O Mustaz.	8/20	GPS, Pathma	Already Occupaid.
38.	Mahmud Ali S/O Shamas Gul R/O Jungara.	9/20	GPS, Sawal Dher No.1.	V: Muslim Khan Term:
39.	Mohd:Shah S/O Fida Mohd: R/O Gujarat.	10/20	GPS, Gharif abad	V: Mohd:Zahid Term:
40.	Mohd:Qasim S/O Fida Mohd: R/O Kho Kheil	11/20	GPS, Bahshali	V: Hussain Mohd: Term:
41.	Ali Ahmad S/O Jama Khan R/O Kodinaka.	12/20	GPS, No.2. Gaddar	V: Ihsanullah Term:
42.	Si Abdul Nasir S/O S; Abdul Qahar R/O Rustam.	13/20	GPS, Sajawal Banda	V: Farzand Term:
43.	Ahmad Ali S/O Si Abdul Hakim R/O Gujarat.	14/20	GPS, Sajawal Banda	V: Farzand Ali Term:
44.	Most Mohd: S/O Farid Khan Gujarat.	15/20	GPS, Surkh Dheri	V: Aziz Ahmed Term:
45.	Shahjehan S/O Jamshid R/O Nasir Kili	16/20	GPS, Sajawal Banda	V: Mohd:Reza Term:
46.	Zahid Ali Shah S/O S; Jonar Shah R/O Gujarat.	17/20	GMPS, Darululom	V: Adad Ali Tefat
47.	Faiz Rahman S/O Bahram Khan R/O Sabul Kili	18/20	GPS, Kata Khat	V: Hamayun
48.	Lal Shahr S/O Said Quresh R/O Wali Begh.	19/20	GMPS, Ghakhay	V: Rabnawaz Term:
49.	Zafar Iqbal S/O Noor Tamash R/O Nashi	20/20	GPS, Kessmalandri	V: M:Yaz Term:

60/22 GPS, Asif Kili V: Masal Khar Term
 R/O Juggara.
 61. Ghulam Nabi S/O Mohd: Younas
 R/O Mir Baz Ghaz.
 62. Sarfaraz Khan S/O Ali Rahman
 R/O Karim Kili
 63. Zahid Badshah S/O Gulab Said
 R/O Shah Baig.
 64. Zahid Khan S/O Hazrat Said
 R/O Saro Shah.
 65. Wahid Shah S/O Jaffar Shah
 R/O Asif Kili
 66. Mohd: Zubair S/O Gul Mohd:
 R/O Sheikh Yousaf.
 67. Mohd: Tariq S/O Mohd: Anwar
 R/O Mirsalam
 68. Munir Khan S/O Musa Khan
 R/O Saro Shah
 69. Mohd: Tahir S/O Ghulam Sarwar
 R/O Maho Dheri.
 70. Shoukat "li S/O Readad Khan
 R/O Sari Ahlol.
 71. Umar Zada S/O Nisar Jan
 R/O Masdar Abad.
 72. Gohar Ali S/O Habib Khan
 R/O Jan Khan "ili
 73. Mohd: Tariq S/O Akbar Said
 R/O Andai.
 74. Said Mohd: S/O Mohd: Hussain
 R/O Shah Baig.
 75. Zavar Hussain S/O Mohd: Quresh
 R/O Chantar.
 76. Bashir Ahmad S/O Wazir Zada
 R/O Sari Bahlol
 77. Saif Wali Khan S/O Khan Said
 R/O Gujar Garhi
 78. Bahat Zada S/O Ghul Sher
 R/O Ghul Sher
 79. EF-23
 80. Farooq Khan S/O Latif Shah
 R/O Aho Dheri.
 81. Suliman S/O Azad Gul
 R/O Jalala.
 82. Akbar Khan S/O Khan Gul
 R/O Hashnaghara Kili
 83. Sawab Gul S/O Rahmat Gul
 R/O L/K.
 84. Sahib Zada S/O Gul Zada
 R/O Jalal
 85. Masood Shah S/O Muzafar Shah
 R/O Shah Baig.
 86. Redwanullah S/O Amir Mohd: Khan
 R/O Qanda Ghar
 87. Ihtishamul Haq S/O Ihsanul Haq
 R/O Azazi
 88. Ais Mohd: S/O Sher Mohd: R/
 L/K.
 89. Sattar S/O Sardan Khan R/
 Kaudari
 90. Shahid Ali S/O Ferdos Khan S
 R/O Sanga.
 91. Alam Khan S/O Roshan Khan
 R/O Sher Garhi.
 92. Shakirullah S/O Sher Mohd:
 R/O Ghano Dheri.
 93. Gulfaraz S/O Gul Khatib
 R/O Safi bad.
 94. Zamarud Shah S/O Asim Khan
 R/O Takkar.
 95. Nor Mohd: S/O Ghazi Khan
 R/O Sajan Kili

61/22 GPS, Gujar Garhi V: Aminulhaq Term:
 62/22 GPS, -dp- V: Iqbal Hakim Ter:
 63/22 GPS, Amia Kili V: Masal Khar Term
 64/22, GMPS, Azim Kili V: Sher Khan Term:
 65/22 GMPS, Jan Khan Kili V: Hamid Term:
 96/22 GPS, Kandar 2 V: Wahid Gul Term:
 66/22 ~~GPS, Sarwar Shah 2~~
 GPS, no. 1. T. B. V: Munir Khan Term
 67/22 GPS, Saro Shah 2. Post already Omp:
 68/22 GPS, Pir Abad V: Rahmandin Term:
 69/22 GMPS, Swato Kili V: Saeedullah Term:
 70/22 GMPS, Umar Khan V: Ihsanur Rahman Ter:
 71/22 GPS, T/B 2. V: Hassib Ter mi
 74/22 ~~GPS, Sarwar Shah 2~~
 GPS, Ghaz Kili V: Mohd: Raiz Term:
 75/22 GPS, Qamar Gai V: Mohd: Nabi Term:
 99/22 GPS, ~~Kandari No. 2.~~ Post already occupied
 77/22 GPS, ~~Sarwar Shah 2~~
 Chantar V: Saeed Iqbal Term:
 78/22 GPS, Khura Banda V: Sabz Ali Term:
 79/22 GPS, Manga 2 V: Masal Ahmad Term:
 74/23 GPS, Qamar Abad V: Mujahid Term:
 75/23 GMPS, Balo Kili V: Payaw Khan Term:
 78/23 GPS, Shubla V: Bahad Badshah Term:
 79/23 GPS, Sher Garh V: Zafar Ali Term:
 80/23 GPS, Sher Garh 1 V: Fazal Hussain Ter:
 81/23 GPS, Nouroz Abad V: Minhas Ali Term:
 82/23 GPS, Shah Dand 2. V: Sher Dil Term:
 83/23 GPS, -dp- V: Minhaj Term:
 84/23 GPS, Landai Shah V: Gohar Ali Shah
 Term:
 85/23 GPS, kotkey V: Abdul Wahab Term:
 86/23 GPS, Hisar Banda Xr A.V.F.
 87/23 GPS, Moti Payan V: Aziz Ahmad Term:
 88/23 GMPS, Jamadar Korona V: Fayaz Ahmad
 Term:
 89/23 GMPS, Tor Dher V: Ziaul Haq Term:
 90/23 GPS, Madi Baba V: Israr Ali Term:
 91.23 GPS, Zarin Abad V: Nordanaz Term:

Page 9

401. Faali Amin S/O Ghulam Qadar
R/O ..zizia
Sarir Khan S/O Raz Khan
R/O Mir Galdi.

92/23 GPO, Chiragh Din 2 V; M. Nazeem Termination
93/23 GPO, Pto-- V: Qazi Hazen Termination

DISABLED PERSONS 1%.

- 402. Mohd: Riaz S/O Abdul Malik R/O Lund Khwar. 1/Disabled. GFS, Salim Khan. Vice, M. Nisar.
- 403. Amir ullah S/O Ashraf Khan R/O Landi. 4/Dis: Khudir Khan, Vilal Badshah. Termination
- 404. S. Asghar Ali Shah S/O Feroz Shah. 5/Dis: Salim Khan. Mohd: Ikram Termination
- 405. Mohd: Iqbal S/O Mira Khan Marjan. 6/Dis: Shah Killi. Vice, Shah Nawaz Termination

TERMS AND CONDITIONS:

1. Their appointments are purely on Temp: basis and subject to termination at any time with out any reason or notice.
2. In case of resignation they have to submit one month's prior notice to the Deptt: or forth one month's pay and allowances thereof to the Govt:.
3. They are required to produce Health and Age Certificate from M/S DHQ Hospital Mardan before taking over charge.
4. In case they fail to take over charge of the post with in 15 days of the issue of this letter, their apptt: order shall automatically be cancelled.
5. Their original certificates etc should be checked before handing over charge.
6. Charge report should be sent to all concerned.
7. No. TA/DA etc is allowed to any one being First appointment.
8. The Academic certificate may also be verified from the quarter concerned.
9. The original PTO Certificate will be checked/verified by the Edu: apptt:.

(MR. GHULAM AKBAR),
DISTRICT EDUCATION OFFICER, (M.L.E.)
PRIMARY MARDAN.

Endst: No. 1176-1590 / Dated Mardan the 23/6 / 1997.

Copy to the:-

1. Section Officer Primary Education Deptt: NwFz Peshawar.
2. Director Primary Education NwFz Peshawar.
3. DNO Mardan (4) SDEO (M) Mardan/Takht Bhai.
4. Supdt: Local Office. (5) ADEO (A) Local Office.
6. Candidates concerned.

APRAR KHAN.
MUNIR KHAN:

checked with

23/6/97
DISTRICT EDUCATION OFFICER,
(M.L.E.) PRIMARY MARDAN.

A

ATTESTED

ADAM KHAN

تاریخ وقت رپورٹ	27/6/2015	تاریخ وقت تقریب	27/6/2015
نام و کنوینٹنٹ	امیر اورنگ زیب خان صاحب اور کنوینٹنٹ لیاقت علی ولد حفرت و بی بی خورشید بیگم		
فہم کیفیت (مردہ) حال اگر کچھ لگا ہو	308/34		
بائے ذوق حاصل قضاوت اور مست فیروز علی خان صاحب	امیر اورنگ زیب خان صاحب		
نام و کنوینٹنٹ	امیر اورنگ زیب خان صاحب		
کاروائی کی تفتیش	محقق کی گئی اگر اطلاع درج ہو تو تفتیش ہو اور توجہ بیان کرو۔		
قضاوت درائی کی تاریخ و وقت	بطور پیشگی رپورٹ		

امیر اورنگ زیب خان صاحب کنوینٹنٹ لیاقت علی ولد حفرت و بی بی خورشید بیگم کے ساتھ 27/6/2015 کو رپورٹ کرنا تھا۔ امیر اورنگ زیب خان صاحب نے رپورٹ میں لیاقت علی ولد حفرت و بی بی خورشید بیگم کے بارے میں بتایا کہ وہ 27/6/2015 کو رپورٹ کرنا تھا۔ امیر اورنگ زیب خان صاحب نے رپورٹ میں لیاقت علی ولد حفرت و بی بی خورشید بیگم کے بارے میں بتایا کہ وہ 27/6/2015 کو رپورٹ کرنا تھا۔ امیر اورنگ زیب خان صاحب نے رپورٹ میں لیاقت علی ولد حفرت و بی بی خورشید بیگم کے بارے میں بتایا کہ وہ 27/6/2015 کو رپورٹ کرنا تھا۔

C

۱۔ برطرفت۔ اہل حق و عدل کے لئے۔
 یونٹس ماہانہ و اہل حق و عدل کے لئے۔
 نقشہ معقول آڈان طرز اسٹیبلشمنٹ کے لئے۔
 جہانگیر گڑھ کو جو بنوایا گیا ہے اس کے لئے۔
 درجہ اولیٰ تا چوتھے درجہ کے لئے۔
 ۲۰۰۶ اور سال ۲۰۰۷ کے لئے۔
 کارروائی کے لئے۔
 ۲۰۰۷ اور سال ۲۰۰۸ کے لئے۔
 ۲۰۰۷ اور سال ۲۰۰۸ کے لئے۔
 ۲۰۰۷ اور سال ۲۰۰۸ کے لئے۔

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ASIPSSC
 27.6.07

ASIPSSC
 27.6.07

نوٹ: اطلاع کے لئے۔
 حروف الفبا پر مشتمل نام ہر ایک کے لئے۔
 حروف الفبا پر مشتمل نام ہر ایک کے لئے۔
 حروف الفبا پر مشتمل نام ہر ایک کے لئے۔

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Order--11
05.06.2018

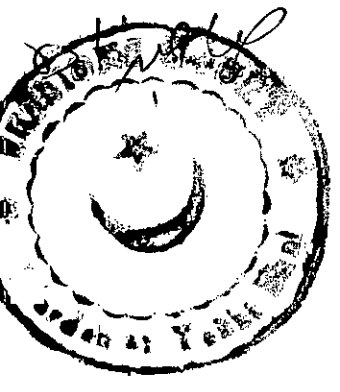
Arshed Khan APP for the State present. Accused, Sahib

Page-13

Zada on bail with counsel present.

Annexure "C"
ATTESTED
Mr.
ADAM KHAN

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In the instant case complainant Liaquat Ali charged accused facing trial Sahib Zada alongwith two other absconding accused for causing injuries to him as well as causing murder of his brother Tahir Ali and father Hazrat Wali. During the trial, compromise was produced and in pursuance thereof joint statement of legal heirs of both the deceased, i.e Mst.Ajmeena (widow) Haidar Ali, Liaquat Ali, Mansoor Ali, Sabiha, Robina, Amreena, Shehla and Sara were recorded wherein they deposed that a genuine compromise has been affected with the accused facing trial and that there is no other legal heirs of both the deceased. It was further submitted that on account of compromise they have got no objection on the acquittal of accused facing trial. Apart from statement of above named legal heirs of deceased, joint statement of elders of the locality namely Haji Javid and Sohrab Gul also recorded towards determination of compromise as well as the legal heirs of deceased. Proforma of compromise in respect of deceased, Hazrat Wali is Ex.PA and with regard to deceased Tahir Ali is Ex.PB, whereas photocopies of CNICs of legal heirs of both the deceased, are Ex.PB/1 to Ex.PB/7 respectively and that of photo copies of elders of locality are Ex.PA/8 and Ex.PA/9. Whereas for minor legal heir Mst.Basirat her share out of

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ATTESTED

Session Copying Branch
Session Court Mardan
of Tahrat Bhai

C

Diyat amount i.e Rs.55,000/- were deposited in the court and National Saving certificates were purchased through the Naib Nazir, the photo copies of which are placed on file.

3. Moreover, the SHO PS Shergarh was also directed vide order of this court dt.25.05.2018 to verify the genuineness of compromise as well as legal heirs of deceased and to submit report accordingly. The report of the SHO consists of six pages including list of legal heirs received today and is in affirmative, which are Ex.PC.

4. From the statement of the legal heirs, elders of the locality, police report, this court is satisfied that a genuine compromise between the parties have been effected. The Sections of law are compoundable, hence, compromise stands accepted and accused facing trial namely Sahib Zada is hereby acquitted of the charges leveled against him through FIR No: 517 dated 27.06.2007 U/Ss 302/324/34 PPC of P.S.Shergarh. Accused is on bail. His sureties stand discharged from the liabilities of bail bonds. Case property be intact till the arrest of absconding co-accused. File be consigned to record room after necessary completion.

Announced
Dated: 05.06.2018

(ASGHAR SHAH)
ASJ-II, Takht Bhai.

05/06/18

ATTESTED
Session Court Branch
Session Court Mardan
at Takht Bhai

ATTESTED
Session Court Mardan
at Takht Bhai

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (ELEM. & SEC. EDU.) MARDAN

NOTIFICATION

ATTESTED

ADAM KHAN

Whereas Mr. Sahib Zada PST, GPS Jalala No.1 was ^{wilful} full absent from duty.

AND WHERE AS an enquiry committee headed by Mr. Shah Nazar Khan DDO (M/P) Takht Bhai was constituted to conduct enquiry against the accused for the charges leveled against him in accordance with the rules.

AND WHERE AS the enquiry committee after having examined the charges and evidence on record had submitted its report.

AND WHERE AS a show cause notice thereafter in Daily Mashriq dated 24/05/2008 was served upon the official to explain his absence from duty otherwise exparte action shall be taken against the official but he failed.

Now, therefore, in exercise of the power conferred by the NWFP, Removal from Service (Special Power Ordinance 2000) the undersigned being competent authority is pleased to impose major penalty of the removal from service w.e.f. 27/06/2007 i.e. date of absence from duty upon Mr. Sahib Zada PST, GPS Jalala No.1 Takht Bhai.

C
10253/G

(AMIR BAHADAR KHAN)
EXECUTIVE DISTRICT OFFICER
(ELEMENTARY & SEC. EDU.) MARDAN

Endst. No. _____ / Sahib Zada/PST, Takht Bhai Dated 23/6 /08.
Copy forwarded to the :-

1. District Accounts Officer Mardan.
2. District Co-ordination Officer Mardan.
3. Deputy District Officer (Male/Primary) Takht Bhai.
4. Head Teacher GPS Jalala No.1
5. Assistant Deputy Distt. Officer Circle Takht Bai.
6. Master File.

1307
1/8/08

Removed from service under special power Ordinance 2000 w.e.f. 27/6/07 from duty and the fulfillment of legal formalities vide EDO s/l Mardan No 10253/G/Sahib Zada dated 23/6/08

Mohad Ali

EXECUTIVE DISTRICT OFFICER
(ELEMENTARY & SEC. EDU.) MARDAN

DDO (M/P)
Takht Bhai

O/O the DDO M/P T. Bhai
End No 9715-16 F No/S. Zada/PST dated 28/6/08

- 1: EDO s/l Mardan for information
- 2: A DO sign with the remarks to make the entry in the stubs of S. Zada and then put before the U.S.

[Handwritten signature]

Officer
(M) Pri: Takht Bhai

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Regd A/D

ATTACHED

ADAM KHAN

کضوبر جناب ڈائریکٹر صاحب محلہ تعلیم ہونہ شہر کھٹواہی ارد
اپیل لبر خاستگی حکم لبر خاستگی ملازمت

جناب عالی گزارش ہے کہ سائل کو ای ڈی او ضلع سرواڑے ہونے
جسٹی نمبر 3/25 مورچہ 06/23 ملازمت سے لوجہ مبنیہ
قصداً غیر حاضری لبر خاستگی کیا ہے۔

والا! میں لبر کنڈ قصداً و عمداً تو لری سے غیر حاضر نہیں
رہا تھا۔ بلکہ میرے پورے خاندان کے افراد کے خلاف
علت نمبر 517 مورچہ 06/27 تھانہ شہر گوردہ میں مبنیہ
قتل کے سلسلہ میں جمعوی دعویداری کی گئی تھی۔ جس کی
وجہ سے میں ملازمت پر حاضر نہ ہو سکا تھا۔ جہیلہ کافی
مرہہ میں حوالات میں بند رہا۔

اب مورچہ 05/06 کو مجھے جناب ایڈیشنل سیشن جج ایف بی
کے عدالت نے بری کر دیا ہے۔ نقل فیصلہ لف ہے۔

عرض ہے کہ نہ تو میرے خلاف بمطابق قواعد صفائی کا
موقع دیا گیا ہے۔ اور نہ کوئی حکمانہ کاروائی بمطابق
قانون کی گئی تھی۔

مجھے لبر خاستگی کے بابت حکم سے بھی لبر رہا لکھا گیا ہے۔
قدورہ حکم مجھے ارسال نہیں کیا گیا تھا۔ جس کا علم
مجھے مورچہ 06/22 کو اس وقت ہوا۔ جب میں نے
بری ہونے کے بعد سکول سے رابطہ کیا۔

استدعا ہے کہ مجھے ملازمت پر بحال و رعایت ملازمت بحال
کیا جائے۔

آپ کا تعداد صاحب زادہ P.T گورنمنٹ پرائمری اسکول
سکول کمالہ گردان
پتہ 1۔ صاحب زادہ ولد گل زادہ موضع کمالہ گردان

اسد علی

E

ATTESTED

ADAM KHAN
ADAM KHAN

No. 140

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

Rs. 40 F

Received a registered*
parcel sent to

26/06/18
ADAM KHAN
Date Stamp

*Write here "letter", "postcard", "packet" or "parcel"
Signature of Receiving Officer with the word "insured" before if when necessary.
Insured for Rs. (in figures) *1000* (in words)

Insurance fee Rs. _____ Ps. _____ (in words)
Weight _____ Kilo _____ Grams

Name and
address
of sender

ADAM KHAN
26/06/18

ATTESTED
ADAM KHAN

RP-54

وہیبت

رجسٹری یا میرے بھنے والے کو اشتہر برائے کے پتے پر ارسال کیا جاتا ہے

ڈاکٹر بلال صاحب صاحب تعلیم صدر دفتر

برائے (نام) مکتوب نمبر 1 اور

پیر کی تاریخ (وزن و حجم میں) گرام

تاریخ تقسیم

مکتوب الیکٹرونک

☆ یہاں پر کسی صورت میں اشتہر نہیں لیا جائے۔ اس صورت میں اشتہر لیا جائے۔

☆ صرف برقی صورت میں اشتہر لیا جائے۔ اس صورت میں اشتہر لیا جائے۔

قیمت اس روپے - Rs. 10/-

140



ACKNOWLEDGEMENT DUE CARD

نام صاحب ذادن

پتہ MUHAMMAD ADAM KHAN
B.A LLB Advocate
High Court Marican

ڈاکخانہ ضلع تحصیل

پوسٹ کوڈ

(پوسٹ کوڈ لکھنا ضروری ہے)

**IN THE COURT OF LIAQAT ALI,
ADDITIONAL SESSIONS JUDGE-II, TAKHT BHAI**

Sessions Case No: 60/SC of 2014

Date of Institution: 20.5.2014
Date of Decision: 27.07.2016

ATTESTED

ADAM KHAN
ADAM KHAN

STATE Vs. UMARZADA

CASE FIR NO.517 DATED 27.6.2007
UNDER SECTIONS 302/34 PPC
P.S Sher Ghar, TAHSIL TAKHT BHAI

JUDGMENT:

1. Accused Umar Zada sono of Gul Karosh r/o Jalala, Tehsil Takht Bhai is facing trial in case FIR No.517 dated 27.6.2007 under sections 302/34 PPC registered at police station Sher Ghar, Tehsil Takht Bhai.

2. Facts in brief of the case according to FIR Ex PA on 27.6.2007 at 11.45 hours complainant Liaquat Ali son of Hazrat Wali in injured condition with his father injured Hazrat Wali son of Mian Gul in unconscious condition were brought in Datsun to Mardan Hospital where in casualty he reported that today he along with Tahir Ali his brother, Hazrat Wali his father came out from their house for proceeding to Takht Bhai courts in connection of their case when they reached near Masjid Purana Bazar Jalal thoroughfare, there at 10.15 hours Umar Zada., Sahib Zada, Amir Nawab sons of Gul Zada were already present duly armed with firearm. His brother Tahir Ali and father Hazrat Wali were ahead a few paces from his. Accused on seeing them started firing at them whereby both his father and brother were hit and injured while accused while decamping from the spot beaten him with butts of their weapons whereby he got injured. Tahir Ali his brother died on the spot while his brother died as soon as was brought to Casualty of hospital. The occurrence has been witnessed beside him by Shah Wali son of Anwar and other so many persons. Motive for the offence was that Hifsa d/o Amir Nawab was married to him for the last three month and has obtained divorce from him, thus he charged the accused for causing him injuries and for Qatle Amd of his brother Tahir Ali and father Hazrat Wali.

*Attested & Sessions Judge II
Takht Bhai.*

3. The case was investigated and after completion of investigation complete challan u/s 512 CrPC was sent for trial against the accused and after completion of proceedings u/s 512 CrPC, accused were declared proclaimed offenders vide order date 19.6.2008 by the then Addl. Sessions Judge, Takht Bhai. After arrest of accused facing trial Umar Zada, supplementary challan against him was sent to the court for trial.

4. Accused facing trial was summoned and after his attendance, provision of section 265-C Cr.P.C was complied with. Charge against the accused was framed to which he pleaded not guilty and claimed trial.

5. Prosecution in support of its case and the charge against the accused examined 12 witnesses.

6. Gist of prosecution evidence is as under:-

PW-1 Muhammad Zaman SI chalked out FIR Ex PA on receipt of Murasila.

PW-2 Alamzeb constable stated that warrant u/s 204 CrPC against accused facing trial was entrusted to him and he went to his village and also searched him in the surrounding area but it was reported to him that after the occurrence, he has gone into hiding. He endorsed his report on the warrants. The warrant is Ex PW 2/1 and his report is Ex PW 2/2. Likewise, proclamation notice u/s 87 CrPC was also handed over to him which he served in accordance with law and the same is Ex PW 2/3 and his report thereon is Ex PW 2/4. In his cross examination he stated that he himself obtained warrant u/s 204 CrPC and proclamation u/s 87 CrPC from concerned Magistrate and added that applications for the said purpose were drafted by the IO. He further stated that on the following day of obtaining warrant he went behind the accused. He stated that he scribed ID card number of one of signatores namely Said Mehmood. He stated that he has not mentioned in his report that who disclosed the house of accused facing trial to him. He further stated that he had not prepared the sketch of the house of accused facing trial.

Addl. Sessions Judge
Takht Bhai.

He denied the suggestion that he has not visited the village of accused facing trial and completed fake formalities in the PS.

PW-3. Zain Khan FC No. 799 stated to had brought Murasila from casualty hospital to PS for registration of case.

PW-4 Fazal Sher SHO stated to had submitted supplementary challan against the accused on 19.4.2014. He further stated that he is well acquainted with hand writing of Khan Khel SHO who had submitted complete challan u/s 512 CrPC in the instant case on 11.7.2007.

PW-5 Dr. Muhammad Zahir Shah stated that on 27.6.2007 at 11.30 AM he has conducted autopsy on the dead body of deceased Tahir Ali and found the following.

EXTERNAL EXAMINATION

1. FA entry wound on left axilla size ¼ x ¼ inch.
2. FA exit wound n right shoulder size 1 x 1 inch.
3. FA entry wound on right patecca size ¼ x ¼ inch.
4. FA exit wound on popliteal fossa size 1 x 1 inch.

INTERNAL EXAMINATION

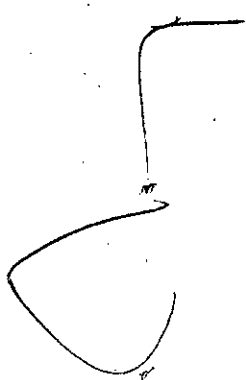
Thorax: Except larynx and trachea, all parts were injured. He opined that the case of death of deceased was due to firearm injuries to the vital organs i.e lungs, heart and major blood vessels. He has given time between injury and death instantaneous while between death and PM within two hours. The PM report is Ex PM and his endorsement on injury sheet and inquest reports are Ex PM/1 and Ex PM/2 respectively. He was further examined as APW-5 and he stated that on 27.6.2007 he had examined injured Liaqat Ali and found the following.

1. Abrasions on face.
2. Whole body pain.

Result: Blunt/simple

He has exhibited his medicolegal certificate as Ex APW 5/1.

During cross examination he stated that he had not obtained signature or thumb impression of the identifier. He denied the suggestion that infact nobody identified the dead body that's why he has not obtained their signatures. He stated that the dead body was brought to the hospital about 15 minutes prior



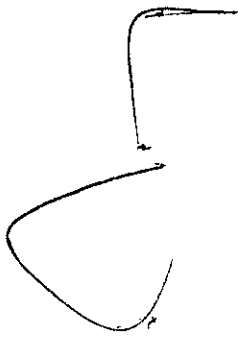
M-4 District & Sessions Judge
Takht Bhai.

to conducting the autopsy and he started autopsy on 11.30 am. He stated that he found two entry wounds and entry wound No. 1 became fatal. He stated that he cannot confirm or deny the suggestion that in view of the same size entrance wound, the occurrence is the result of involvement of a single person from the same place through a single weapon. He stated that while taking the maximum time laps between death and PM, i.e. two hours, in juxtaposition with the time of examination i.e. 11.30 am, then in his opinion the occurrence goes to 9.30 am. He denied the suggestion that injured was initially examined by some other medical officer. He stated that he has not mentioned time of arrival of injured in hospital, however, mentioned the time of his report as 10.00 AM. He admitted correct that injured might have reached to the hospital before 10.00 AM. He further stated that abrasion can be caused through a blunt weapon, due to friction or fall over a rub surface. He admitted correct that both the injuries on the injured were not of that much alarming nature that injured could have been referred for special treatment.

PW-6 Wali Rahman stated to be marginal witness to recovery memo Ex PW 6/1 vide which the IO took into possession blood through cotton from the spot from the place of deceased Tahir Ali and seal the same into parcel. During cross examination stated that deceased Tahir Ali was his nephew and a child came to his house and informed him regarding occurrence at about 11.00/12.00 hours. He has further stated that before his arrival to the place of occurrence, police party has already reached there. He further stated that blood was taken near from the house of Rasul Khan and Masjid.

PW-7 complainant Liaqat Ali narrated the story of FIR and further stated that he lodged the report in shape of Murasila Ex PA/1 which correctly bear his signature and one Shah Wali also signed his report as endorser. That the IO prepared the site plan at his instance. During cross examination he stated that PW Shah Wali, Aftab and Noor Muhammad are alive and witness Noor Muhammad is residing at Jalala while Shah Wali in Bunair and Aftab is abroad now-a-days. He admitted correct that all the above named witnesses

cannot come with him for recording their statements. He denied the suggestion that infact he was already in hospital as he was beaten by somebody and was lying in the hospital. He further denied the suggestion that his report is false and concocted one, therefore, the above witnesses avoided to come to court and adduce false evidence. He stated that he has not disclosed his report in hospital that firstly they were taken to Ganjai Hospital. He admitted that he did not report the matter in Ganjai hospital as police officials were not available there. He denied the suggestion that infact he was already in hospital and was not present at the time of occurrence in the village that's why he did not report either in Civil Hospital Ganjai or PS. He stated that accused Sahibzada, dead accused Amir Nawab and accused facing trial are his real maternal uncles. He further stated that beside the above named maternal uncles, there were major sons of accused Umarzada and Sahibzada. He admitted correct that they had registered a criminal case regarding house hold dispute against said accused Amir Nawab who was his ex-father in law. He further stated that in said criminal case matter was patched up. He stated that on the day of occurrence his deceased brother Tahir Ali had not taken his breakfast while his deceased father had so not properly take breakfast, however, he took full breakfast after Fajar prayer. He further stated that it was about 10 minutes passed 8.00 am when they went out of their house. He further stated his deceased father and brother came out ahead of him. He further stated the distance from his house till end of Mohallah Kalalan, the thoroughfare is about 50 paces. He stated that the accused were present on the thoroughfare leading towards school and hospital. He denied the suggestion that his point and point of accused facing trial were not visible from each other. He stated that he has not shown any bullet marks to the IO on the surrounding walls. He further stated that the women folk of their house along with other co-villagers came out on the report of fire-shots. He stated that though the accused had got motive with him but they did not done him to death as by them on one hand they were aggrieved from his father and brother who arranged his second marriage within one and half month and other their ammunition were exhausted as



Amir Ghous, Sessions Judge
Tahir Ali

they were having .30 bore pistols. He admitted correct that he has not mentioned the type of weapon neither in his report nor during investigation. He further stated that he has not disclosed in his report nor to the IO that accused facing trial were feeling grudge against his father and brother as they arranged second marriage for him. He denied the suggestion that he introduce the statement for the first time in the court and that advance new motive to the extent of his deceased father and brother. He stated that he had not become unconscious and corps of his brother was not picked up before him as firstly he and his father were shifted. He stated that funeral prayer of his deceased father and brother were offered at 6.00 pm. He denied the suggest that he deposed falsely that's why none from the locality supported his statement.

PW-8 Dr. Wajid stated that on 27.6.2007 at 11.55 hours he examined injured Hazrat Wali who was unconscious and found the following injuries.

1. Firearm entry wound half centimeter on left side on back.
2. Firearm exit wound 1 cm on left side of chest.
3. Firearm entry wound on medial side of left hand.
4. Firearm exit wound on lateral side of left hand.

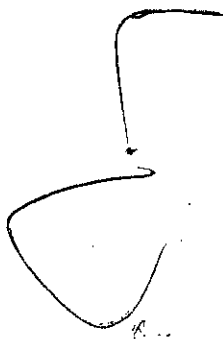
Duration of injuries was about two hours and kind of weapon was firearm. His medicolegal report is Ex PW 8/1 and endorsement on injury sheet is Ex PW 8/2.

Lateron the injured died in the hospital and he conducted his PM examination at 15.15 hours identified by Aftab and Shah Wali and found the external injuries as mentioned above.

INTERNAL EXAMINATION.

Thorax: Walls, ribs, cartilages, pleurae, left lung, pericardium and heart and blood vessels were injured.

He opined that death of deceased was due to firearm injuries to hear, left lung and blood vessels. He had given probable time between injury and death about two hours and between death and PM within 15 minutes. His PM report is exhibited as Ex PM and endorsement on injury sheet as Ex PM/1 and Ex PM/2. During cross examination he stated that time of arrival of



Handwritten text or signature, possibly a name or date, located below the diagram.

injured into hospital was 11.55 hours and the same is time of examination. He admitted correct the over writing on the word unconscious. He stated that he has correctly given the duration of injuries as two hours. He stated that he cannot opine to the extent that for how long the injured was capable of talking. He stated that he has not examined the stomach and its contents nor given the rectal temperature of deceased.

PW-9 Karim Khan SI stated that when BBA of accused facing trial was recalled, he arrested him and issued his card of arrest as Ex PW 9/1 on 16.4.2014. Vide application Ex PW 9/2 he obtained two days custody of accused and on 18.4.2014 vide application Ex PW 9/3 he again produced the accused before the court who was sent to Judicial lock up. He handed over the case file to SHO for submission of supplementary challan. He admitted correct that no recovery, pointation or confession whatsoever was made by the accused during the course of his investigation.

PW-10 Sardar Ali identified the dead body of deceased Tahir Ali before the police.

PW-11 Hassan Khan ASI stated that he is marginal witness to recovery memo Ex PW 11/1 vide which the IO took into possession blood stained clothes of deceased Tahir Ali consist upon qamis, shalwar and sealed the same into parcel. He is also marginal witness to recovery memo Ex PW 11/2 vide which the IO took into possession blood stained clothes of deceased Hazrat Wali consists upon qamis, shalwar having bullets marks and the IO sealed the same into parcel. IO of the case also took into possession blood stained clothes of injured Liaqat Ali consisting upon qamis and shalwar. The clothes of deceased Tahir Ali is Ex P1, of deceased Hazrat Wali is Ex P2 and of complainant Liaqat Ali is Ex P3. He denied the suggestion that nothing was taken into possession in his presence and he being subordinate to the IO has been falsely deposing.

PW-12 Gul Akbar SI stated that on information he came to hospital and prepared the documents regarding the death of deceased Tahir Ali consists upon inquest report and injury sheet Ex PW 12/1 and Ex PW 12/2. During cross examination he admitted correct that while proceeding to THQ Hospital

Ganjai, PP Jalala come in the way. He stated that he was informed when he was on patrolling duty but do not know the exact time of receipt of information as sufficient time has been lapsed. He further stated that when he reached the hospital, deceased Tahir Ali was lying in mortuary. He further stated that information/feedback mentioned in the inquest report was provided to him by identifier of dead body. He denied the suggestion that his proceedings were falsely introduced in order to fill up the lacuna in the case.

PW-12 Muhammad Yaqoob SI stated that Gul Imran Khan SI and Abdul Majeed Khan SI are dead now. They remained with him as his colleagues and he is fully acquainted with their hand writing and their signatures. He seen the Murasila Ex PA/1 written by Abdul Majeed Khan SI along with injury sheet Ex PW 12/1, injury sheet of complainant Ex PW 12/2 and inquest report of Hazrat Wali deceased Ex PW 12/3.

He is also acquainted with hand writing and signature of Gul Imran SI who has prepared the site plan Ex PB, recovery memo of clothes of deceased Tahir Ali, recovery memo of blood taken through cotton from the spot of Tahir Ali, recovery memo of clothes of deceased Hazrat Ali and injured Liaqat Ali Ex PW 11/1, PW 6/1 and Ex PW 11/2. Application Ex PW 12/4 vide which Gul Imran Khan SI applied for warrant u/s 204 CrPC and application Ex PW 12/5 vide which he applied for proclamation u/s 87 CrPC, application Ex PW 12/6 vide which the clothes of deceased and blood stained cotton were sent to FSL correctly bears his signatures. Docket Ex PW 12/7 to Education Department regarding accused Sahib Zada who was teacher, application Ex PW 12/8 vide which he sent blood stained clothes of deceased Tahir Ali, list of legal heirs of deceased Hazrat Wali Ex PW 12/9, application Ex PW 12/10 submitted to Patwari Halqa are also in hand writing of Gul Imran and bears his signature. The FSL report regarding the blood stained clothes is Ex PK. He stated that clothes of both the deceased and injured Liaqat Ali are Ex PW 1 to Ex P3 already taken by Gul Imran SI vide recovery memo Ex PW 6/1. During cross examination he stated that he has not got any proof pertaining to the duties of deceased inspector Gul Imran

Additional Sessions Judge
Lahore District

and sub-inspector Abdul Majeed that they remained with him on duty in a single/same police station. He added that he served for last 40 years and both the deceased was his trainee and remained together for long sufficient time. He admitted correct that IO has not clarified through arrow or in details of the site plan, that in which direction the complainant party was proceeding. He admitted correct that it was categorically mentioned in the detail of point No. 1 of site plan, no blood was recovered. He admitted correct that in the site plan specifically in the detail of point No. 7, allotted to the accused facing trial, there is neither any mentioned regarding the kind of weapon nor any empties have been shown recovered by the IO. He admitted correct that main thoroughfare of the occurrence is situated in village abadi. He admitted correct that near to point No. 1 and 2 houses of Dr. Imran, Sadullah Khan and a goodaown of Fazal Manan have been shown. He further admitted correct that no bullet mark were shown on these houses. He denied the suggestion that he has dishonestly deposed and never remained with the said police officials.

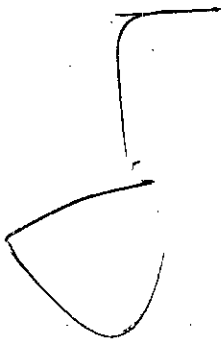
7. After recording of the prosecution evidence, statement of accused recorded under section 342 Cr.P.C wherein he denied the charge leveled against him and the allegations of the prosecution. He wished to examine on oath and also to produce defence evidence.

8. He himself examined as DW 1 and produced Said Ghani as DW 2 and Mst. Haleema as DW 3. Gist of defence evidence is as under:-

DW-1 Accused Umarzada while professing his innocence stated that he was no ill-will with complainant party and infact his deceased brother Amir Zada was having a dispute with them on women folk and that matter too has been compromised. He exhibited compromise documents as Ex DW 1/1 to Ex DW 1/4 and stated that in that case he was not nominated. Infact he is residing at Karachi and during the days of occurrence he brought his paralysis son Shahzada to his native village Jalala for treatment. On the day of occurrence he was invited by his relative Said Ghani, Muhammad Ghani etc at village Hero shah, Malakand Agency for arrangement of marriage of his sons. In village Hero Shah he was informed about the occurrence and that his brothers are charged for the same therefore before zuhr

azan time he left village Hero shah and went to Karachi. At Karachi he was suffered from heart attack, initially took some treatment there but then shifted for his treatment to his native village Jalala and there he came to know that he has been arrayed as accused in this case. During cross examination he admitted correct that Ali Said is his relative from his wife side and daughter of Said Ghani is married to his son. He also admitted correct that daughter of Mst. Halima DW is married to his son Wiqar. He also admitted correct that one of his brother has been passed away during abscondance while his brother Sahibzada is still absconding. He admitted correct that Mst. Hafsa divorced by complainant was married to Sohail son of Bostan. He stated that he do not remember as to how many years ahead of occurrence, he shifted to Karachi. He further stated that he do not have any residential house at Karachi and residing as a tenant. He stated that he got the information of occurrence, on its day that his brother in law and son of his sister were killed and other son of his sister was injured in the occurrence. He further stated that he did not visit house of his said sister for consoling the grieved family. He denied the suggest that he along with absconding and dead accused were real culprits and willfully avoided his arrest while remaining absconder for long time he also denied the suggestion that when they succeeded to won over the eyewitnesses due to threats to their lives, he surrendered before the court to earn his acquittal.

DW 2 Said Ghani stated that accused facing trial was residing in Karachi and had come to his village Jalala for treatment of his son. On the day of occurrence, accused with one Suhail was in his village Hero Shah as he had invited him. It was Wednesday and at about 1.00 pm accused was informed about the occurrence and that his brothers were charged. At evening time accused left his village and further he do not know. During cross examination he stated that his wife and wife of accused facing trial are cousins and his daughter is married to son of accused facing trial. He stated that in his presence the informer has not stated that accused facing trial was also charged. He further stated that he participated in janaza of Amir Nawab dead accused and had not participated in janaza of both



Accused's Lawyer Judge
Taktit Bhai.

the deceased in this case. he denied the suggestion that accused facing trial has come to his house after the occurrence and due to close relationship he was deposing in his favour.

DW-3 Mst Haleema stated that he learned in her house that complainant Liaqat Ali was beaten by Amir Nawab (now dead) and that he was shifted to hospital. Thereafter, he heard fireshots and rushed to the spot where she found her nephew Tahir Ali dead and his father was injured. No body from relatives of deceased was present there and even mother Tahir Ali reached after her to the spot. She has not seen accused facing trial on the spot. Accused is innocent and has been falsely charged. She stated that her daughter was married to the son of accused facing trial. She further stated that she along with accused facing trial, dead accused Amir Nawab and absconding accused were residing at the same street and their houses were situated at a distance of 5 to 8 paces from each other. She stated that her all brothers were aware that they were charged for two murders. She stated that after the occurrence, accused facing trial left for Karachi and shifted there. She denied the suggestion that her three real brothers/accused are actual culprits and have committed murder of two innocent persons and have caused injuries to complainant but she has been threatened that her daughter will be divorced if she did not deposed in their favour falsely.

8. Counsel for the defence while opening the prosecution case, argued that the prosecution has badly proved to prove and bring the charge against accused facing trial beyond any doubt. That the occurrence has not taken place in the manner in which the same is reported and complainant was not present at all at the time of occurrence rather he was at some other place being beaten by some other person but later on introduced to the present case in order to level false charge against the accused facing trial. That there are material contradictions and improvements in the statements of complainant and other eyewitnesses were not produced despite of their availability. That defence evidence clearly shows that accused facing trial were not involved in the occurrence. That defence evidence

showing absence of accused facing trial at the time of occurrence remained un-rebutted. That according to prosecution case the complainant along with deceased were visiting Katchehri at 10.00 am and normally, people came to attend courts early in the morning. That complainant during cross examination has stated that they left the house at some minutes passed 8.00 am and the place of occurrence is at a distance of 50 paces from their house, therefore, reaching to the place of occurrence at 10.15 am create serious doubts about the time of occurrence. That it is not appealable to common mind that the accused were shown alleged motive with the complainant but they spared him and killed his brother and father who had no motive with the accused party. That the FIR and recovery have not been proved because only witness of the recovery proceedings was produced and the investigating officer is dead. That complainant being inimical towards accused facing trial and only sole statement of complainant is not sufficient to hold conviction, hence prosecution failed to prove its charge against the accused facing trial beyond any shadow of doubt and he is entitled to be acquitted.

9. On the other hand SPP for the State and counsel for complainant argued that the occurrence took place at 10.15 am and prompt report at 11.45 am was lodged at Mardan Hospital, keeping in view distance between the place of occurrence and Mardan Hospital. That prosecution has proved the charge beyond any doubt. complainant appearing as PW 7 has recorded trust worthy statement and during his cross examination, his statement remained unsheltered. That accused facing trial and absconding accused are maternal uncle of complainant, therefore, leveling false charge by leaving the real culprits is out of consideration. That conduct of accused facing trial after the occurrence by not attending the funerals of the deceased and fleeing away along with his family members shows his guilty conscious; that accused facing trial remained absconder for sufficient long time and when the other eyewitness of the occurrence were won over he surrendered himself to get the acquittal; that the site plan is in the line with the ocular account; blood was recovered from

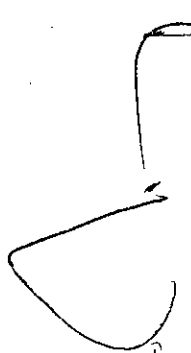
the spot and the said blood along with blood stained clothes of the deceased were sent for examination and the report is in positive; that any minor discrepancy in the statement of complainant is not damaging the prosecution case; that direct charge and considerable long abscondance has proved the charge against the facing trial beyond any doubt.

10. I have considered the arguments of counsel for the parties and perused the record.

11. The occurrence of present case was shown to have taken place at 10.15 AM whereas the report was made 11.45 AM in shape of Murasila Ex PA/1 by complainant Liaqat Ali brother of deceased Tahir Ali and son of deceased Hazrat Wali. According to the report of complainant he along with deceased brother Tahir Ali and father Hazrat Wali left the house and were proceeding to Katchehri Takht Bhai for attending a court hearing, when reached the place of occurrence, accused facing trial along with absconding co-accused already present there, started firing at his deceased brother and father Hazrat Wali who were ahead at a distance of some paces from him and he was following them. As a result of firing, both of them received severe injuries and the accused while fleeing from the spot came in front of him and gave beating to him with butts of firearm and he also received injuries on different parts of the body. Tahir Ali injured to be died on the spot and complainant along with his injured father was being shifted to hospital and on reaching casualty his father also succumbed to the injuries. The occurrence is stated to be witnessed by Shah Wali son of Anwar and many other persons. Motive behind the occurrence was stated that Mst. Hifsa daughter of Amir Nawar was married to complainant three months back and has obtained divorce from him. Post mortem examination of deceased Tahir Ali was conducted by PW-5 Dr. Zahir Shah on 27.6.2007 at 11.30 am. The Post Mortem report was exhibited as Ex PM. According to PM examination rigor mortis was not developed and deceased received two entry wounds having the same size and also have exit wound of the

Takht Bhai.

same size. In stomach of the deceased semi digested food was found. Complainant appearing as PW 7 during cross examination has stated that on the day of occurrence his deceased brother Tahir Ali had not taken his breakfast while his deceased father has so not properly take breakfast however he took full breakfast after performing of Fajar prayer. Medical report contradicts the statement of complainant and his presence with his deceased father and brother in his house, because semi digested food was found in the stomach of deceased Tahir Ali during his Post Mortem Examination. The Post Mortem Examination was conducted at 11.30 AM. Since rigor mortis were not developed, therefore, his death was probably caused between 9.00 AM to 9.30 AM and presence of semi digested food in stomach shows that he might have taken breakfast at about 7.00 to 7.30 AM. Moreover, according to the report, the occurrence is shown to have taken place at 10.15 AM whereas complainant during cross examination has categorically stated that they left the house at some minutes passed 8.00 AM. He further stated the distance of his house till the end of Mohallah Kallala, the thoroughfare is about 50 paces. According to the site plan Ex PB, occurrence took place in the thoroughfare of Jalala and in Mohallah Kallala is adjacent to the place of occurrence, though the house of complainant is not shown in the site plan but keeping in view the distance between the place of occurrence Mohallah Kallala and the distance given complainant from Moahllah Kallala, the complainant party must have reached to the place of occurrence at about 8.30 AM but according to the report the occurrence took place at 10.15 AM. No explanation of two hours from reaching to the place of occurrence from the house of complainant was given. According to initial report, the motive of the occurrence was shown to be divorce by the complainant to the daughter of dead accused Amir Nawab. No motive with both the deceased and accused facing trial is shown and it is not believable to common mind that when the motive was with complainant, they why the accused facing trial left complainant and killed his father and brother. Though complainant during cross examination has given explanation and made improvement by stating that his deceased brother and father had arranged second marriage for



Yakht Ehtai.

him just within one and half month, that's why the accused committed murder of his father and brother but his said part of statement is improvement on his part and seems to be afterthought. According to the prosecution case, complainant made report at Mardan Hospital and the injury sheet Ex PW 12/2 was prepared by deceased Abdul Majeed Khan SI and the same was exhibited in the statement of Yaqoob Khan SI PW-12 who verified the signature of deceased Abdul Majeed Khan. According to the said injury sheet the deceased was referred to from RHC Takht Bhai but the complainant was examined by PW-5 Dr. Zahir Shah on the same day and the time of examination in MLC report Ex APW 5/1 is shown as 10.00 AM. The said PW during cross examination has stated that the injured might have reached to the hospital before 10.00 AM whereas the time of occurrence has been shown as 10.15 AM which also create serious doubts about the presence of complainant at the time of occurrence and prosecution failed to prove the presence of complainant at the time and place of occurrence. Though accused facing trial remained absconder for a considerable long time but it is settled view that abscondance does not prove the guilt of the accused and is only a supportive evidence, hence in the given circumstances, prosecution failed to prove the charge against facing trial and he is acquitted of the charge leveled against him in this case. Accused facing trial is in custody. Be released if not required in any other case of law. Case property be dealt with in accordance with law. File of this court be consigned to record room.

ANNOUNCED
27.7.2016

(LIAQAT ALI)
ADDL: SESSIONS JUDGE-II
TAKHT BHAI

Addl: District & Sessions Judge
Takht Bhai.

CERTIFICATE

Certified that this judgment consists of fifteen pages. Each page has been read, corrected and signed by me where ever deemed necessary.

(LIAQAT ALI)
ADDL: SESSIONS JUDGE-II
TAKHT BHAI

Addl: District & Sessions Judge
Takht Bhai.

ATTESTED

AD/MI KHAN

1998]

Muhammad Islam v. Government of N.-W.F.P.
(Raja Afrasiab Khan, J)

1993

was totally unwarranted. The Department does not deny receipt of applications seeking extension in leave, but the conduct of the appellant shows that he has been refusing to receive letters sent to him by the Department and he himself also did not bother to ascertain the fate of such applications. The plea of mala fides raised by the appellant is also baseless as no cogent evidence was produced by the appellant before the Service Tribunal to substantiate the same. Furthermore, no question of public importance is involved. Resultantly, this appeal fails and is hereby dismissed. There will be no order as to costs.

M.B.A./M-169/S

Appeal dismissed.

1998 S C M R 1993

[Supreme Court of Pakistan]

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

Dr. MUHAMMAD ISLAM---Appellant

versus

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

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

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

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

---F.R. 54---Civil service---Civil servant was involved in a case under S.302/34, P.P.C. for a murder---No evidence could be brought against the accused civil servant on charge of murder, thus, proving that allegations levelled against him were baseless---Acquittal of civil servant from the criminal case---Accused civil servant in case of acquittal was to be considered to have committed no offence because the competent Criminal Court had freed/cleared him from an accusation or charge of crime---Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of murder case against him. [pp. 1999, 1998] F & D

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

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

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

The observation of the Criminal Court in the bail granting order is wholly immaterial for the purpose of acquittal or conviction of the accused. The observations in the orders passed in bail applications are always tentative in nature and as such, cannot be used by the parties for conviction or acquittal of the accused. [p. 1997] A

(c) Criminal trial---

---Benefit of doubt---Doubt itself destroys the very basis of the prosecution case---Where the benefit of doubt has been given to the accused, it cannot be said that charge has been established by the prosecution---Accused has to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the commission of crime and as such deserves to be convicted to meet the ends of justice---Even where benefit of doubt has been extended to accused, he shall be deemed to have been honourably acquitted. [p. 1997] B

(d) Criminal trial---

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

All acquittals, even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals. [p. 1998] C

That term "acquittal" has not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service. [p. 1998] E

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

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

1998] Muhammad Islam v. Government of N.-W.F.P.
(Raja Afrasiab Khan, J)

1995

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

(e) Words and phrases---

---Word "acquittal"---Connotation. [p. 1998] E

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

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

Respondent No. 3: Ex parte

Date of hearing: 2nd June, 1998.

JUDGMENT

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

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

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

It is evident that the accused have been acquitted in the case. At the time of incident, the appellant was posted as Veterinary Officer (Health) (B-17), Incharge Veterinary Dispensary, Katlang District Mardan. He was suspended from service with effect from 22nd of August, 1989 vide order dated 17-1-1990 because of his involvement in the aforesaid murder case. Nevertheless as pointed out above, he was acquitted of the murder charge by the trial Judge on 9th of June, 1992. On the strength of this order, the appellant moved an application on 29-6-1992 for his reinstatement in service. On 7-4-1993, the competent Authority accepted the application of the appellant and in consequence thereof reinstated him in service with effect from 22nd of August, 1989. The period from 22nd of August, 1989 to the date of his assumption of duty i.e. 18-4-1993 was treated as extraordinary leave without pay. On 2nd of May, 1993, the

affidavit was given by the son of the complainant that the parties had entered into a compromise.

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

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

to do so, the accused will be entitled to acquittal and such acquittal will be honourable, even if it is the result of a benefit of doubt. The expression 'benefit of doubt' is only suggestive of the fact that the prosecution has failed to exonerate itself of the duty of proving its case beyond all reasonable doubt.

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

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

4. Be that as it may, we hold that the appellant was acquitted because there was not an iota of evidence available on record against him. Learned counsel for the respondents relied upon the rule laid down in Government of West Pakistan through the Secretary, P.W.D., Lahore v. Mian Muhammad Hayat (PLD 1976 SC 202), wherein it was held that the acquittal of the accused had to be honourable which would mean that the allegations were false. In our view, the above rule shall not apply to this case for the reason that the appellant in this case was tried and for lack of evidence, he was acquitted by the trial Court. In the referred case, the accused, Muhammad Hayat was never tried under any offence by any Criminal Court. It may also be noted that the provisions of F.R. 54(a) have been declared un-Islamic by the Shariat Appellate Bench of this 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" has not been defined any where in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service. According to "Dictionary Macmillan, William D. Halsey/Editorial Director, Macmillan Publishing Co., Incorporated New York, Collier Macmillan Publishers London" the words "acquit" and "acquittal" mean:--

"acquit"--quitted, -quitting. v.t. 1. to free or clear from an accusation or charge of crime; declare not guilty; exonerate: The jury acquitted

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him after a short trial. 2. To relieve or release, as from a duty or obligation: to acquit him of responsibility. 3. To conduct (oneself); behave: The team acquitted itself well in its first game. (Old French acquitter to set free, save, going back to Latin ad to + quietare to quiet)"

'acquittal' n.1. a setting free from a criminal charge by a verdict or other legal process. 2. Act of acquitting; being acquitted."

The appellant was acquitted by the trial Judge as already pointed out above. It shall, therefore, be presumed that the allegations levelled against him are baseless. In consequence, he has not been declared guilty. In presence of above meaning of "acquittal" the appellant is held to have committed no offence because the competent Criminal Court has freed/cleared him from an accusation or charge of crime. The appellant is, therefore, entitled to the grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of registration of murder case against him. This appeal succeeds and is allowed with no order as to costs.

M.B.A./M-178/S

Appeal allowed.

1998 S C M R 1999

[Supreme Court of Pakistan]

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

HIDAYATULLAH and another---Appellants

versus

CHIEF SECRETARY, N.-W.F.P. and another---Respondents

Civil Appeals Nos. 562 and 563 of 1995, decided on 11th June, 1998.

(On appeal from the judgment dated 21-9-1994 of the N.-W.F.P. Service Tribunal in Appeal No. 196 of 1993).

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

----Art. 212---Misconduct---Removal from service---Acquisition of land by private negotiation---Civil servant posted as Revenue Extra-Commissioner did not insist on vendors to hand over all title deeds relating to the acquired land and instead obtained registered agreement deed of sale on stamp paper worth Rs.5 without taking into account the stay order and the merits of applications of co-sharers---Leave to appeal was granted to consider contention that "as the land was purchased by private negotiations between the department and the sellers

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Chairman, Agricultural Development Bank of Pakistan v. Mumtaz Khan (Asif Saeed Khan Khosa, J)

SC-695

Annexure J

P L D 2010 Supreme Court 695

Present: Tassaduq Hussain Jilani and Asif Saeed Khan Khosa, JJ

ATTESTED
ADAM KHAN

CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another---Appellants

versus

MUMTAZ KHAN---Respondent

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

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

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

S. 4---Penal Code (XLV of 1860), S.53---Constitution of Pakistan (1973), Art. 212 (3)---Leave to appeal was granted by Supreme Court to consider; whether appeal before Service Tribunal was not time barred; whether convicted person, who was released after payment of Diyat amount could be said or could be declared as a person acquitted honourably and in that eventuality could such person, who was released on payment of Diyat, was liable to be reinstated into service; whether payment of Diyat could absolve a person from accusation of murder; and whether respondent was an acquitted person or was a convicted person even after payment of Diyat. [p. 699] A

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

Ss. 309 & 310---Criminal Procedure Code (V of 1898), Ss.249-A & 265-K--- Islamic law---Crime and punishment---Acquittal---Scope---Benefit of doubt---Prior to introduction of Islamic provisions in Penal Code, 1860, acquittal of an accused person could be recorded when prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring prosecution and the other favouring defence, Court decided to extend benefit of doubt to accused person---Acquittal could also be recorded under S.149-A, Cr.P.C. or S.265-K, Cr.P.C., when charge against accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence---After introduction of Islamic provisions in Penal Code, 1860, it has now also become available for accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under S.309 P.P.C. or on the basis of compounding/Sulh under S. 310 P.P.C.---In case of waiver / Afw acquittal can be earned without any monetary payment to the heirs of deceased but in case of compounding/Sulh an acquittal may be

J

obtained upon acceptance Badal-i-Sulh by the heirs of deceased from the accused person. [p. 701] B

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

----Ss. 53, 299(e), 310(5) & 323---'Diyat' and 'Badal-i-Sulh'---
Distinction---Concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as provisions of S.310(5), P.P.C. and the Explanation attached therewith show that Badal-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them---Diyat, under S. 53, P.P.C. is punishment and provisions of S.299(e), P.P.C. and S. 323, P.P.C. manifest that amount of Diyat is to be fixed by Court. [p. 702] C

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

----S. 310 (5)---Criminal Procedure Code (V of 1898), S.345---
Compounding of offence of murder---Payment of Badal-i-Sulh---
Effect---Compounding of offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is form of punishment and that such compounding of offence leads to nothing but an acquittal of accused person. [p. 702] D

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

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

----S. 310(5)---Criminal Procedure Code (V of 1898), S.345---
Compounding of offence of murder---Admission of guilt---Scope---It is not always that a compromise is entered into by accused person on the basis of admission of guilt by him---In many cases of false implication or spreading net wide by complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battle---Compounding of an offence does not amount to admission of guilt on the part of accused person or that an acquittal earned through such compounding of an offence may not have ramification regarding all spheres of activity of acquitted person's life, including his service or employment, beyond criminal case against him. [pp. 703, 704] E & G

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

----S. 403---Constitution of Pakistan (1973), Art. 13(a)---Acquittal---
Maxim autrefois acquit---Principle of Afw---Scope---Ultimate acquittal in a criminal case exonerates accused person completely for all future

sed from purposes vis-à-vis the criminal charge against him---Concept of autrefois acquit embodied in S. 403, Cr.P.C., protection guaranteed by Art.13(a) of the Constitution, Afw (waiver) or Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime. [p. 703] F

i-Sulh'-- from the . and the is to be th between ovisions of of Diyat is (g) Service Tribunals Act (LXX of 1973)---

---S. 4---Penal Code (XLV of 1860), Ss.302 & 310 (5)---Criminal Procedure Code (V of 1898), S.345---Reinstatement in service--- Acquittal by compounding offence of murder---Payment of Badal-i-Sulh---Respondent was employee of a Bank and was convicted on the charge of murder but later on offence was compounded between the parties and respondent was acquitted after payment of Badal-i-Sulh--- After the respondent was convicted under the charge of murder, Bank proceeded against him and removed him from service---Bank declined to reinstate him in service, after he was acquitted of the charge but Service Tribunal allowed the appeal and reinstated him in service--- Validity---No allegation was levelled against respondent regarding any illegality, irregularity or impropriety committed by him in relation to his service and acquittal in the case of murder had removed the only blemish cast upon him---Conviction of respondent in murder was the only ground on which he had been removed from service and that ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service---Even order of removal of respondent from service had provided that his case would be considered by competent authority for his reinstatement in service in case he was acquitted of the criminal charge---Respondent was justified in claiming his reinstatement in service upon earning acquittal from the competent criminal court--- --Scope---It is the duty of the Supreme Court to interfere in the judgment passed by Service Tribunal, whereby respondent was reinstated in service---Appeal was dismissed. [pp. 704, 705] H & J

Courts of law Shehzad Ahmad alias Mithu and another v. The State 2005 Cr.LJ 1316 and Muhammad Siddique v. The State PLD 2002 Lah. 444

ounding of part of accusounding of s of activity (a) Service Tribunals Act (LXX of 1973)---

---S.4---Appeal---Limitation---Civil servant sought reinstatement in service, after he was acquitted from murder case---Service Tribunal allowed the appeal filed by civil servant and reinstated him in service--- The plea raised by employer/bank was that appeal was barred by limitation---Validity---Civil servant was acquitted in criminal case on 19-9-1998 and he filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in criminal case---It would have

been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service. Appeal before Service Tribunal was not barred by limitation. [p. 705]

The Chairman P.I.A.C. and others v. Nasim Malik PLD 1998 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 5 distinguished.

Raja Aleem Abbasi, Advocate Supreme Court for Appellants.

Shakeel Ahmad, Advocate Supreme Court for Respondent.

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

Date of hearing: 8th April, 2010.

JUDGMENT

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

2. Mumtaz Khan respondent was a Mobile Credit Officer serving with the Agricultural Development Bank of Pakistan when he was implicated in a case of murder through F.I.R. No.327 registered at Police Station Naurang, District Lakki Marwat on 8-9-1991 in respect of an offence under section 302, P.P.C. read with section 34, P.P.C. As a result of trial of that criminal case the respondent was convicted by the learned Sessions Judge, Lakki Marwat for an offence under section 302(b), P.P.C. read with section 34, P.P.C. vide judgment dated 15-11-1995 and was sentenced to imprisonment for life and a fine of Rs.40,000 or in default of payment whereof to undergo simple imprisonment for five years. The respondent preferred an appeal in this regard but his appeal was dismissed by the Peshawar High Court, Dera Ismail Khan Bench vide judgment handed down on 1-4-1998. We have been informed that the respondent had not challenged his conviction and sentence any further and after a few months of the decision of his appeal an application had been submitted by him before the learned Sessions Judge, Lakki Marwat seeking his acquittal on the basis of a compromise arrived at between him and the heirs of the deceased. That application submitted by the respondent was allowed by the learned Sessions Judge, Lakki Marwat on 22-9-1998 and the respondent was acquitted of

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

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

Hence, the present appeal before this Court.

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

4. It has been argued by the learned counsel for the appellants that the judgment passed by this Court in the case of Dr. Muhammad Islam on of his appeal Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 and of a compromise entered upon by the Federal Service Tribunal, Islamabad in the impugned judgment was not relevant to the facts of this case as the said precedent did not pertain to an acquittal in a criminal case on the basis of compromise. It has also been argued by him that by virtue of the

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

5. As against that the learned counsel for the respondent has maintained that the entire controversy presented before the Federal Service Tribunal, Islamabad and also before this Court regarding acquittal of the respondent on the basis of paying Diyat to the heirs of the deceased is misconceived because the respondent had earned his acquittal after paying Badal-i-Sulh to the heirs of the deceased under section 310, P.P.C. and not upon payment of Diyat. He has elaborated that Diyat may be a punishment contemplated by the provisions of section 53, P.P.C. but Badal-i-Sulh is surely not a punishment mentioned in that section. He has also argued that the respondent's appeal before the Federal Service Tribunal, Islamabad had been filed well within the period of limitation and in the comments submitted by the appellants before the Federal Service Tribunal, Islamabad no objection had been raised by them regarding the appeals filed by the respondent before the Service Tribunal or before the departmental authority being barred by time. He has further maintained in this respect that there is nothing available on the record of this case to establish that the respondent's appeal filed before the departmental authority was barred by time or any objection had ever been raised before the departmental authority in that regard or that the said appeal had been dismissed on the ground of limitation. The learned counsel for the respondent has gone on to submit that no allegation had ever been levelled against the respondent regarding commission of any illegality, irregularity or impropriety by him in service and the blemish upon the respondent on the basis of

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

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

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

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

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are Honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such

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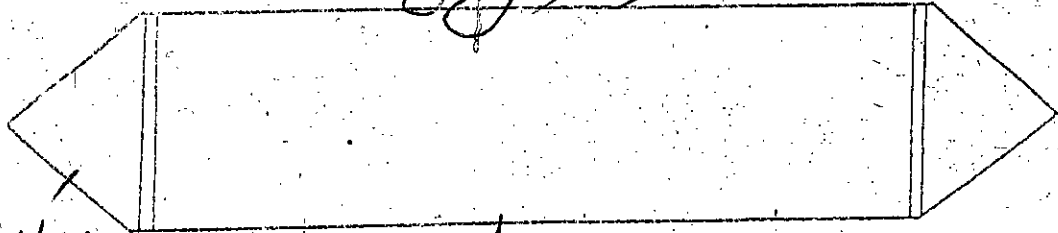
acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

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

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بعد االت سرسری ڈیٹیلز اور



2 مہینے تک ایجنسی کے لئے
بنام

صاحبزادہ

JA 292/18

موزخہ
مقدمہ
دعوی
جرم

باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی و کل کارروائی متعلقہ کارروائی کے لئے
آن مقام کے لئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر حالت ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برادگی 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 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساخت
پر واخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوا سے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہوا یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا اذکالت نامہ لکھ دیا کہ سند ہے۔

Handwritten signature

المرقوم _____ ماہ _____ 20 _____

_____ واہ العباد _____

کے لئے منظور ہے۔

Accepted by

M. Aomen Aejab

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Chairman P.I.A.C

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as a general rule that compounding of an offence invariably amounts to an admission of guilt on the part of the accused person or that an acquittal earned through such compounding may have ramifications qua spheres of activity of the acquitted person's life, including his service and employment, beyond the criminal case against him. We may reiterate that in the case of Dr. Muhammad Islam (supra) this Court has categorically observed that "All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals". The sway of those observations made by this Court would surely also encompass an acquittal obtained on the basis of compounding of the offence. It is admitted at all hands that no allegation had been levelled against the respondent in the present case regarding any illegality, irregularity or impropriety committed by him in relation to his service and his acquittal in the case of murder had removed the only blemish cast upon him. His conviction in the case of murder was the only ground on which he had been removed from service and the said ground has subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service.

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

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

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Chairman P.I.A.C and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513 cited by the learned counsel for the appellants in that regard. We may also observe in this context that the respondent had been acquitted in the criminal case on 22-9-1998 and he had filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in the criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning an acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case, we have found it to be unjust and oppressive to penalize the respondent for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service.

13. For what has been discussed above this appeal is dismissed and the impugned majority verdict rendered by the Federal Service Tribunal, Islamabad on 3-7-2000 is upheld and maintained.

M.H./C-3/S

Appeal dismissed.

P LD 2010 Supreme Court 705

Present: Javed Iqbal and Anwar Zaheer Jamali, JJ

LAHORE DEVELOPMENT AUTHORITY---Petitioner

versus

Mst. SHARIFAN BIBI and another---Respondents

Civil Petition No.1450-L of 2005, decided on 30th March, 2010.

(On appeal from the order dated 26-5-2005 of the Lahore High Court, Lahore passed in C.R. No.379 of 2001).

Civil Procedure Code (V of 1908)----

S. 115---Limitation Act (IX of 1908), S.5---Constitution of Pakistan (1973), Art. 185(3)---Civil revision---Limitation---Condonation of delay---Revision application filed by petitioner was barred by limitation and High Court declined to condone the delay, resultantly the same was dismissed---Validity---Law of limitation could not be considered merely a formality and required to be observed being mandatory in nature---Purpose of law of limitation was to help vigilant and not the indolent---Helping hand might not be extended to a litigant having fallen into deep slumber, on having become forgetful of his rights---Concerned person had to be made aware of invasion of his interest and such awareness had to be ascertained as a matter of fact---Supreme

that even the order of... ed on 3-3-1996 had... d be considered by the... rvice in case he was... core as well we have... ed in claiming his... al from the competent... earned counsel for the... ng barred by time is... t that admittedly the... ibunal, Islamabad was... There is no material... hat the respondent's... , whether the delay in... on what basis the said... al of the respondent's... ion that his appeal had... he same was dismissed... ch objection had been... e Tribunal, Islamabad... pellant regarding the... y time does not find... , therefore, it is not... n in the cases of The

VAKALAT NAMA

In the Court of Service Tribunal Peshawar.

Appeal No. _____ of 2018

SAHIB ZADA

(Petitioner)

(Plaintiff)

(Appellant)

VERSUS

The Secy; etc;

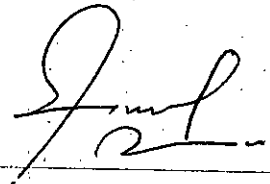
(Respondent)

(Defendant)

I/we Sahib Zada the
above noted Appellant. do

hercby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as
Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or
refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability
for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our
behalf all sums and amounts payable or deposited on my/our account in the above noted matter.


Dated: 08-10-2018.



(Signature of Client)

(Sahib Zada)

MUHAMMAD ADAM KHAN,
Advocate,
District Courts; Mardan.



MUHAMMAD ADAM KHAN
B.A LLB Advocate
High Court Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1292/2018

Sahib Zada S/O Gul Zada Ex-PST R/O Jalala Takhat Bhai District Mardan.

Appellant

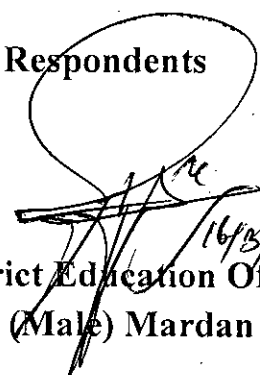
Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others
..... Respondents

INDEX

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit & Reply to condonation of Delay		01	04
2.	Copy of show cause notice /publication	"A"	05	--
3.	Copy of order of Removal	"B"	06	--
4.	Copy of Respondent No 3 Letter	"C"	07	--
4.	Copy of Respondent No 2 Letter	"D"	08	--

Respondents


16/07/18
District Education Officer
(Male) Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1292/2018

Sahib Zada S/O Gul Zada Ex-PST R/O Jalala Takhat Bhai District Mardan.

Appellant

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others
..... Respondents

Para Wise Comments on Behalf of Respondents No 1 to 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is incompetent in its present form, hence the appeal is liable to be dismissed.
3. That the instant appeal is badly time barred.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped by his own conduct.
7. That the appellant has concealed the material facts from this Honorable Tribunal hence the appeal is liable to be dismissed.
8. That the instant appeal is based on malafide intention, hence the appeal is liable to be dismissed.
9. That the instant appeal is against the prevailing law and rules.
10. That the appellant has been treated as per law & rules.
11. That after fulfillment of all the codal formalities the appellant was removed from service vide order Endst No 10253/G dated 23-06-2008 in accordance with law.

(Copy Of Show Cause & order of Removal is attached as **Annex-"A" & B**)

FACT:

1. Para No 1 pertains to record, hence need no comments.
2. Para No 2 pertains to record, hence need no comments.
3. Para No 3 pertains to record, hence need no comments


4. Para No 4 pertains to record, hence need no comment.
5. Para No 5 pertains to record, hence need no comments
6. Para No 6 is incorrect baseless against facts & law, the answering respondent acted in accordance with law. The respondent No 3 issued letter No 7305 Dated 31-07-2018, and to ask from respondent No 2 to submit detail report of the appellant. The respondent No 2 Submitted through a letter No 7775/ Dated 13-10-2018 ,that the appellant removal from service was issued due to his absence from duties.

(copy of Letters are as Annex C & D)

GROUND:


- I. Para No I pertains to personal record, hence need no comments.
- II. Para No II is incorrect, baseless as proper show cause notice as well as publication was made in respect of the appellant, hence denied
- III. Para No III is incorrect, baseless as that after fulfillment of all the codal formalities the appellant was removed from service vide order Endst No 10253/G dated 23-06-2008 in accordance with law.
- IV. Para No IV is incorrect, baseless as proper show cause notice as well as publication was made in respect of the appellant, hence denied.
- V. Para No V pertains to personal record, hence need no comments.
- VI. Para No VI pertains to record, hence need no comments.
- VII. Para No VII pertains to record, hence need no comments.
- VIII. Para No VIII need no comments as each and every case has their own merit
- IX. Para No IX pertains to personal matter, hence need no comments.
- X. That the respondents seek permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that in the light of above facts, the appeal may please be dismissed with cost.


Director of (E & SE)
of KPK Peshawar.

Respondents


District Education Officer
(Male) Mardan


Secretary (E & SE)
of KPK Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1292/2018

Sahib Zada S/O Gul Zada Ex-PST R/O Jalala Takhat Bhai District Mardan.

Appellant

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others
..... Respondents

Reply to Application for condonation of delay.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

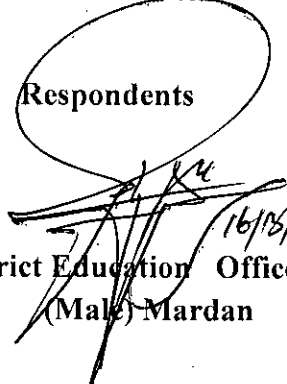
1. That the petitioner has got no cause of action & locus standi to file the instant application.
2. That the application in hand is not maintainable in its present form.
3. That the appellant has not come to this Honorable Tribunal with clean hand.
4. That the delay has not been justified by the petitioner.
5. That the appellant is estopped by his own conduct.
6. That the appellant has concealed the material facts from this Honorable Tribunal hence liable to be dismissed.

ON FACTS:

1. Para No 1 is correct need no comments.
2. Para No 2 is incorrect, as the same was conveyed to the appellant of his address
3. Pare No 3 is incorrect, baseless as proper show cause notice / publication was made in respect of the appellant, hence denied. (Copy of the show cause notice/publication is as Annex A)
4. Para No 4 pertains to personal record, hence need no comments.
5. Para No 5 correct, however law prefers Limitation of the case.

Therefore it is humbly prayed that keeping in view the above mentioned fact, the instant application along with appeal may kindly be dismissed with cost.

Respondents


16/12/19
District Education Officer
(Male) Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1292/2018
Sahib Zada S/O Gul Zada Ex-PST R/O Jalala Takhat Bhai District Mardan.

Appellant

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others
..... Respondents

AFFIDAVIT

I, Mr. Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



Deponent
Sajid Khan
16101-6005318-5

Annex A (5)

روزنامہ مشرق فورم 24-05-2008

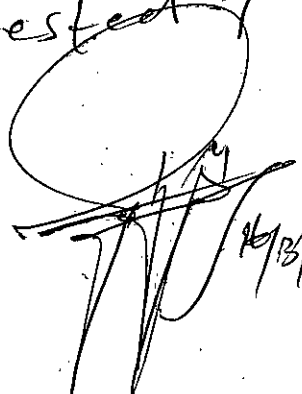
شوکار نوٹس

آپ کسی صاحب زادہ ولد گل زادہ PST گورنمنٹ پرائمری سکول ولدہ پسر
 27/06/07 سے غیر حاضر ہیں۔ لہذا ایڈمیٹریشن سکول ہڈانے آپ کی غیر حاضری کی رپورٹ پیش
 کے دفتر بھیج دی۔ جسکی بناء پر محاذ امر نے آپ کے خلاف ایک ایڑی نمٹنی قائم کرنے کا حکم صادر کیا
 آپ مقررہ تاریخ 08-09-2007 کو ایڈمٹری امر کے عدسے گئی پیش نمٹنی ہونے۔ نمٹنی ہڈانے
 ایڑی امر نے آپ کی غیر حاضری کی تصدیق کر کے آپ کے خلاف سکول پاور 2000 ملازمت سے
 خاتمی کے نوٹیفیکیشن کے ذریعے ایک کونڈکسی سے بر خاتمی کی سفارش کی ہے۔ لہذا اب آپ
 احب زادہ ولد گل زادہ کو بذریعہ اخبار مطلع کیا جاتا ہے کہ آپ اس اشتہار کی اشاعت کے چودہ دن
 اندر اندر حاضر ہو کر محاذ امر کو اپنی غیر حاضری کی معقول وجہ بتائیں۔ بصورت دیگر آپ کے
 ایڈ سکول پاور 2000 ملازمت سے بر خاتمی کے نوٹیفیکیشن کے ذریعے یکطرفہ طور پر کارروائی کی
 گئی۔ جس میں آپ کو کوئی سے بر خاتمی کیا جاسکتا ہے۔

INF MP/69

المستقبل - امیر سہادر خان
 ایگزیکٹو ڈسٹرکٹ آفیسر (سکول ایڈمنسٹریسی) مردان

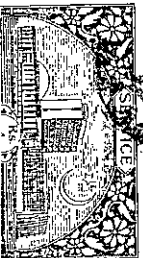
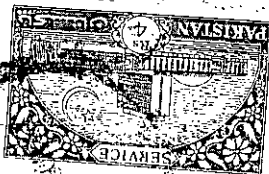
روزنامہ "مشرق" فورم 24-5-2008

Attested by

 16/5/19

Annex C (7)

①

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.



No. 7305 / F. No: 162/Vol: XII/KC/Appeal
of PST(M) General.
Dated Peshawar the 31.7 /2018.

The District Education Officer(M)
Peshawar. *Mardan*

Subject: - APPEAL.

Memo:-

I am directed to refer to the subject noted above and to enclose herewith a copy of appeal in respect of Mr. Sahib Zada PST GPS No.I Jala District Mardan and to ask you to submit detail report/comments to this office within a week time.

DEPARTMENT OF
ELEMENTARY & SECONDARY
EDUCATION (H/SS)E
KPK Peshawar.

M. Amir Khan
Assistant Director (Etab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

Endst: No. _____ /

*31/7/18

- 1. P.A to Director Elementary and Secondary Education local office.

Assistant Director (Etab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

Rahim Baloch

11/8/18

198
1-8-2018

Attested by
[Signature]
16/07/18
M/S - Sent

District Education Office (Male) Mardan.
Dairy
No. 4519
Date 1-8-18

ADP (M)
2-9-18

Annex D - (08)

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) MARDAN

No. 7775 / Dated 13-10-2018

To

The Director,
E&SE Khyberpakhtunkhwa, Peshawar.

Subject: APPEAL

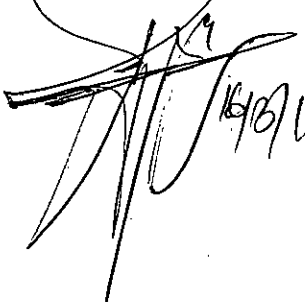
Memo:

Reference your letter No.7305/F.No 162/Vol:XII/KC/Appeal of PST(M) General dated 31-07-2018 on the subject cited above.

The relevant records in r/o Mr. Sahib Zada Ex-PST GPS No.1 Jalala Mardan whose removal from service was issued due to his absence from duties , are submitted to your kind perusal for further order please.

Enclosed- as above


DISTRICT EDUCATION OFFICER
(MALE) MARDAN

Attested by

16/10/18

BEFORE THE SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.1292/2018.

Hearing 06.08.2019.

Sahib Zada V/S The Govt; of K.P.K etc;

Rejoinder :-

Pry; Objections:-

1 to 10:- Objection under Serial No.1 to 10 are incorrect false, based on malice on part of Respondents. Denied.

11. Incorrect & false. Denied. The impugned order was issued in violation to the rules. The alleged show cause Notice and impugned order, besides violative to the relevant law, were not communicated to Appellant. Even, the same were supposed to have been addressed on his home address.

On Facts:-

1. To 5:- Incorrect & based on malice. Denied. The relevant Records are in the custody of Replying Respondents.

6. Incorrect and misleading. Denied. The referred documents are manipulated & the same are the result of after-thought.

Grounds:-

i. Misleading. Denied. The relevant record is in custody of Respondents.

ii. Incorrect, misleading & based on malice besides being illegal. Denied. The publication of alleged show cause notice, does not fulfill the requisite requirements, besides it

does not contain the residential address of Appellant, nor the jail address.

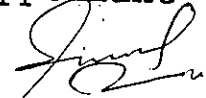
- iii. That all the claimed for-militias are in violation to the relevant rules. Denied. Because, inspite of allegations of absence from duty, none of the correspondence, contain the address of residence of Appellant nor the jail, nor the same were communicated to Appellant.
- iv. Incorrect. Denied, as per para-III, above.
- v. Based on malice. The copies of F.i.R & the judgment are on file & the Respondents were well aware of the relevant incident.
- vi. To vii:- Refusal is based on malice, as per the contents of the foregoing paragraph No. 1 to 5 of facts, above.
- viii. Para-viii of Grounds of Appeal is correct. The denial on part of Respondents is based on malice. Denied.
- ix. Incorrect & misleading as per para-1 to 5 of facts above. Denied.
- x. Needs no reply.

It is prayed that on acceptance of this Appeal, the impugned order may be set-aside and the Appellant may be ordered to be re-instated into service with back service benefits alongwith any other relief, deemed appropriate by this Hon'ble Tribunal.

The cost of this appeal may be awarded in favour of Appellant against Respondents.

Dated: 05-08-2019.

Appellant



(Sahib Zada)

Affidavit:-

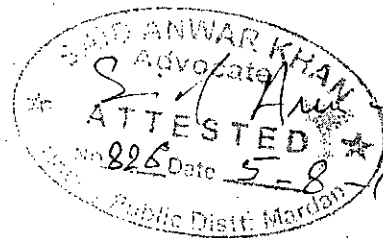
Ahwan
MUHAMMAD ADAM KHAN
B.A LLB Advocate
High Court Mardan

I, Sahib Zada /The Appellant do hereby state on Solemn affirmation that the contents of this Rejoinder are true and correct to the best of my knowledge and belief.

Deponent



(Sahib Zada)



1998 | Muhammad Islam v. Government of N.-W.F.P. 1993
(Raja Afrasiab Khan, J)

was totally unwarranted. The Department does not deny receipt of applications seeking extension in leave, but the conduct of the appellant shows that he has been refusing to receive letters sent to him by the Department and he himself also did not bother to ascertain the fate of such applications. The plea of mala fides raised by the appellant is also baseless as no cogent evidence was produced by the appellant before the Service Tribunal to substantiate the same. Furthermore, no question of public importance is involved. Resultantly, this appeal fails and is hereby dismissed. There will be no order as to costs.

M.B.A./M-169/S

Appeal dismissed.

1998 S C M R 1993

Acquittal
Compromise

[Supreme Court of Pakistan]

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

Dr. MUHAMMAD ISLAM---Appellant

versus

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

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

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

(a) Fundamental Rules---

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

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

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

The observation of the Criminal Court in the bail granting order is wholly immaterial for the purpose of acquittal or conviction of the accused. The observations in the orders passed in bail applications are always tentative in nature and as such, cannot be used by the parties for conviction or acquittal of the accused. [p. 1997] A

(c) Criminal trial---

---Benefit of doubt---Doubt itself destroys the very basis of the prosecution case---Where the benefit of doubt has been given to the accused, it cannot be said that charge has been established by the prosecution---Accused has to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the commission of crime and as such deserves to be convicted to meet the ends of justice---Even where benefit of doubt has been extended to accused, he shall be deemed to have been honourably acquitted. [p. 1997] B

(d) Criminal trial---

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

All acquittals, even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals. [p. 1998] C

That term "acquittal" has not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service. [p. 1998] E

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

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Acquittal

1998]

Muhammad Islam v. Government of N.-W.F.P.
(Raja Afrasiab Khan, J)

1995

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

(e) Words and phrases---

---Word "acquittal"---Connotation. [p. 1998] E.

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

Hafiz Awan, Advocate Supreme Court with Muhammad Zahoor Qureshi Azad, Advocate-on-Record (absent) for Respondents Nos. 1 and 2.
Respondent No. 3: Ex parte

Date of hearing: 2nd June, 1998.

JUDGMENT

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

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

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

It is evident that the accused have been acquitted in the case. At the time of incident, the appellant was posted as Veterinary Officer (Health) (B-17), Incharge Veterinary Dispensary, Katlang District Mardan. He was suspended from service with effect from 22nd of August, 1989 vide order dated 17-1-1990 because of his involvement in the aforesaid murder case. Nevertheless as pointed out above, he was acquitted of the murder charge by the trial Judge on 9th of June, 1992. On the strength of this order, the appellant moved an application on 29-6-1992 for his reinstatement in service. On 7-4-1993, the competent authority granted the reinstatement of the appellant and in consequence thereof, the appellant resumed his service. The period

Appellant filed representation against the order dated 7-4-1993 which was rejected by Secretary Food, Agriculture, Livestock and Cooperative Department, Peshawar on 19th of June, 1993. The appellant then filed appeal before the N.-W.F.P. Service Tribunal praying for the payment of salary and allowances to him for the said period. This claim of the appellant was contested by the Government on the ground that the acquittal of the appellant was based on compromise between the parties. This being the position, acquittal of the appellant cannot be held to be honourable so as to entitle him to full pay and allowances for the said period. The Tribunal vide its decision, dated 24th of August, 1994 dismissed the appeal observing:--

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

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

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

2. Learned counsel appearing on behalf of the appellant submitted that the appellant was acquitted and as such, was entitled to be given the pay along with allowances for the period he remained under suspension. This position was contested by the respondents by saying that as a matter of fact, there was a

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affidavit was given by the son of the complainant that the parties had entered into a compromise.

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

"There is hardly any ambiguity in these provisions and they do not present any difficulty. We are in no doubt that the provisions of clause (a) are attracted by the facts on the ground that the appellant was acquitted of the charge against him. Although, the department claims that this was the result of benefit of doubt, we would hold that the acquittal is honourable within the meaning of this rule. As a matter of fact, all acquittals are honourable and the expression 'honourable acquittals' occurring in clause (a) seems to be superfluous and redundant. It is one of the most valuable principles of criminal

to do so, the accused will be entitled to acquittal and such acquittal will be honourable, even if it is the result of a benefit of doubt. The expression 'benefit of doubt' is only suggestive of the fact that the prosecution has failed to exonerate itself of the duty of proving its case beyond all reasonable doubt.

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

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

4. Be that as it may, we hold that the appellant was acquitted because there was not an iota of evidence available on record against him. Learned counsel for the respondents relied upon the rule laid down in Government of West Pakistan through the Secretary, P.W.D., Lahore v. Mian Muhammad Hayat (PLD 1976 SC 202), wherein it was held that the acquittal of the accused had to be honourable which would mean that the allegations were false. In our view, the above rule shall not apply to this case for the reason that the appellant in this case was tried and for lack of evidence, he was acquitted by the trial Court. In the referred case, the accused, Muhammad Hayat was never tried under any offence by any Criminal Court. It may also be noted that the provisions of F.R. 54(a) have been declared un-Islamic by the Shariat Appellate Bench of this 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" has not been defined any where in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service. According to "Dictionary Macmillan, William D. Halsey/Editorial Director, Macmillan Publishing Co., Incorporated New York, Collier Macmillan Publishers London" the words "acquit" and "acquittal" mean:--

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[1998]

Hidayatullah v. Chief Secretary, N.-W.F.P.
(Wajihuddin Ahmed, J)

1999

him after a short trial. 2. To relieve or release, as from a duty or obligation: to acquit him of responsibility. 3. To conduct (oneself); behave: The team acquitted itself well in its first game. (Old French aquitter to set free, save, going back to Latin ad to + quietare to quiet)"

'acquittal' n.1. a setting free from a criminal charge by a verdict or other legal process. 2. Act of acquitting; being acquitted'."

The appellant was acquitted by the trial Judge as already pointed out above. It shall, therefore, be presumed that the allegations levelled against him are baseless. In consequence, he has not been declared guilty. In presence of above meaning of "acquittal" the appellant is held to have committed no offence because the competent Criminal Court has freed/cleared him from an accusation or charge of crime. The appellant is, therefore, entitled to the grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of registration of murder case against him. This appeal succeeds and is allowed with no order as to costs.

M.B.A./M-178/S

Appeal allowed.

1998 S C M R 1999

[Supreme Court of Pakistan]

Present: Saidu Zaman Siddiqui, Raja Afrasiab Khan
and Wajihuddin Ahmed, JJ

HIDAYATULLAH and another---Appellants

versus

CHIEF SECRETARY, N.-W.F.P. and another---Respondents

Civil Appeals Nos. 562 and 563 of 1995, decided on 11th June, 1998.

(On appeal from the judgment dated 21-9-1994 of the N.-W.F.P. Service Tribunal in Appeal No. 196 of 1993).

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

---Art. 212---Misconduct---Removal from service---Acquisition of land by private negotiation---Civil servant posted as Revenue Extra-Commissioner did not insist on vendors to hand over all title deeds relating to the acquired land and instead obtained registered agreement deed of sale on stamp paper worth Rs.5

*Acquittal
Honorable
+ Limitation*

Chairman, Agricultural Development Bank of Pakistan v. Mumtaz Khan (Asif Saeed Khan Khosa, J)

SE 695

Annexure J

P L D 2010 Supreme Court 695

Present: Tassaduq Hussain Jilani and Asif Saeed Khan Khosa, JJ

CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another---Appellants

versus

MUMTAZ KHAN---Respondent

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

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

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

--S. 4---Penal Code (XLV of 1860), S. 53---Constitution of Pakistan (1973), Art. 212 (3)---Leave to appeal was granted by Supreme Court to consider; whether appeal before Service Tribunal was not time barred; whether convicted person, who was released after payment of Diyat amount could be said or could be declared as a person acquitted honourably and in that eventuality could such person, who was released on payment of Diyat, was liable to be reinstated into service; whether payment of Diyat could absolve a person from accusation of murder; and whether respondent was an acquitted person or was a convicted person even after payment of Diyat. [p. 699] A

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

--Ss. 309 & 310---Criminal Procedure Code (V of 1898), Ss. 249-A & 265-K--- Islamic law---Crime and punishment---Acquittal---Scope---Benefit of doubt---Prior to introduction of Islamic provisions in Penal Code, 1860, acquittal of an accused person could be recorded when prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring prosecution and the other favouring defence; Court decided to extend benefit of doubt to accused person---Acquittal could also be recorded under S. 149-A, Cr.P.C. or S. 265-K, Cr.P.C., when charge against accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence---After introduction of Islamic provisions in Penal Code, 1860, it has now also become a rule for accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under S. 309 P.P.C. or on the basis

Confession J

obtained upon acceptance Badal-i-Sulh by the heirs of deceased from the accused person. [p. 701] B

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

---Ss. 53, 299(e), 310(5) & 323---'Diyat' and 'Badal-i-Sulh'--- Distinction---Concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as provisions of S.310(5), P.P.C. and the Explanation attached therewith show that Badal-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them---Diyat, under S. 53, P.P.C. is punishment and provisions of S.299(e), P.P.C. and S. 323, P.P.C. manifest that amount of Diyat is to be fixed by Court. [p. 702] C

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

---S. 310 (5)---Criminal Procedure Code (V of 1898), S.345--- Compounding of offence of murder---Payment of Badal-i-Sulh--- Effect---Compounding of offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is form of punishment and that such compounding of offence leads to nothing but an acquittal of accused person. [p. 702] D

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

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

---S. 310(5)---Criminal Procedure Code (V of 1898), S.345--- Compounding of offence of murder---Admission of guilt---Scope---It is not always that a compromise is entered into by accused person on the basis of admission of guilt by him---In many cases of false implication or spreading net wide by complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battle---Compounding of an offence does not amount to admission of guilt on the part of accused person or that an acquittal earned through such compounding of an offence may not have ramification regarding all spheres of activity of acquitted person's life, including his service or employment, beyond criminal case against him. [pp. 703; 704] E & G

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

---S. 403---Constitution of Pakistan (1973). Art. 13(a)---Acquittal---

purposes vis-à-vis the criminal charge against him---Concept of autrefois acquit embodied in S. 403, Cr.P.C., protection guaranteed by Art.13(a) of the Constitution, Afw (waiver) or Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime. [p. 703] F

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

---S. 4---Penal Code (XLV of 1860), Ss.302 & 310 (5)---Criminal Procedure Code (V of 1898), S.345---Reinstatement in service---Acquittal by compounding offence of murder---Payment of Badal-i-Sulh---Respondent was employee of a Bank and was convicted on the charge of murder but later on offence was compounded between the parties and respondent was acquitted after payment of Badal-i-Sulh---After the respondent was convicted under the charge of murder, Bank proceeded against him and removed him from service---Bank declined to reinstate him in service, after he was acquitted of the charge but Service Tribunal allowed the appeal and reinstated him in service---Validity---No allegation was levelled against respondent regarding any illegality, irregularity or impropriety committed by him in relation to his service and acquittal in the case of murder had removed the only blemish cast upon him---Conviction of respondent in murder was the only ground on which he had been removed from service and that ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service---Even order of removal of respondent from service had provided that his case would be considered by competent authority for his reinstatement in service in case he was acquitted of the criminal charge---Respondent was justified in claiming his reinstatement in service upon earning acquittal from the competent criminal court---Supreme Court declined to interfere in the judgment passed by Service Tribunal, whereby respondent was reinstated in service---Appeal was dismissed. [pp. 704, 705] H & J

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

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

---S.4---Appeal---Limitation---Civil servant sought reinstatement in service, after he was acquitted from murder case---Service Tribunal allowed the appeal filed by civil servant and reinstated him in service---Ground raised by employer/bank was that appeal was barred by

been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service. Appeal before Service Tribunal was not barred by limitation. [p. 705]

The Chairman P.I.A.C. and others v. Nasim Malik PLD 1997 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 511 distinguished.

Raja Aleem Abbasi, Advocate Supreme Court for Appellants.

Shakeel Ahmad, Advocate Supreme Court for Respondent.

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

Date of hearing: 8th April, 2010.

JUDGMENT

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

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

- (a) Whether time barred
 - (b) Whether Diyat amount acquitted person, was reinstated
 - (c) Whether accusation
 - (d) Whether convicted
- Hence, the We have have gone through It has been judgment passed Government of and Cope and upon by the ment was not

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

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

Hence, the present appeal before this Court.

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

4. It has been argued by the learned counsel for the appellants that the judgment passed by this Court in the case of Dr. Muhammad Islam Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 and relied upon by the Federal Service Tribunal, Islamabad in the impugned

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

5. As against that the learned counsel for the respondent has maintained that the entire controversy presented before the Federal Service Tribunal, Islamabad and also before this Court regarding acquittal of the respondent on the basis of paying Diyat to the heirs of the deceased is misconceived because the respondent had earned his acquittal after paying Badal-i-Sulh to the heirs of the deceased under section 310, P.P.C. and not upon payment of Diyat. He has elaborated that Diyat may be a punishment contemplated by the provisions of section 53, P.P.C. but Badal-i-Sulh is surely not a punishment mentioned in that section. He has also argued that the respondent's appeal before the Federal Service Tribunal, Islamabad had been filed well within the period of limitation and in the comments submitted by the appellants before the Federal Service Tribunal, Islamabad no objection had been raised by them regarding the appeals filed by the respondent before the Service Tribunal or before the departmental authority being barred by time. He has further maintained in this respect that there is nothing available on the record of this case to establish that the respondent's appeal filed before the departmental authority was barred by time or any objection had ever been raised before the departmental authority in regard or that the said appeal had been dismissed on the ground of limitation. The learned counsel for the respondent has gone on to submit that no allegation had ever been levelled against the respondent regarding any illegality or impropriety by him in

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

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The said statement in service who had been a declared that an acquittal honourable or dishonourable or dishonourable Court in that case on the basis of compounding regarding the status of All acquittals are respondent in the present account of his acquittal discussion made above by this case the present appellants have been irrelevant to the core

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

10. As regards appellants based upon person who, by virtue of condemned murder said issue from division the learned counsel always that a compound basis of admission or spreading the compound the offence from the hassle or law after arduous case the respondent assault upon the and before the maintained in one and the respondent case. Be that a exonerates the accused the criminal charge autrefois acquitted guaranteed by Pakistan, 1973 Islamic jurisprudence

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

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

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are Honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of

acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

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

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10. As regards the submission made by the learned counsel for the appellants based upon the issue of propriety of reinstating in service a person who, by virtue of compounding of an offence of murder, is a self-condemned murderer we may observe that we have pondered over the said issue from diverse angles and have not felt persuaded to agree with the learned counsel for the appellants. Experience shows that it is not always that a compromise is entered into by an accused person on the basis of admission of guilt by him and in many cases of false implication or spreading the net wide by the complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battles. Even in the present case the respondent and his brother were accused of launching a joint assault upon the deceased upon the bidding and command of their father and before the learned trial Court the respondent's brother had maintained in unequivocal terms that he alone had murdered the deceased and the respondent and their father had falsely been implicated in this case. Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis-à-vis the criminal charge against him as is evident from the concept of *autrefois* acquit embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973 (and, according to our humble understanding of the concept of Sulh (compounding) in respect of

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as a general rule that compounding of an offence invariably amounts to an admission of guilt on the part of the accused person or that an acquittal earned through such compounding may have ramifications quite different from those spheres of activity of the acquitted person's life, including his service and employment, beyond the criminal case against him. We may refer to the case of Dr. Muhammad Islam (supra) this Court has been a futile and categorically observed that "All acquittals are certainly honourable and thus, in the law has not drawn any distinction between these types of acquittals" and, thus, in the sway of those observations made by this Court would surely encompass an acquittal obtained on the basis of compounding of an offence. It is admitted at all hands that no allegation had been levelled against the respondent in the present case regarding any illegality, irregularity or impropriety committed by him in relation to his service and his acquittal in the case of murder had removed the only blemish upon him. His conviction in the case of murder was the only ground which he had been removed from service and the said ground subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service.

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

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

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Chairman P.I.A.C and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513 cited by the learned counsel for the appellants in that regard. We may also observe in this context that the respondent had been acquitted in the criminal case on 22-9-1998 and he had filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in the criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning an acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case, we have found it to be unjust and oppressive to penalize the respondent for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service.

13. For what has been discussed above this appeal is dismissed and the impugned majority verdict rendered by the Federal Service Tribunal, Islamabad on 3-7-2000 is upheld and maintained.

M.H./C-3/S

Appeal dismissed.

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P LD 2010 Supreme Court 705

Present: Javed Iqbal and Anwar Zaheer Jamali, JJ

LAHORE DEVELOPMENT AUTHORITY---Petitioner

versus

Mst. SHARIFAN BIBI and another---Respondents

Civil Petition No. 1450-L of 2005, decided on 30th March, 2010.

(On appeal from the order dated 26-5-2005 of the Lahore High Court, Lahore passed in C.R. No. 379 of 2001).

Civil Procedure Code (V of 1908)----

S. 115---Limitation Act (IX of 1908), S.5---Constitution of Pakistan (1973), Art. 185(3)---Civil revision---Limitation---Condonation of delay---Revision application filed by petitioner was barred by limitation and High Court declined to condone the delay, resultantly the same was dismissed---Validity---Law of limitation could not be considered merely formality and required to be observed being mandatory in nature---Purpose of law of limitation was to help vigilant and not the indolent---Helping hand might not be extended to a litigant having

earned counsel for the... ng barred by time is... t that admittedly the... ibunal, Islamabad was... . There is no material... hat the respondent's... , whether the delay in... on what basis the said... al of the respondent's... ion that his appeal had... he same was dismissed... ich objection had been... e Tribunal, Islamabad... appellants regarding the

VAKALAT NAMA

In the Court of Service Tribunal Peshawar

Appeal No _____ of 2018

SAHIB ZADA

(Petitioner)
(Plaintiff)
(Appellant)

VERSUS

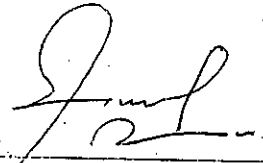
The Secy; etc;

(Respondent)
(Defendant)

I/we Sahib Zada the
above noted Appellant do

hierby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as
Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or
refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability
for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our
behalf all sums and amounts payable or deposited on my/our account in the above noted matter

Dated: _____



(Signature of Client)
(Sahib Zada)



Accepted

MUHAMMAD ADAM KHAN,
Advocate,
District Courts, Mardan.