

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 665/2020

Date of Institution ... 24.01.2020
Date of Decision ... 29.03.2022

Waqif Khan son of Raza Khan R/O Karkani Banda Katlang
District Mardan.

... (Appellant)

VERSUS

The Secretary Education Khyber Pakhtunkhwa at Peshawar and
four others.

... (Respondents)

Muhammad Sabir Khan,
Advocate

... For appellant.

Muhammad Riaz Khan Paindakhel,
Assistant Advocate General

... For respondents.

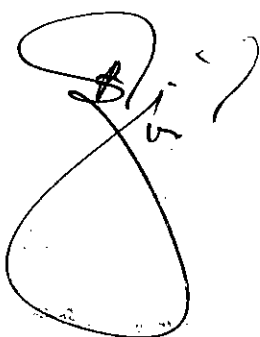
Salah-Ud-Din
Rozina Rehman

... Member (J)
... Member (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

"It is therefore, humbly prayed that by accepting the
instant appeal, the impugned order of the respondent
No.2 may kindly be set aside and the appellant may be



reinstated in his service alongwith all back benefits and salaries.”

2. The relevant facts leading to filing of instant appeal are that appellant was serving as Sweeper in Government High School Babuzai Katlang, District Mardan. He was implicated in case FIR No.271 registered at Police Station Katlang, Mardan U/S 9 (C) of CNSA on 21.05.2017. He was tried and convicted by the Trial Court and was sent to judicial lockup. He impugned the conviction before the Peshawar High Court, Peshawar which was allowed and conviction was set aside. In the meanwhile, major penalty of removal from service on the sole ground of his conviction in a criminal case was imposed upon him. He, therefore, moved an application to the respondent No.2 for reinstatement just after his acquittal which was turned down, hence, the present service appeal.

3. We have heard Muhammad Sabir Khan Advocate for appellant and Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Sabir Khan Advocate, learned counsel appearing on behalf of appellant, inter-alia, submitted that the impugned orders are illegal, against law and facts as the appellant was not treated according to law and rules. He contended that the appellant was discriminated and given step motherly treatment as no charge sheet with statement of allegations and show cause notices were communicated to the appellant and no proper inquiry was conducted in the matter. He submitted that the appellant was not provided



proper opportunity of personal hearing and he was condemned unheard. He, therefore, requested for acceptance of the instant appeal.

5. Conversely learned AAG submitted that the appellant was charged vide FIR No.271 dated 21.05.2017 at Police Station Katlang, Mardan and was convicted by a competent court of Law. He submitted that he was treated according to law and that the orders of the respondents are legal and that he was punished according to law.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that during service, he was charged in case FIR No.271 dated 21.05.2017 registered at Police Station Katlang U/S 9 (C) of CNSA. He was arrested and tried. It was on 26.06.2019 when he was convicted and sentenced to undergo rigorous imprisonment for five years with fine of Rs.30,000/-. He impugned the judgment of the Trial Court before the august Peshawar High Court, Peshawar and it was on 26.09.2019 when his appeal was allowed, impugned judgment was set aside and appellant was acquitted of the charge leveled against him. Soon after earning acquittal on 26.09.2019, he filed departmental appeal on 24.10.2019. The assertion of the learned AAG regarding the departmental appeal being barred by time does not find support from any document. He filed appeal after earning acquittal within 30 days. It would have been a futile attempt on the part of appellant to challenge his removal from service before earning

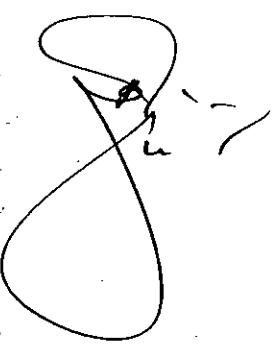


acquittal in the criminal case and it would be unjust to penalize the appellant for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation of his removal from service. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Conviction of the appellant in the case of narcotics was the only ground on which he had been removed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

7. It is established from the record that charges of his involvement in narcotics case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.


8. It merits a mention here that neither charge sheet with statement of allegations nor show cause notice was ever served upon appellant. No inquiry was conducted and the appellant was removed from service just on the strength of conviction by the learned Trial Court. Admittedly, he was condemned unheard as no opportunity of personal hearing was ever afforded to the appellant.

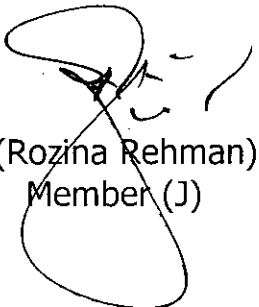
9. For what has been discussed above, this appeal is accepted and the impugned order dated 22.07.2019 is set aside alongwith other orders on the appeal of the appellant and the appellant is reinstated in service with back benefits from the date of his arrest in



the criminal case. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED.
29.03.2022


(Salah-Ud-Din)
Member (J)


(Rozina Rehman)
Member (J)

ORDER
29.03.2022

Appellant present through counsel.

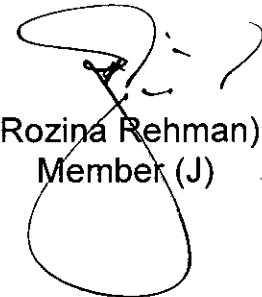
Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents present.

Vide our judgment of today of this Tribunal placed on file, this appeal is accepted and the impugned order 22.07.2019 is set aside alongwith other orders on the appeal of the appellant and the appellant is reinstated in service with back benefits from the date of his arrest in the criminal case. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
29.03.2022



(Salah-Ud-Din)
Member (J)



(Rozina Rehman)
Member (J)

30.08.2021

Due to summer vacations, the case is adjourned
14.12.2021 for the same as before.


READER

14-12-21

DB is on Tour case to come up

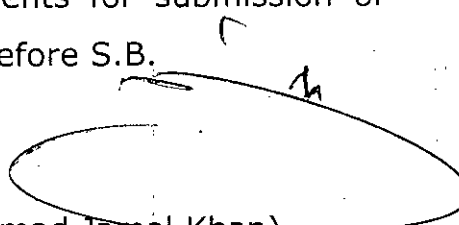
For the same on Dated. 29-3-22


Reader

21.10.2020

Mr. Inayat Malik, Brother of appellant, on behalf of the appellant is present. Mr. Kabirullah Khattak, Additional Advocate General is also present.

Neither written reply on behalf of respondents submitted nor any representative of the department is present despite issuance of notices vide preceding order sheet dated 31.08.2020. Again notices be issued to the respondents for submission of written reply/comments for 09.12.2020 before S.B.


(Muhammad Jamal Khan)
Member (Judicial)

09.12.2020

Appellant in person and Addl. AG for the respondents present.

Learned AAG is required to contact the respondents and facilitate submission of requisite reply/comments on 02.02.2021 as last chance.


Chairman

02.02.2021

Appellant in person and Addl. AG alongwith Sajid Superintendent for respondents No. 1 to 3 present.

Representative of the said respondents has furnished reply/comments. Placed on file. Nemo on behalf of respondents No. 4 & 5 nor their written reply/comments received. The matter is therefore, assigned to D.B for arguments on 10.05.2021. The appellant may furnish rejoinder, within one month, if so advised.


Chairman

10.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 30.08.2021 for the same as before.


Reader

07.07.2020

Counsel for the appellant present.

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

Again, request was made for submission of comments. Last chance is given. To come up for written reply/comments on 31.08.2020 before S.B.



Member (J)

31.08.2020

Appellant in person present. Mr. Kabirullah Khattak Addl. AG for the respondents present.

Written reply/comments not submitted. None present on behalf of the respondent department, therefore, notice be issued to the respondents department for submission of written reply/comments.

Adjourned to 21.10.2020 before S.B.



Member (E)

25.02.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Sweeper) has filed the present service appeal being aggrieved against the order dated 22.07.2019 whereby major penalty of removal from service was imposed upon him and against the order dated 13.12.2019 through which his the application for his reinstatement in service was rejected.

Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 13.04.2020 before S.B.

Appellant Deposited
Security & Process Fee


Member

13.04.2020



Due to public holiday on account of COVID-19, the case is adjourned to 07.07.2020 for the same. To come up for the same as before S.B.


Reader

FORM OF ORDER SHEET

Court of _____

Case No.- 665 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/01/2020	<p>The appeal of Mr. Waqaf Khan presented today by Mr. Muhammad Sabir Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please decrease</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/02/2020</u>.</p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appeal No 665/2020

Waqif Khan

VS The secretary Education KPK at Peshawar.

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Appellant:

Through:

Muhammad Sabir Khan

Advocate.


Mardan

Dated: 24-01-2020

Cell No, 0300 7080096

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No 665/2020
Waqif Khan Son of Raza Khan R/o Karkani Banda Katlang District Mardan.
..... (Appellant)

VS

**Khyber Pakhtunkhwa
Service Tribunal**

- ✓1) The secretary Education KPK at Peshawar.
- ✓2) District Education Officer(male) Mardan,
- ✓3) The Director (E and S education) Mardan.
- 4) The District Account officer Mardan
- 5) Principal Govt. High School Babozi Katlang *Mardan*

Diary No. 777
Dated 24/01/2020

..... (Respondents)

APPEAL AGAINST THE UNLAWFUL TERMINATION ORDER OF PETITIONER BY RESPONDENT NO. 3 ON THE BASES OF THE COVICTION OF THE APPELLANT IN CRIMINAL CASE WITH OUT WAITING TO THE DECISION OF THE APPELLAT FORUM AS THE SAME COVICTION WAS DECLARED ILLEGLE AND WAS SET ASIDE BY AGUST PESHAWAR HIGH COURT AND THE SAME WAS COMUNICATED TO THE RESPONDENTS AND THE DEPARMENTAL APPEAL OF THE APPELLANT FOR REINSTATMENT AND RELEASE OF HIS SALARIES WERE TURN DOWNED BY THE RESPONDENT NO.1 WHICH IS AGAINST THE LAW, RULES OF CIVIL SERVENTS AND AGAINST THE POLICY OF THE EDUCATION DEPARTMENT.

Esteemed Sir submitted as:

FACTS:

1. That the appellant is working as sweeper in (BPS 4) in education department KPK since 14/ 1/1993 and serving in Govt High School Babozi Katlang District Mardan.
2. That the appellant has spotless carrier and has performed his duty with full dedication and no complaint was ever reported by the superior against him..(copy of the pay clip of the appellant is attached as Annexure A)
3. That on dated 21/05/2017 the *Appellant* was falsely charged by the local police vide FIR No 27 1 U/S 9 C CNSA at Police Station Katlang, Mardan.

Filed to-day
24/01/20
Registrar

4. That the appellant was released on bail and then the trial was conducted and the learned Trial Court illegally convicted the appellant and was sent to judicial lockup on 24/6/2019.
5. That the appellant impugned the illegal conviction of the learned trial court before the Peshawar High Court and the same was allowed and the conviction of the appellant was set aside by the Peshawar High Court on 26/9/2019 and declared the appellant being innocent. (copy of the judgment of the High Court Peshawar is attached as annexure B)
6. That the respondent No. 2 imposed major penalty of removal from service on the sole ground of his conviction in false case without waiting for to the decision of the appeal of the appellant before the High Court on 22/7/2019 vide letter 8594-97. (Copy of the impugned order is attached as annexure C)
7. That after the acquittal of the appellant and after his release from lockup the appellant moved an application to the respondent No. 2 for reinstatement and releasing his salaries but the respondent No. 2 turn downed the application/appeal of the appellant without any legal justification vide letter No.14738 dated 13 December 2019.
(copy of departmental appeal and order is attached as annexure D and E)
8. That the appellant has served for more than 26 years and on the bases of illegal conviction which has already been set aside by the competent court and even then the application of the appellant was not accepted and was deprived the appellant from benefits of his long service.
9. That both the orders of the respondents are illegal and not maintainable and also against the service rules of civil servants.
10. That the appellant is civil servant and this honorable tribunal has jurisdiction to entertain the matter

RAYER:

It is therefore, humbly prayed that by accepting the instant appeal, the impugned order of the respondent No. 2 may kindly be set aside and the appellant may be reinstated in his service along with all back benefits and salaries. Any other consequential relief which the tribunal deems fit and just may also be granted.

Dist. Govt. NWFP-Provincial
District Accounts Office Mardan
Monthly Salary Statement (May-2019)

Anx A
4



Personal Information of Mr WAQIF KHAN d/w/s of RAZA KHAN

Personnel Number: 00127820 CNIC: 1610117653637
Date of Birth: 01.01.1971 Entry into Govt. Service: 14.01.1993

NTN: 0
Length of Service: 26 Years 04 Months 019 Days

Employment Category: Active Permanent

Designation: SWEEPER 80003509-DISTRICT GOVERNMENT KHYBE
DDO Code: MR6115-PRINCIPAL G.H.S BABOZAI KATLANG MAR
Payroll Section: 003 GPF Section: 001 Cash Center: 0
GPF A/C No: EDUMR009217 Interest Applied: Yes GPF Balance: 95,354.00
Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 04 Pay Stage: 23

Wage type	Amount	Wage type	Amount
0003 Subsistence pay	17,820.00	1000 House Rent Allowance	1,458.00
1210 Convey Allowance 2005	1,785.00	1300 Medical Allowance	1,500.00
1516 Dress/ Uniform Allowance	150.00	1567 Washing Allowance	150.00
2148 15% Adhoc Relief All-2013	423.00	2199 Adhoc Relief Allow @10%	288.00
2211 Adhoc Relief All 2016 10%	1,457.00	2224 Adhoc Relief All 2017 10%	1,782.00

Deductions - General

Wage type	Amount	Wage type	Amount
3004 GPF Subscription - Rs 830	-830.00	3501 Benevolent Fund	-300.00
3609 Income Tax	-166.00	3990 Emp.Edu. Fund KPK	-60.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	108,000.00	-3,000.00	75,000.00

Deductions - Income Tax

Payable: 1,000.00 Recovered till May-2019: 834.00 Exempted: 0.02 Recoverable: 165.98

Gross Pay (Rs.): 26,813.00 Deductions: (Rs.): -4,356.00 Net Pay: (Rs.): 22,457.00

Payee Name: WAQIF KHAN
Account Number: PLS000000013215
Bank Details: NATIONAL BANK OF PAKISTAN, 230884 KATLONG, MARDAN KATLONG, MARDAN, MARDAN

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL KHARKANI MARDAN PO KATLANG DISTT MA
City: MARDAN Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
Temp. Address: City: Email:

(130696/24.05.2019/09:30:38) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

Attested

(15)

Annex B

(5)

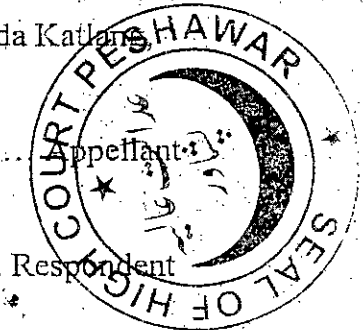
BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Cr.A.No. _____/2019

Waqif Khan S/O Raza Khan R/O Madu Lar Karkani Banda Katlang
Mardan.

Versus

The State



*CASE FIR NO.271 DATED 21.05.2017
CHARGE UNDER SECTION 9-C CNSA,
P.S Katlang, Mardan.*

Appeal U/S 48 CNSA, 1997 r/w 410 Cr.P.C against the order and judgment of Mr. Aziz Muhammad, ASJ, Katlang dated 24.06.2019, whereby the appellant was convicted and sentenced u/s 9-C CNSA of 1997 for rigorous imprisonment for 5 years ~~and~~ with a fine of Rs.30,000/-, or in default of payment of fine appellant shall further suffer imprisonment for three months.

Prayer-in-Appeal:

On acceptance of this appeal, the order and impugned judgment of Mr. Aziz Muhammad ASJ Katlang, Mardan vide dated 24.06.2019, may kindly be set aside and the appellant may graciously be acquitted from the charged leveled against them.

CH/e

ATTESTED
EXAMINER
Peshawar High Court

(2)

6

Respectfully Sheweth;

- 1) That the above named appellant have been involved and arrested by the local Police of Police Station Katlang , in case vide FIR No. 271 dated 21.05.2017. The local police commonest investigation, on completion whereof complete Challan was submitted in the court of learned Additional Session Judge Katlang, where the charge was framed against the appellant, consequently the appellant was convicted and sentence by learned ASJ-Katlang vide order dated 24.06.2019. (Attested copy of judgment are attached as Annexure "A")
- 2) That being aggrieved from the aforesaid order and judgment of the learned ASJ Katlang, the appellant approaches this Hon'ble Court for setting aside the order and judgment of the lower forum on the following grounds, inter alias.

GROUNDS

- A. That the impugned order and judgment of the learned ASJ Katlang, is against law, facts and material on record, and based on mis-reading and non-reading of evidence, hence, not maintainable.
- B. That on the basis of the evidence on record the impugned order and judgment is not sustainable, and the learned Trial Court has not applied his mind while passing impugned judgment, where a poor and innocent person have been convicted for no offence.
- C. That no recovery of alleged narcotics has been affected from the immediate/ intelligent possession of the appellant nor the alleged recovery was affected on the pointation of appellant and having no connection with the alleged recovery of alleged narcotics, neither the alleged contraband was waived or sealed at spot, nor the recovery memo was prepared on the spot, as such violated the mandatory provision of Rule-4(1) of the Control of Narcotics Substances (Government Analysis) Rules, 2001.

[Handwritten signature]

ATTESTED
EXAMINER
Peshawar High Court

(3)

7

D. That the prosecution is very much failed, in order to bring home guilt to the accused/ appellant as the evidence produced by the prosecution, is full of material and fatal contradiction, dishonest investigation and improvement, lack of corroboration between the statements of PWs and omission, as such not worthy of reliance and, therefore, conviction cannot be made on such flimsy, doubtful and incredible evidence.

E. That the investigating agency did not bothered to find out any connecting evidence to link the appellants in the crime, and it is now well settled principal of law and the august Supreme Court of Pakistan in the case "Nek Muhammad & another Versus The State" reported in PLD 1995 Supreme Court 517(b) held that

"Mere recovery of contrabands articles from a place or a vehicle does not automatically connect an accused/ person with such articles unless prosecution succeeds in showing that he had a conscious possession of the same"

F. That the appellant was convicted on a very highly flimsy, doubtful and interested evidence of the prosecution, hence, the conviction of the appellants are not sustainable in the eye of law.

G. That the impugned order and judgment of the learned Subordinate Court is manifestly wrong and the evidence produced by the prosecution does not connect the appellant with the commission of offence.

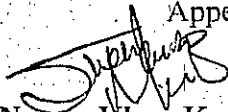
H. That the impugned judgment, which is based on surmises and conjectures is the result of mis-reading and non-reading of evidence available on the record, and the impugned order and judgment of the learned Trial Court is against law, fact and justice, hence, not maintainable at all.

I. That the prosecution story as setup in the FIR, and the deposed before the Trial Court are quite different, therefore, does not inspire confidence.

ATTESTED
EXAMINER
Peshawar High Court

- (47)
- (8)
- J. That the sentence awarded to the appellants is capricious and is based on presumption, supposition, conjectures and surmises.
- K. That a great number of major discrepancies in the statement of PWs have been brought on record to sheltered the prosecution testimony.
- L. That the appellants are quite innocent and the prosecution has failed to prove his case against the appellants, beyond any reasonable ground, and the learned Trial Court instead of extending benefits of doubts to the appellants have absolved in favour of prosecution.
- M. That the learned Trial Court has made a subjected approach to the case and has not assessed the prosecution evidence in accordance with well established principles setup by the Superior Courts on the subject, which has resulted in grave miscarriage of justice.
- N. That on prior permission of this Hon'ble Court the appellants may argued the other grounds at the time of arguments.

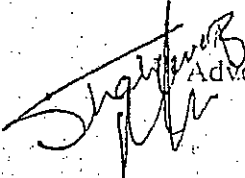
It is, therefore, humbly prayed that on acceptance of this appeal, the order and impugned judgment of Mr. Aziz Muhammad ASJ Katlang vide dated 24.06.2019, may kindly be set aside and the appellant may graciously be acquitted from the charge leveled against him.

Through  Appellant
Shah Nawaz Khan Katlang
Advocate

Dated: 28.06.2019

CERTIFICATE:

Certified that no such like appeal has earlier been filed in this Hon'ble Court as per the instructions of the appellant.

 Advocate


ATTESTED
EXAMINER
Peshawar High Court

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Cr. Misc.No. _____/2019

IN

Cr. Appeal No. _____/2019

Waqif Khan S/O Raza Khan R/O Madu Lar Karkani Banda Katlang,
Mardan.

..... Appellant

Versus

The State..... Respondent

APPLICATION U/S 426 Cr.P.C. FOR
SUSPENSION OF SENTENCE IN THE
IMPUGNED JUDGMENT AND ORDER
OF THE LEARNED ASJ Katlang, DATED
24.06.2019 AND RELEASE OF THE
PETITIONERS/ APPELLANTS ON BAIL,
TILL THE FINAL DISPOSAL OF THE
MAIN APPEAL.

Respectfully Sheweth;

- 1) That the petitioners/ appellant have already been impugned their conviction and sentence dated 24.06.2019 passed by the ASJ Katlang, before this Hon'ble Court in which no date has yet been fixed and grounds of appeal may be considered as integral part and parcel of this application.
- 2) That conviction in sentence imposed upon the petitioner/ appellant is corporately shown and the petitioner/ appellant

ATTESTED
EXAMINER
Peshawar High Court

(Handwritten mark)

10

have faced the agony of court trial for sufficient long time and are still in miserable condition in jail.

- 3) That due to huge load of work and pendency of cases, the accompanying appeal filed in this Hon'ble Court would take sufficient time, therefore, for safe administration of justice the petitioner/ appellant may not kept in jail for a long time. Moreover, the petitioner/ appellant was on bail during the trial, and was regularly attend the court for long time and not misuse the concession of bail granted by this Hon'ble Court to Waqif Khan Appellant by the learned Trial Court.
- 4) That the case against the petitioner/ appellant is one of highly discrepant and illegal evidence warranting interference by this Hon'ble Court for the intents of suspension of conviction and sentence.
- 5) That the conviction recorded and sentence awarded to petitioner/ appellant is against the facts brought on record and law on subject and the petitioner/ appellant are innocent, therefore, sanguine of success in their accompanying appeal.
- 6) That the petitioner/ appellant is ready to furnish any reliable surety to the entire satisfaction of this hon'ble court.

It is, therefore, most humbly prayed that on acceptance of this application, the impugned judgment/ order dated 24.06.2019 passed by learned ASJ-Katlang, may kindly be suspended, and the petitioner/ appellant may very graciously be released on bail till the final decision of the main appeal.

Petitioner/ appellant
 Through *(Signature)*
 Shah Nawaz Khan Katlang
 Advocate

Dated: 28.06.2019

ATTESTED
 EXAMINER
 Ferozwar High Court

25

11

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Cr.Misc. (BA) No. _____/2019

Waqif KhanAccused/ Petitioner

VERSUS

The State Respondents

AFFIDAVIT

I, Sajid Khan son of Mir Muhammad Khan R/o Karkani Banda, Tehsil Katlang District Mardan (special attorney for accused/ petitioner), do hereby affirm and declare on oath that the contents of the accompanying Application are true and correct and nothing has been concealed from this Hon'ble Court. Further affirm that no such like bail application has earlier been filed before this Hon'ble Court.

Sajid Khan

Deponent

CNIC No.16101-1585988-9

Cell: 0346-9629111

Identified by:

Shah Nawaz Khan Katlang
Advocate High Court
District Courts Mardan

Shah Nawaz Khan

5130
29/10/19
Sajid Khan
Karkani
Mir Muhammad
Shah Nawaz
29/6/19
41

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 57 of
the Constitution of the Islamic Republic of Pakistan

23 OCT 2019

12

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

Judicial Department

Cr.A No. 825-P/2019

Waqif Khan Vs the State

Date of hearing 26.09.2019.

Mr. Shah Nawaz Khan, Advocate, for the
appellant.

Mr. Mujahid Ali Khan, AAG, for the State

JUDGMENT

AHMAD ALI, J. Questioned herein is the

judgment of learned Additional Sessions

Judge/Judge, Special Court, Katlang (Mardan),

dated 26.06.2019, whereby appellant Waqif Khan

s/o Raza Khan, was convicted and sentenced to

five years RI with fine of Rs.30,000/ or in default

of payment of fine to further undergo three months

S.I, in case FIR No.271 dated 21.05.2017,

registered against him u/s 9 C CNSA at Police

Station Katlang, Mardan.

2. Brief facts, as per contents of FIR, are that

the complainant Hazrat Nabi Khan, ASI, during

gasht apprehended the accused-appellant Waqif

Khan, having 500 grams charas pukhta on the spot,

whereas 1500 grams of charas pukhta were

recovered from the fields near the spot of

occurrence on his pointation. Total 2000 grams



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[Handwritten mark]

ATTESTED
EXAMINER
Peshawar High Court

charas were recovered. 5/5 grams from each packet were separated for chemical analysis of FSL and sealed in parcels No.1 to 3. Remaining contraband was sealed in a separate parcel No.4. On each of the parcel 3/3 signia of 'MH' were affixed. Accused-appellant was arrested and on the basis of murasila Ex.PA, FIR ibid was registered against the accused-appellant.

2. On completion of investigation, challan was submitted in Court where the appellant was charge sheeted to which he pleaded not guilty and claimed trial. The prosecution in order to prove its case, produced and examined as many as seven witnesses in all whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned Trial Court, after conclusion of trial, found the appellant guilty of the charge and, while recording his conviction, sentenced him as mentioned above. Feeling aggrieved, the appellant has filed the instant appeal before this Court.

3. Arguments heard and record gone through.

4. Allegation against the appellant is that he was having 500 grams charas in his direct possession whereas, 1500 grams of charas pukhta

ATTESTED
EXAMINER
Peshawar High Court

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were recovered from the fields near the place of occurrence.

5. The complainant/PW-5 stated in his examination in chief that on 21.05.2017, he along with two other police officials (Waseem Akhtar 1367 and Imrad 2681) was on duty when received information regarding selling of narcotics by famous drug peddler, namely, Waqif (hereinafter called appellant). They reached the spot of occurrence at 1630 hrs and recovered 500 grams charas pukhta from the accused-appellant. Further deposed that on pointation of accused-appellant 1x1/2 packet of 1500 grams were recovered from his field's drainage divergent at karkany banda. Questions arise here, firstly, that when the complainant received information regarding selling of narcotics by the accused-appellant, why did not he conduct a test purchase, through an independent witness so as to have been substantiated his stance qua his allegation, secondly why the recovery was not in shape of sachets and, thirdly, when according to the site-plan the place of occurrence is surrounded by fields, why did not the accused-appellant, having contraband in his possession, on seeing the police party, decamp from the spot. By nature when an

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Peshawar High Court

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accused notices the police party or sensing any danger, he being about to do wrong, automatically makes ways for his escape. It seems an afterthought that once the accused, already apprehended with 500 grams of narcotics and he being well aware of the consequences, then why did he point-out hidden narcotics and when he was all alone in knowledge of the same. These unanswered questions are mystery in the instant happening. Rather, the scenario suggests that the occurrence has not at all taken place as alleged by the complainant.

6. It was the Moharrir of the police station, who while appearing as PW-7 in the trial court deposed that he received parcels No.1 to 4 for keeping the same in the safe custody at malkhana of the PS concerned, but astonishingly, samples were sent to FSL on 26.05.2017 with a considerable delay of 5 days.

7. To utter surprise of the Court, the FSL report shows the physical appearance of the contraband to be liquid. Complainant while initially reporting the matter and while recording statement before the learned trial court categorically stated that the substance recovered from accused-appellant was charas pukhta. This


ATTESTED
EXAMINER
Peshawar High Court

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fact leads to a mystery towards the recovery by complainant and sending of samples by the Moharrir as to what was actually sent to FSL for analysis.

8. In present case against the appellant, the record suggests that safe custody of the recovered substance as well as safe transmission of samples of the recovered substance to the FSL are not in line with the prosecution story which created doubts qua establishment of the charge against the accused. Moreover, the FSL report Ex.PK only shows the belt number of FC1117 who took the samples to FSL on 26.05.2017. Furthermore, record is silent as to why the samples were received in FSL with a considerable delay of 5 days. Prosecution failed to bring anything on record with respect to the said delay.

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9. In present case, where the recovery, place of occurrence, and samples of substance sent to FSL are doubtful, there it cannot be said that the prosecution had proved its case against the accused-appellant beyond reasonable doubt.

10. All the above aspects of the case created doubts in the prosecution case qua its recovery and it suggests that occurrence has not taken

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ATTESTED
EXAMINER
Peshawar High Court

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place in the mode and manner as alleged by the prosecution.

11. The above discussion has led this Court to believe that the learned trial court has erred in appreciating the case evidence both ocular and circumstantial in its true perspective. It has been held, time and again by the superior courts, that a slightest doubt occurs in the prosecution case is sufficient to grant acquittal to an accused. The conclusions drawn by the learned trial Court are not borne out of the case evidence therefore, the impugned judgment is not sustainable.

12. For what has been discussed above, this appeal is allowed, the impugned judgment is set aside and the appellant is acquitted of the charge leveled against him. He be set at liberty forthwith, if not required in any other case.

13. Above are the reasons of short order of even date.

Qain
JUDGE

JUDGE

Announced on:
26.09.2019

Amjad Ali, PS
Hon'ble Mr. Justice Lal Jai Khattak & Hon'ble Mr. Justice Ahmed Ali

CERTIFIED TO BE TRUE COPY
Examiner
Postmaster High Court, Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan Order 1997

23 OCT 2019

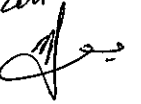
CAV

BETTER COPY

1. Whereas Waqif Khan Sweeper GHS Babozai Katlang Mardan involved in a case & has been arrested by the police on account of selling the chars weigh 2000 gram and FIR lodged against him in the Police Station Katlang dated 06.12.2016.
2. Whereas the Court Decided the case of the accused Mr. Waqif Khan Sweeper GHS Babozai Katlang Mardan, keeping in view the contents of FIR duly substantiated through consistent, confidence inspiring and trustworthy evidence, concerning the recovery of chars, it is held that prosecution has proved the Charge of recovery of 2000 grams chars from the possession of the accused facing trial and on his pointation, as such, has proved its case beyond any shadow of doubts.
3. Whereas, the court also decided, therefore the accused facing trial is hereby convicted U/s 9 (c) CNSA and is sentenced for imprisonment of five (05) years (RI). The accused shall also pay fine to the tune of Rs.30,000/- (Thirty thousand) as the court decision received from the Principal vide his letter No.677 dated 01.07.2019.
4. Now, therefore in exercise of Powers conferred under the Revised Efficiency and Disciplinary Rules 2011, I the District Education Officer (Male) Mardan being competent authority is pleased to imposed Major Penalty of Removal from service upon Mr. Waqif Khan Sweeper GHS Babozai Katlang w.e.f in the light court of Additional Session, Judge Special Court under CNSA, Katlang decision, 26.06.2019.

Note: Necessary entry to this effect should be made in his service book.

(Zulfqar-ul-Mulk)
District Education Officer
(Male Mardan)

attest


Endst: No. 8594-97/ PF Waqif Khan Sweeper GHS Babuzai/Dated Mardan the 2207.2019.

Copy of the above is forwarded for information & N/action to the:-

1. P.S to Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. P.A to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Nazim Mardan.
4. Deputy Commissioner Mardan.
5. Principal, GHS Babozai Katlang Mardan for strict compliance.
6. Official concerned:
7. District Accounts Officer Mardan.
8. District Monitoring Officer IMU Mardan.
9. EMIS Branch local office.

District Education Officer
(Male Mardan)

Office Order
Office of the DEO (M) Mardan

1. Whereas, Waqif Khan Sweeper GHS Babozai Katlang Mardan involved in a case & has been arrested by the police on account of selling the chars weight 2000 gram and FIR lodged against him in the Police Station Katlang dated 6.12.2016.

2. Whereas, the Court Decided the case of the accused Mr. Waqif Khan Sweeper GHS Babozai Katlang Mardan, keeping in view the contents of FIR duly substantiated through consistent, confidence inspiring and trustworthy evidence, concerning the recovery of chars, it is held that prosecution has proved the Charge of recovery of 2000 grams chars from the possession of the accused facing trial and on his pointation, as such, has proved its case beyond any shadow of doubts.

3. Whereas, the court also decided, therefore the accused facing trial is hereby convicted U/s 9(c) CNSA and is sentenced for imprisonment of five (05) years (RI). The accused shall also pay fine to the tune of Rs.30,000/- (thirty thousand) as the court decision received from the Principal vide his letter No.677 dated 1.7.2019.

4. Now, therefore in exercise of Powers conferred under the Revised Efficiency and Disciplinary Rules 2011, the District Education Officer (Male) Mardan being competent authority is pleased to imposed Major Penalty of Removal from service upon Mr. Waqif Khan Sweeper GHS Babozai Katlang w.e.f. in the light court of Addl. Session, Judge Special Court under CNSA, Katlang decision, 26.6.2019

NOTE:- Necessary entry to this effect should be made in his service book.

(Zulfaqr-ul-Mulk)
District Education Officer
(Male) Mardan

8594-97

Endst: No. _____ / PF Waqif Khan Sweeper GHS Babuzai / Dated Mardan the 22-7-2019.

Copy of the above is forwarded for information & reaction to the:-

1. P.S. to Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. P.A to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Nazim Mardan.
4. Deputy Commissioner Mardan.
5. Principal, GHS Babozai Katlang Mardan for strict compliance.
6. Official concerned.
7. District Accounts Officer Mardan.
8. District Monitoring Officer IMU Mardan.
9. EMIS Branch local office.

Attested
Principal
G.H.S. Babuzai Katlang
Mardan

District Education Officer
(Male) Mardan

الحمد لله رب العالمين والصلوة والسلام على سيدنا محمد وآله الطيبين الطاهرين
(محرر) 19/11/19

Annex D (19)

درخواستِ عمارتِ دارالعلوم
و علم دارالعلوم بیروت بحالی ملازمت
و ادائیگی تنخواہ جات
بیروت فیصلہ حکم عدالت بحالی بیروت (ہائی کورٹ بیروت)

جلاب عالی

مذکورہ لکڑی کے بارے میں سائل ایک دستاویز جمع کیا ہے
جو کوئی سرکاری دستاویز ہے۔
گورنمنٹ ہائی سکول بالوڑا۔ کالنگ فیصلہ بیروت
سے تکریر خاکروب کیسٹاٹ کیا۔

درج ذیل سببوں کے خلاف حکم عدالت 27/5/17
مقام کالنگ۔ فیصلہ بیروت درج کیا گیا۔
انڈیا کے لوگوں کے بارے میں کوئی دستاویز - اس بارے میں اسٹیشنر ان بھارت نے
سائل کو مطلع کیا۔ (مجموعہ حکم بر 93-10392 صلح 16-12-17)
اب سائل کو عدالت بحالی بیروت (بیروت ہائی کورٹ) نے جواب دیا ہے
یا غرض بیروت کیا۔ فیصلہ عدالت بحالی ہے۔

اسٹیشنر عمارتِ غنیمت دارالعلوم کالنگ عدالت بحالی کے
فیصلہ کے پیش میں سائل کا عطلی ختم کرنے کی کوئی کسٹیاٹ
کرنے کا حکم صادر نہیں کیا اور تنخواہ جات کے ادائیگی کرنے
حکم صادر نہیں کیا۔
24.10.19

7-383-1765-1764

واقف خانی و لکڑی خانی سائین کرنے کی بارے
مقام کالنگ۔ فیصلہ بیروت
خاکروب گورنمنٹ ہائی سکول بالوڑا۔ کالنگ



OFFICE OF THE
DISTRICT EDUCATION OFFICER
(MALE) MARDAN

& ☎ 0937-933151 , ✉ deomalemardan@gmail.com



Amal
20

No. 14738 /PF Waqif Khan Sweeper GHS Babuzai Katlang/Dated 13-12-2019.

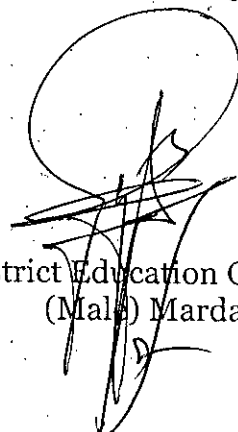
To

Mr, Waqif Khan Sweeper
GHS Babuzai Katlang Mardan.

Subject:- APPEAL FOR RE-INSTATEMENT IN SERVICE

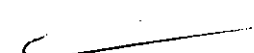
Memo:

Reference your application received on 01.11.2019 to this office for the subject noted above is hereby rejected, with the remarks that your removal order is prior than the acquittal order and filed.



District Education Officer
(Male) Mardan.

Endst No. _____
Copy for information to the:-

1. Headmaster GHS Babuzai Katlang Mardan.


District Education Officer
(Male) Mardan.

Attested

قیمت 50 روپے	25495			
ایڈوکیٹ:		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ ایسوسی ایشن نمبر:				
رابطہ نمبر:				

بعدالت جناب: محمد حفیظ خواجہ سرور کے سر شہید کیس نمبر

منجانب: <u>Appellant</u>	دعویٰ: <u>مصلح</u>
<u>واقف بن</u>	علت نمبر:
<u>بنام</u>	مورخہ:
<u>سید محمد اسحاق کھٹن</u>	جرم:
	تھانہ:

باعث تحریر آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کاروائی متعلقہ مقدمہ
آن مقام سید محمد اسحاق کھٹن کیلئے محمد اسحاق کھٹن کو وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم:

العبد گواہ شد العبد

مقام کے لیے منظور ہے۔

attested and

Accepted

واقف بن

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No: 665/2020

Waqif khan son of Raza khan R/O karhani Banda Katlang District Mardan.

(Appellant)

Versus

The Secretary (E & SE) Khyber Pakhtun Khwa Peshawar, & Others.

(Respondents)

INDEX

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit		01	04
2.	Letter & FIR	A & B	05	06
3	Letter & Judgment	C & D	07	17
4	Copy of order of Removal	E	00	18
5	Copy of application & appeal for Reinstatement	F & G	19	20

Respondent
21/10/2020
District Education Officer
(Male) Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No: 665/2020

Waqif khan son of Raza khan R/O karhani Banda Katlang District Mardan.

(Appellant)

Versus

The Secretary (E & SE) Khyber Pakhtun Khwa Peshawar, & Others.

(Respondents)

Para Wise Comments On Respondents 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 badly time barred.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant has concealed the material facts from this Honorable Tribunal hence the appeal is liable to be dismissed.
5. That the principal through a letter No.266 dated 25-05-2017, has sent FIR No. 271 dated 21-05-2016 to the respondents. (Letter & FIR are as Annexure A & B)
6. That the Principal of GHS Babuzai Katlong Mardan through a letter No 677 dated 01-07-2019 has submitted report regarding the imprisonment of the appellant (Waqif khan).(Letter & Judgment are as Annexure C & D)
7. That after fulfillment of all the codal formalities, the appellant was removed from service vide order Endst No 8594-97/ G dated 22-07-2019 in accordance with law.

(Order of Removal is Annexure as Annex-E)

FACTS:

1. Para No 1 pertains record, hence needs no comments.
2. Para No 2 is pertains record, hence needs no comments.
3. Para No 3 is incorrect, baseless, against facts & law, as the appellant was charged vide FIR NO 271 U/S 9 C CNSA on dated 21-05-2017 at police station katlang Mardan, and the appellant is facing trial here by convicted under section 9 C CNSA and is sentence for imprisonment of five (05) years and fine to tune of Rs. 30,000/(Thirty thousands),hence denied.(Copy of Judgment is as Annexure E)

4. Para No 4 is incorrect, baseless and against facts as the appellant has legally convicted and has sent to judicial lockup on dated 24-06-2019.
5. Para No 5 pertains to record, hence needs no comments.
6. Para No 6 is incorrect, as the respondent being a responsible Govt Officer acted according to law, hence denied.
7. Para No is incorrect, baseless and against facts as the respondent through letter No. 14739 dated 13-12-2019, the application of the appellant has rejected with the remarks that the removal order of the appellant is prior than the acquittal order, hence denied.

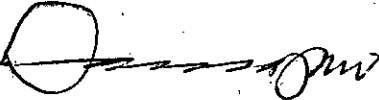
(application & appeal for Reinstatement are as Annexure F & G)


8. Para No 8 is incorrect, as the respondent has issued removal order on dated 22-07-2019 before the acquittal order, hence denied
9. Para No 9 is incorrect, as the orders of the respondent are legal, maintainable and is not against the service rules of civil servant. The appellant has done misconduct, hence denied.
10. Para No 10 needs no Comments.

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

Respondents 2&5

**District Education Officer
(Male) Mardan**


**Director of (E & SE)
of KPK Peshawar**


**Secretary of (E & SE)
Of KPK Peshawar**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No: 665/2020

Waqif khan son of Raza khan R/O karhani Banda Katlang District Mardan.

(Appellant)

Versus

The Secretary (E & SE) Khyber Pakhtun Khwa 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

①

Office of the Principal
G.H.S. Babuzai Katlang

No 266 Dated 25/5/2017.

District Education Officer
E/S Mardan.

59

Subject:- FIR against Mr. Wajif Khan sweeper
for selling chaise.

R/Sir,

It is stated for your kind information that
Mr. Wajif Khan sweeper of this school was absent from
duty on 22/5/2017. Later we came to know through
reliable sources that he had been arrested by the
Police in selling chaise. After obtaining FIR
against him from S.H.O. Katlang is being forwarded
for further necessary action please.

It is further stated that he is already suspended
for so many times.



ADDC (PD)
R. Khan

25/5/2017

Arshad Hussain
Principal G.H.S.
Babuzai Katlang.
PRINCIPAL
G.H.S. Babuzai Katlang
Distt: Mardan

ابتدائی اطلاع رپورٹ (6) - Annex - B - ۱۵۴

ابتدائی اطلاع نسبت قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ نو جداری

26	جلد 271	صفحہ 5/77	تاریخ 16:30 بجے
تاریخ وقت رپورٹ	5/77 بجے	وقت 17:00 بجے	تاریخ وقت 17:30 بجے
نام و سکونت اطلاع دہندہ مستعین	شاہتی کارڈ نمبر / موبائل نمبر	حضرت نجی خان ASI	
مختصر کیفیت جرم (موردہ) حال اگر کچھ لیا گیا ہو۔	9C, CN54	بڑا گھڑی (2000) گرام گھڑی	
جائے وقوعہ فاصلہ تھانہ سے اور سمت		ادراہی بلڈز واقعہ کرنی مدرو	
نام و سکونت ملزم	0344-9059217	واقعہ ولد رضا خان ساکن کرنی مدرو	
شاہتی کارڈ نمبر / موبائل نمبر	16101-1765363-7		
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو۔		بدرستی فراہم شدہ تمام کیا گیا ہے	
تھانہ سے روانگی کی تاریخ و وقت		سبیل ڈاک	

ابتدائی اطلاع نیچے درج کرو۔ بوقت صدر ایک تحریری مراسلہ منجانب
 نئی خان ASI بدست کرنل و سیم اہلکار 367 نمبر پر ارسال کیا گیا ہے۔ (SHO) ایڈیشن تھانہ پانڈی
 (2000) گرام گھڑی ملزم پر ارسال کیا گیا ہے۔ پیش کرتے ہیں رپورٹ کرتے ہیں کہ مشورہ منشیات فروش واقعہ
 رضا خان کے متعلق اطلاع ملی کہ معاملہ سوائے وقوعہ والا پورچس فروخت کرنا ہے اطلاع بر فوراً جائے وقوعہ
 ملزم کو قابو کر کے ملزم کے قبضہ سے چرس برآمد کر کے جوڑوں کرنے پر آمادگی گرام نکلی ملزم واقعہ کو لہری
 روٹ کر کے تھانہ لایا کہ اس نے ملزم چرس ادراہی خود واقعہ کرنی میں چھپایا ہے جو فوری طور پر مذکورہ
 پورچس ادراہی بلڈز سے سزا ادراہی میں درج ہے ملزم ایک پلاسٹک کی تھلی نکال کر پیش کر کے تھلی پر
 ایکٹ پچتہ چرس برآمد ہو کر جوڑوں کرنے پر ایکٹ ہو کر (1000) گرام نکلی جبکہ آدھے پیکٹ
 (500) گرام نکلی۔ دونوں پیکٹوں سے 5/5 گرام اور پچھلے 500 گرام سے (5) گرام بٹریں جنرل FSL
 پر ہندو ارسال ہو کر 3 نمبر کر کے سبکدہ جایا 495 اور 1490 گرام یعنی کل 1985 گرام ہندو ارسال کرنا
 ہر ایک بار ارسال ہو کر 3 عدد واپس آئی MH شہرت کے قلم چرس برکتے نور عبید اللہ پولیس میں آ کر
 پورچس برکتے ہر ایک بار ارسال ہو کر حسب نہایت گھڑی کر کے پیش کیا۔ حضرت نجی خان ASI پر مراسلہ تحریر کر کے
 میں جا چکی تھوڑے ہی وقت میں کرنل و سیم اہلکار 367 ارسال تھانہ سے تفتیش کیا جائے حضرت نجی خان ASI
 پر اطلاع تھانہ کا نمبر 215/107 کارروائی ہو جائے اس آدھے مراسلہ میں یہ خبر درج صدر مدرو
 پر ہندو فوراً متنبہ ہو کر تھانہ FIR مع مراسلہ تفتیش خواہ تفتیش کے لئے سہ ماہی

ASi-PS-KTG
 21/05/1017

Annexure C-7

AEVI
23/7/19

Office of the Principal (67)
GHS Babuzai Katlang Mardan
No 677 Dated 01/07/2019.

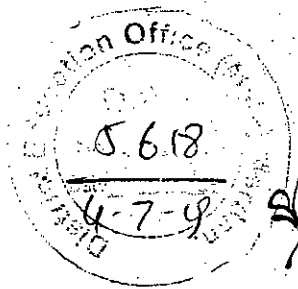
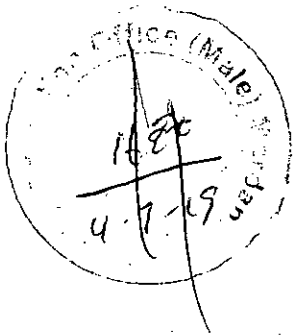
District Education Officer
(Male) Mardan.

Subject: Penalty of Impersonment/Dismisal of
Mr wajif Khan Sweeper.

R/Sir,

Enclosed find herewith the Court decision
of against Mr wajif Khan for the penalty of
05 years Impersonment and Rs 30,000/- in the case of
selling charge for further necessary action please.

Thanks



21/7/19

01/07/2019
Principal GHS
Babuzai Katlang

Mardan **PRINCIPAL**
GHS Babuzai Katlang
Distt: Mardan.

Annexure D- (8)

IN THE COURT OF AZIZ MUHAMMAD,
ADDL: SESSIONS JUDGE/JUDGE SPECIAL COURT UNDER CNSA, KATLANG
MARDAN.



Special Case No: 101/SPL of 2017

Date of Institution: 14.12.2017

Date of Decision : 26.06.2019

66

THE STATE

....VERSUS....

Waqif Khan son of Raza Khan r/o Madho Lar Karkani Banda
Tehsil Katlang, Mardan.

.....(Accused Facing Trial)

CHARGED VIDE CASE FIR NO.271, DATED 21.05.2017, UNDER
SECTION 9 (C) CNSA, 1997, P.STATION KATLANG, MARDAN.

JUDGMENT

- 1- Accused Waqif Khan son of Raza Khan faced trial in the subject case.
- 2- Brief fact as per contents of FIR, are that during Patrolling Hazrat Nabi Khan ASI produced accused Waqif on the spot i.e. fields near Karkani Mado alongwith 2000 grams chars pukhta, sealed into parcel and reported the matter that he received information that famous drug peddler Waqif Khan son of Raza Khan is selling chars on the spot. Consequent upon said information, the police party rushed to the spot where they overpowered the accused and from his possession chars weighing 500 grams recovered. On preliminary interrogation accused facing trial disclosed that he has kept

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Sessions Court Katlang at Mardan

29/6/19
26-6-19

65

more chars in the fields of Karkani. On this, accused led to the said spot in custody, from where accused facing trial dig out a plastic bag, which contained chars weighing 1 1/2 packets. On weightment one packet came out of 1000 grams while another 500 grams. Five grams chars separated from each packets for the FSL analysis and sealed into parcels No.1,2,3. While remaining chars i.e. 495 grams and 1490 grams sealed into parcel No.4 by affixing 3/3 monogram of 'MH'. Mursila was sent to police station through constable Waseem Akhtar No.1367 for registration of the FIR, whereof case in hand was registered.

3- The matter was entrusted to Bashir Khan Inspector (PW-5) for Investigation, who prepared Site Plan (Ex.PB) on the pointation of complainant and marginal witnesses, recorded statements of PWs U/s 161 Cr.PC. Vide application EX.PW5/1, he interrogated accused facing trial and during interrogation he pointed out the place of occurrence to him vide pointation memo EX.PW5/2. He produced accused facing trial before the court of Judicial Magistrate vide application EX.PW5/3 for recording his confessional statement but he refused to do so and was sent to judicial lockup. He has also received FSL report in positive and placed on file DDs EX.PW5/4 and EX.PW5/5 regarding the departure, facts of recovery and arrival of the complainant.

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 Sessions Court Karkana, Mar. 2011

29/6/11

26.6.11


(64)

He has also placed on file FSL receipt EX.PW3/1 and attested copies of those cases registered against accused facing trial, EX.PW5/6 to EX.PW5/10. After completion of investigation he handed over case file to SHO Mohsin Fawad for submission of challan against accused facing trial, as he well conversant with the signature of said SHO, who has submitted challan on 23.05.2017, EX.PW5/11.

4. During the course of trial, copies of the relevant documents were provided to the accused facing trial, within the meaning of Section 265 (C) Cr.P.C. Thereafter, accused facing trial was indicated, who pleaded not guilty and claimed trial. Prosecution was directed to produce its evidence. In order to prove its case, prosecution produced 07 PWs, the gist of their deposition is given below:-

Tariq Alam ASI examined as PW-1, who is marginal to pointation memo EX.PW1/1 vide which accused facing trial during investigation pointed out the place of occurrence to

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Sessions Court Katihar, Bihar

Waseem Akhtar FC No.1367 examined as PW-2, is the marginal witness to the recovery memo EX.PW2/1 vide which complainant had taken into possession chars weighing 500 grams from possession of accused. On his interrogation in the case in hand more chars weighing 1500 grams were also recovered from the fields belonging to him. Case

29/6/18

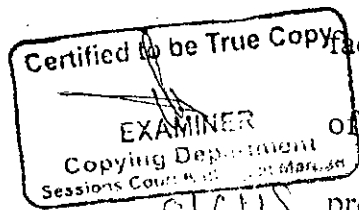
property was exhibited as EX.P1. His statement was also recorded by the IO.

Faiz Muhammad Khan SHO examined as PW-3; on receipt of murasila from Hazrat Nabi Khan ASI through constable Naseem Akhtar No.1367, he incorporated the contents of murasila into FIR-EX.PA.

Constable Jandool No.1117 (retired) examined as PW-4; On 26.05.2017, Muharrir had handed over to him three parcels containing 5/5 grams chars in a sealed condition, having 3/3 monogram of MH, which he taken to FSL Peshawar for examination vide receipt EX.PW4/1.

Bashir Khan Acting DSP Investigation examined as PW-5, who is investigating officer of the present case, who prepared Site Plan (Ex.PB) on the pointation of complainant and marginal witnesses, recorded statements of PWs U/s 161 Cr.PC. Vide application EX.PW5/1, he interrogated accused

facing trial and during interrogation he pointed out the place of occurrence to him vide pointation memo EX.PW5/2. He produced accused facing trial before the court of Judicial Magistrate vide application EX.PW5/3 for recording his confessional statement but he refused to do so and was sent to judicial lockup. He has also received FSL report in positive and DDs EX.PW5/4 and EX.PW5/5 regarding the departure, facts of recovery and arrival of the complainant. He has also placed on file FSL receipt EX.PW3/1 and



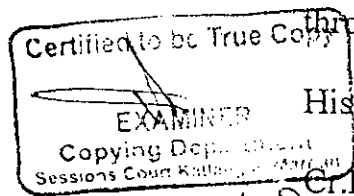
(12)

(62)

attested copies of those cases registered against accused facing trial, EX.PW5/6 to EX.PW5/10. After completion of investigation he handed over case file to SHO Mohsin Fawad for submission of challan against accused facing trial, as he well conversant with the signature of said SHO, who has submitted challan on 23.05.2017, EX.PW5/11.

Hazrat Nabi Khan ASI examined as PW-6; He is complainant of the present case and narrated the same facts as that of FIR, EX.PA.

Sadique ASI examined as PW-7; on 21.05.2017, complainant Hazrat Nabi Khan ASI handed over to him four parcels, parcels No.1,2,3 contained 5/5 grams chars and parcel No.4 contained remaining chars. He made entry in register No.19 and kept the same in Mall Khana in safe custody. He also sent parcel No.1,2,3 to the FSL Peshawar



- 5- Prosecution closed its evidence. Therefore, accused facing trail was examined U/s 342 Cr.PC, who professed innocence, however, did not opted to appear as his own witness on oath or to produce evidence in defense.
- 26-6-19

(6)

- 6- I have heard the arguments of learned APP for State and learned counsel for accused facing trial and have perused the case file thoroughly.
- 7. APP Muhammad Sajjad for the State, argued that recovery of narcotics had been effected from the direct possession of accused facing trial. That all the PWs were consistent on material points and nothing favourable to accused has been brought during cross examination and no reason for false implication was suggested. That samples taken from the recovered stuff were sent to FSL for chemical analysis and the report is in positive. He prayed for awarding punishment according to law.
- 8- On the other hand, learned counsel for the accused argued that accused facing trial is innocent and has been falsely implicated. That the case of prosecution is full of doubts and the benefit of doubt goes in favour of prosecution. He argued

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 Sessions Court, Muzaffargarh

29/6/11

all the PWs are police officials and no independent witness has been associated with the alleged recovery proceedings. That the prosecution badly failed to prove the safe custody of alleged samples taken from recovered stuff. He prayed for acquittal of accused facing trial.

45.6.11
 [Signature]

- 9. The case or prosecution is primarily based upon direct evidence of recovery of 500 grams chars from immediate possession of accused facing trial and recovery of 1500

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grams chars on his pointation after his arrest and preliminary interrogation on the spot. Separation of samples from the recovered lot, sending the samples to FSL for analysis and opinion and positive report of the FSL, showing that the recovered stuff was chars.

10. In order to prove its case, prosecution produced 07 PWs. The seizing officer Hazrat Nabi ASI has been produced and examined as PW-6, whereas, the witnesses of recovery, namely Waseem Akhtar FC No.1367, has been produced and examined as PW-2. Complainant/ seizing officer PW-6 deposed in line with the contents of Murasila and has deposed that accused facing trial was apprehended and 500 grams chars was recovered from his direct possession while 1500 grams chars was recovered on his pointation in the fields belonging to him. He further testified that the contrabands were weighed on the spot and 5 grams samples

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Sessions Court, District Marican

were separated from each packet for analysis through FSL.

He testified that the samples were sealed in parcel No. 1,2,3

29/6/18

on the spot, whereas, the remaining was sealed in parcel No.

4 on the spot in presence of marginal witnesses to recovery

memo. PW-2 Waseem Akhtar No.1367 verified his signature

on recovery memo ExpW2/1. He testified that Hazrat Nabi

Khan ASI in his presence recovered 500 gram chars from the

possession of accused facing trial and 1500 grams on his

22-6-18

pointation. He has also witnessed the separation of sample of 5/5 grams from the recovered stuff and sealing the same in parcels on the spot. Thus, the deposition of PW-6 and PW-2 remained consistent on material points i.e. time, place, and manner of recovery. The learned defense counsel could not shatter the deposition of these two material witnesses on material points despite lengthy cross examination. Therefore, their testimony is adjudged to be consistent and confidence inspiring. PW-5 is the Investigating Officer of this case. He has confirmed that he had prepared the site plan EX.PB on the pointation of complainant and eyewitnesses.

- Record would further show that the samples taken from the recovered substance were sent to FSL, through Jandool No.1117/PW-4, on 26.05.2017. He testified that he had handed over parcel No. 1,2,3 containing chars 5/5 grams to FSL. His statement was further supported by Sadique ASI Muharrir (PW-7), testified that he had sent parcel No. 1,2,3 containing 5/5 gram chars, to FSL for analysis through constable Jandool No.1117. From the testimony of PW-4 and PW-7 prosecution succeeded to prove the safe custody of chars and its transmission to FSL. FSL report was placed on file, which clearly suggests that the samples separated from the recovered lot, duly sealed in parcels No. 1,2,3 were containing chars.

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12. The learned defense counsel vehemently argued that no private persons have been associated with the recovery proceedings despite prior information; therefore, the very base of the recovery is doubtful. In this connection, S. 25 of CNSA, 1997 is clear, which excludes the application of S. 103 Cr.PC from the cases registered under CNSA, 1997. Police official could safely be relied, when they had no enmity with accused facing trial. (In this respect, reliance is placed on 2004 SCMR 988). Learned defense counsel had not put a single suggestion for false implication. Moreover, once the prosecution has apparently establish its case, then under S. 29 of CNSA 1997, burden shifts upon the accused facing trial to prove contrary to the plea of prosecution. In the case in hand, prosecution had discharged its initial onus while proving that substance recovered from accused was

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 Sessions Court Kattana, at Marican

chars, whereas, accused facing trial had failed to discharge its burden as required U/s 29 of CNSA, 1997.

29/6/13

13. In the light of above discussion, keeping in view the contents of FIR duly substantiated through consistent, confidence inspiring and trustworthy evidence, concerning the recovery of chars, it is held that prosecution has proved the charge of recovery of 2000 grams chars from the possession of accused facing trial and on his pointation, as such, has proved its case beyond any shadow of doubts. Therefore, accused facing trial

22-6-13

is hereby convicted U/s 9(c)CNSA and is sentenced for imprisonment of five (05) years (RI). He shall also pay fine to the tune of Rs. 30,000/- (thirty thousands), in case of default, he shall further undergo simple imprisonment for three months. Accused is on bail, be taken into custody and be sent to jail, his bail stands cancelled and sureties are absolved accordingly from liability of their bail bonds.

14. Case property be disposed of in accordance with law after expiry of limitation period of appeal. Copy of this judgment is hereby provided to the convict free of cost. One copy of this judgment be also sent to prosecution.

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Sessions Court Katlang Mardan

29/6/19

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

ANNOUNCED
24.06.2019

(AZIZ MUHAMMAD)
Add: Sessions Judge/Judge Special
Court Under CNSA Katlang Mardan.

CERTIFICATE

It is hereby certified that this judgment consists of ten (10) pages, each page read corrected and signed by me.

(AZIZ MUHAMMAD)
Add: Sessions Judge/Judge Special
Court Under CNSA Katlang Mardan.

Name of Applicant	محمد امجد
Date of Presentation of Application	29-6-19
Date on which copy Prepared	29-6-19
Date on which copy Examined	29-6-19
No. of words	P-10
Court Fee Stamps	---
Argent Fee	---
Signature of Copyist	---
Date of Delivery	29-6-19

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN.DISMISAL FROM SERVICE.

1. Whereas, Waqif Khan Sweeper GHS Babozai Katlang Mardan involved in a case & has been arrested by the police on account of selling the chars weigh 2000 gram and FIR lodged against him in the Police Station Katlang dated 6.12.2016.

2. Whereas, the Court Decided the case of the accused Mr. Waqif Khan Sweeper GHS Babozai Katlang Mardan, keeping in view the contents of FIR duly substantiated through consistent, confidence inspiring and trustworthy evidence, concerning the recovery of chars, it is held that prosecution has proved the Charge of recovery of 2000 grams chars from the possession of the accused facing trial and on his pointation, as such, has proved its case beyond any shadow of doubts.

3. Whereas, the court also decided, therefore the accused facing trial is hereby convicted U/s 9(c) CNSA and is sentenced for imprisonment of five (05) years (RI). The accused shall also pay fine to the tune of Rs.30,000/- (thirty thousand) as the court decision received from the Principal vide his letter No.677 dated 1.7.2019.

4. Now, therefore in exercise of Powers conferred under the Revised Efficiency and Disciplinary Rules 2011, I the District Education Officer (Male) Mardan being competent authority is pleased to imposed Major Penalty of Removal from service upon Mr. Waqif Khan Sweeper GHS Babozai Katlang w.e.f. in the light court of Addl: Session, Judge Special Court under CNSA, Katlang decision, 26.6.2019

NOTE:- Necessary entry to this effect should be made in his service book.

(Zulfaqr-ul-Mulk)
District Education Officer
(Male) Mardan

Endst: No. 8594-97 / PF Waqif Khan Sweeper GHS Babuzai / Dated Mardan the 22-07-2019.

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

1. P.S. to Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. P.A to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Nazim Mardan.
4. Deputy Commissioner Mardan.
5. Principal, GHS Babozai Katlang Mardan for strict compliance.
6. Official concerned. ✓
7. District Accounts Officer Mardan.
8. District Monitoring Officer IMU Mardan.
9. EMIS Branch local office.


District Education Officer
(Male) Mardan.

19/7-19

گورنمنٹ ہائی اسکول، ایف ڈی ایف، ایف ڈی ایف (مہمان) ممبئی

دفعہ ۱۱۱ کے تحت
وہ علم مذکورہ میں ہر ایک کے لیے
وہ ادارہ سرکاری تنظیموں کے
ہر ایک کے لیے علم عدالت کے لیے (ہائی کورٹ کے لیے)

حکومت ہندی

موجودہ گورنمنٹ ہائی اسکول، ایف ڈی ایف، ایف ڈی ایف
گورنمنٹ ہائی اسکول، ایف ڈی ایف، ایف ڈی ایف
گورنمنٹ ہائی اسکول، ایف ڈی ایف، ایف ڈی ایف

دوران میں ہر ایک کے لیے علم عدالت کے لیے (ہائی کورٹ کے لیے)
ادارہ ہائی اسکول، ایف ڈی ایف، ایف ڈی ایف
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ELEMENTARY & SECONDARY EDUCATION, GOVT. OF KHYBER PAKHTUNKHWA



OFFICE OF THE
DISTRICT EDUCATION OFFICER
(MALE) MARDAN

☎ & 📠 0937-933151 ; 📧 deomalemardan@gmail.com

Amal



(20)

No. 14738 /PF Waqif Khan Sweeper GHS Babuzai Katlang/Dated 13-12-2019.

To

Mr. Waqif Khan Sweeper
GHS Babuzai Katlang Mardan.

Subject:- APPEAL FOR RE-INSTATEMENT IN SERVICE

Memo:

Reference your application received on 01.11.2019 to this office for the subject noted above is hereby rejected, with the remarks that your removal order is prior than the acquittal order and filed.

District Education Officer
(Male) Mardan.

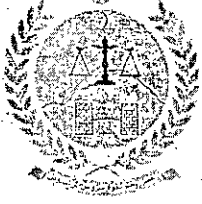
Endst No

14739

Copy for information to the:-

1. Headmaster GHS Babuzai Katlang Mardan.

District Education Officer
(Male) Mardan.



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No: 1170 /ST Dated: 25 / 5 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To

District Education Officer(M)
Mardan

Subject: JUDGMENT IN APPEAL NO. 665/2020 Waqif Khan

I am directed to forward herewith a certified copy of judgment dated 29.03.2022 passed by this Tribunal on the above subject for compliance please.

Encl:As above

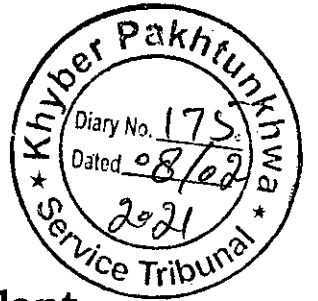

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

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

CM No. _____/2021

In Re:

Service Appeal No. 665/2020



Waqif Khan Appellant

VERSUS

Secretary E&SE, KPK & others Respondents

**APPLICATION FOR EARLY
HEARING OF THE CAPTIONED
SERVICE APPEAL**

Respectfully Sheweth:

1. That the above titled Service Appeal is pending adjudication before this Honourable Tribunal which is fixed for regular hearing on 10.05.2021.
2. That the matter pertains to the Service of the Appellant, the Respondent had illegally and malafidely terminated the Appellant from his services on the basais of Court conviction which has already been set aside by the Hon'ble Peshawar High court Peshawar.
3. That the Appellant had served for more than 27 years in the respondents Department and since last 1 year the Appellant being a poor person suffer from financial losses due to the above mentioned termination Order, if the above titled Service Appeal is not fixed for an early date the

*1st date before SB
shall remain posted to
the date already fixed in
the month.*

15/2/21

*Put up to the court with
relevant appeal.*

9/2/2021

Lead

Appellant would suffer extreme irreparable loss, hence the case may kindly be fixed for an early date.

4. That there is no legal bar on acceptance of this application.

It is, therefore, most humbly prayed that on acceptance of this application, the above titled Service Appeal may kindly be fixed before for an early date.

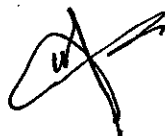
Appellant

Through

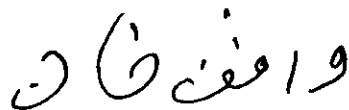
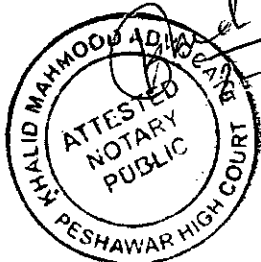
Date: 08.02.2021

MUHAMMAD SABIR
Advocate, High Court
Peshawar

AFFIDAVIT



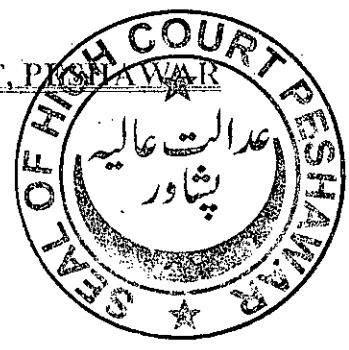
It is solemnly affirm and declare on oath that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



DEPONENT

کیس نمبر 13

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



Cr.A.No. _____/2019

Waqif Khan S/O Raza Khan R/O Madu Lar Karkani Banda Katlang,
Mardan.

..... Appellant

Versus

The State Respondent

*CASE FIR NO.271 DATED 21.05.2017
CHARGE UNDER SECTION 9-C CNSA,
P.S Katlang, Mardan.*

Appeal U/S 48 CNSA, 1997 r/w 410 Cr.P.C against the order and judgment of Mr. Aziz Muhammad, ASJ, Katlang dated 24.06.2019, whereby the appellant was convicted and sentenced u/s 9-C CNSA of 1997 for rigorous imprisonment for 5 years ~~and~~ with a fine of Rs.30,000/-, or in default of payment of fine appellant shall further suffer imprisonment for three months.

Prayer-in-Appeal:

On acceptance of this appeal, the order and impugned judgment of Mr. Aziz Muhammad ASJ Katlang, Mardan vide dated 24.06.2019, may kindly be set aside and the appellant may graciously be acquitted from the charged leveled against them.

ATTESTED

EXAMINER
Peshawar High Court

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

Judicial Department

Cr.A No. 825-P/2019

Waqif Khan Vs the State

Date of hearing 26.09.2019.

Mr. Shah Nawaz Khan, Advocate, for the
appellant.

Mr. Mujahid Ali Khan, AAG, for the State

JUDGMENT

AHMAD ALI, J. Questioned herein is the judgment of learned Additional Sessions Judge/Judge, Special Court, Katlang (Mardan), dated 26.06.2019, whereby appellant Waqif Khan s/o Raza Khan, was convicted and sentenced to five years RI with fine of Rs.30,000/ or in default of payment of fine to further undergo three months S.I, in case FIR No.271 dated 21.05.2017, registered against him u/s 9 C CNSA at Police Station Katlang, Mardan.

2. Brief facts, as per contents of FIR, are that the complainant Hazrat Nabi Khan, ASI, during gasht apprehended the accused-appellant Waqif Khan, having 500 grams charas pukhta on the spot, whereas 1500 grams of charas pukhta were recovered from the fields near the spot of occurrence on his pointation. Total 2000 grams



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charas were recovered. 5/5 grams from each packet were separated for chemical analysis of FSL and sealed in parcels No.1 to 3. Remaining contraband was sealed in a separate parcel No.4. On each of the parcel 3/3 signia of 'MH' were affixed. Accused-appellant was arrested and on the basis of murasila Ex.PA, FIR ibid was registered against the accused-appellant.

2. On completion of investigation, challan was submitted in Court where the appellant was charge sheeted to which he pleaded not guilty and claimed trial. The prosecution in order to prove its case, produced and examined as many as seven witnesses in all whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned Trial Court, after conclusion of trial, found the appellant guilty of the charge and, while recording his conviction, sentenced him as mentioned above. Feeling aggrieved, the appellant has filed the instant appeal before this Court.

3. Arguments heard and record gone through.

4. Allegation against the appellant is that he was having 500 grams charas in his direct possession whereas, 1500 grams of charas pukhta

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were recovered from the fields near the place of occurrence.

5. The complainant/PW-5 stated in his examination in chief that on 21.05.2017, he along with two other police officials (Waseem Akhtar 1367 and Imrad 2681) was on duty when received information regarding selling of narcotics by famous drug peddler, namely, Waqif (hereinafter called appellant). They reached the spot of occurrence at 1630 hrs and recovered 500 grams charas pukhta from the accused-appellant. Further deposed that on pointation of accused-appellant 1x1/2 packet of 1500 grams were recovered from his field's drainage divergent at karkany banda. Questions arise here, firstly, that when the complainant received information regarding selling of narcotics by the accused-appellant, why did not he conduct a test purchase, through an independent witness so as to have been substantiated his stance qua his allegation, secondly why the recovery was not in shape of sachets and, thirdly, when according to the site-plan the place of occurrence is surrounded by fields, why did not the accused-appellant, having contraband in his possession, on seeing the police party, decamp from the spot. By nature when an

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accused notices the police party or sensing any danger, he being about to do wrong, automatically makes ways for his escape. It seems an afterthought that once the accused, already apprehended with 500 grams of narcotics and he being well aware of the consequences, then why did he point-out hidden narcotics and when he was all alone in knowledge of the same. These unanswered questions are mystery in the instant happening. Rather, the scenario suggests that the occurrence has not at all taken place as alleged by the complainant.

6. It was the Moharrir of the police station, who while appearing as PW-7 in the trial court deposed that he received parcels No.1 to 4 for keeping the same in the safe custody at malkhana of the PS concerned, but astonishingly, samples were sent to FSL on 26.05.2017 with a considerable delay of 5 days.

7. To utter surprise of the Court, the FSL report shows the physical appearance of the contraband to be liquid. Complainant while initially reporting the matter and while recording statement before the learned trial court categorically stated that the substance recovered from accused-appellant was charas pukhta. This

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fact leads to a mystery towards the recovery by complainant and sending of samples by the Moharrir as to what was actually sent to FSL for analysis.

8. In present case against the appellant, the record suggests that safe custody of the recovered substance as well as safe transmission of samples of the recovered substance to the FSL are not in line with the prosecution story which created doubts qua establishment of the charge against the accused. Moreover, the FSL report Ex.PK only shows the belt number of FC1117 who took the samples to FSL on 26.05.2017. Furthermore, record is silent as to why the samples were received in FSL with a considerable delay of 5 days. Prosecution failed to bring anything on record with respect to the said delay.

9. In present case, where the recovery, place of occurrence, and samples of substance sent to FSL are doubtful, there it cannot be said that the prosecution had proved its case against the accused-appellant beyond reasonable doubt.

10. All the above aspects of the case created doubts in the prosecution case qua its recovery and it suggests that occurrence has not taken

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place in the mode and manner as alleged by the prosecution.

11. The above discussion has led this Court to believe that the learned trial court has erred in appreciating the case evidence both ocular and circumstantial in its true perspective. It has been held, time and again by the superior courts, that a slightest doubt occurs in the prosecution case is sufficient to grant acquittal to an accused. The conclusions drawn by the learned trial Court are not borne out of the case evidence therefore, the impugned judgment is not sustainable.

12. For what has been discussed above, this appeal is allowed, the impugned judgment is set aside and the appellant is acquitted of the charge leveled against him. He be set at liberty forthwith, if not required in any other case.

13. Above are the reasons of short order of even date.


JUDGE

JUDGE

Announced on:
26.09.2019

Amjad Ali, PS

10B

Hon'ble Mr. Justice Lal Jai Khattak & Hon'ble Mr. Justice Ali Nawaz Khan


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Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

24 JAN 2020