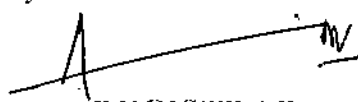


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. - \_\_\_\_\_ 160/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/1/2023	<p>The appeal of Mr. Afsar Ali Khan resubmitted today by Mr. Javed Iqbal Gulbela Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on _____, Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Afsar Ali Khan Computer Operator District Court Buner received today i.e. on 12.01.2023 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Memorandum of appeal is not signed by the appellatant. ✓
- 4- Affidavit be got attested by the Oath Commissioner.

No. 171 /S.T,

Dt. 13/1 /2023

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Javed Iqbal Gulbella Adv.  
High Court Pesh.

Note :-

Respect Sir,

Resubmitted after removal of all mandatory objection. Hence, the case may graciously be put up for hearing before the SB.

Advocate [Signature]

28/01/23

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

Service Appeal No. 161/2023

Afsar Ali Khan

**VERSUS**

Registrar, Peshawar High Court Peshawar.


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Dated: 10-01-2022

Through

Appellant

  
Javed Iqbal Gulbela  
Advocate, Supreme Court,  
Pakistan.

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 161/2023

***Afsar Ali Khan***, Computer Operator, District Courts, Buner.

..... ***Appellant***

**VERSUS**

1. Peshawar High Court Peshawar, though Registrar.
2. The District & Sessions Judge/Zilla Qazi, Buner.
3. The Senior Civil Judge (Admn) Buner at Dagger.
4. The Civil Judge -I/JM Buner at Dagger.
5. The District Accounts Officer, Buner.

..... ***Respondents***

**APPEAL UNDER SECTION 4 OF THE KHYBER**  
**PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR**  
**BACK BENEFITS IN TERMS OF ARREARS OF SALARIES**  
**FROM LODGING THE F.I.R AGAINST THE APPELLANT TILL**  
**REUSMPTION OF DUTIES.**

***Respectfully Sheweth,***

1. That after getting onto the rolls of this prestigious department, the Appellant have had pulled day & night to render his best in the service of the department with utmost zest and professional gusto, which is crystal evident from the long-stretched service period of the Appellant spread over decades, that too without receiving any taint or blemish on the Appellant's service record.
2. That but little did the Appellant knew his deuce fate and what a strangest woe, that whilst the Appellant was serving in zeal and zest, he was booked in a false and malicious charges in Case F.I.R No. 1017 Dated: 29-08-2019, on the account of 302/404/427/34 of PPC and because of, as a natural instinct which the brought chills and thriller

went down the spine of the Appellant, he had to escape to a remote place. (Copy of the F.I.R is annexed here as Annexure "A")

3. That even though the Appellant had been absconding, but he was in state of absentia from his duty, somehow managed to send down a message to his department for the reason of his absentee from duty, but later it came to the knowledge that no intimation was brought before the Respondents.
4. That lest the absconding of the Appellant met an end, when the Appellant surrendered himself before the Learned Additional District & Sessions Judge -II/IZQ Buner, and moved a pre-arrest bail petition Dated: 29-04-2019, which was dismissed and rejected and thereafter, the Appellant had been sent to judicial lockup and after which the trial of the Appellant came into motion and later which was concluded vide the Order & Judgment Dated: 17-09-2020 as a result of which the Appellant was acquitted from the bogus and malicious charges levelled against him . (Copy of the Order & Judgment Dated: 17-09-2020 is annexed here as Annexure "B")
5. That after the closure of trial whereby the Appellant was acquitted honorably, the Appellant moved application on 24-09-2020 to the Respondent in order to join and resume back his service and withdraw the suspension levied against him and any departmental proceedings which had taken arisen due to the absentia of the Appellant, to be consigned back to the record room whereby the Appellant was allowed resume his duties and to withdraw his salary from the time of lodged F.I.R against him but for the later period which included the arena of time after the Appellant surrendered and was dismissed the relief of pre-arrest bail, the Appellant was bereft of the salaries and other emoluments for which he was entitled. (Copy of the Application/Representation Dated: is annexed here as Annexure "C")
6. That from the supra-mentioned saga, it was clearer than crystal that the absentee from service by the Appellant could have never been

intentional or callously but rather it was purposeful and consequential as well.

7. That in the given circumstances whereby the Appellant had been punished for no sake of his own and all his fatigue over the past years have only met the dust, the Appellant agitated his grievances before the Respondents by preferring a departmental appeal to his high-up's on 24-09-2022, whereby the Respondents still have maintained a tight lip despite the lapse of the statutory time. (Copy of the Departmental Appeal is annexed here as Annexure "D")
8. That feeling aggrieved from the acts of the Respondent having no other efficacious remedy available elsewhere & forum to be addressed at, the Appellant approaches this Hon'ble Tribunal inter alia upon the following grounds:-

**GROUNDS:**

- A. That it is settled principle and rule of law in the F.R. & S.R that the Appellant after the acquittal from the charge is entitled for the aback benefits, including all his monthly emoluments.
- B. That another principle laid down by the dictum of the Superior Court is that whilst any August Court or Tribunal allows the Appeal of any Appellant, against the orders of the Competent Authority, then not only the Appellant be reinstated into service with all back benefits but the Appellant is also entitled to all his back benefits from resumption of duty where he had left from.
- C. That the dictum of the Supreme Court supports the case of the Appellant whereby the Appellant (Civil Servant) who had been acquitted from the charges in criminal case, and also dismissed from service by the order of the Departmental Authority, and his appeal before the Learned Punjab Services Tribunal was also dismissed, the same was set aside and the Appellant was directed to be reinstated with all back benefits for the period he has not been gainfully employed elsewhere.
- D. That clear violation of Section 24 A of the General Clauses Act, 1897 has been made by not responding to the application of the Appellants which is not sustainable in the eye of law. It is in settled law that authorities having statutory powers must exercise the same in fair, just and reasonable manner. The impugned order of the Respondents is unfair, unjust and therefore not maintainable.

- E. That under the mandate of Article 4 of the Constitution, no one should be treated otherwise than in accordance with law, but here the case is *volta-facie* and a totally different yardstick has been used to treat the Appellant.
- F. That the long-continued service of the Appellant, which depends on length of his service and equity, justifiably desires and requires that having rendered his prime youth and life in the services of the Respondents, the Appellant should not be exploited or hung in dark.
- G. That the law and law courts of the land have always preferred and appreciated that rules are to be followed, and have always discouraged, depreciated, and deplored any variation from rules or its violation.
- H. Any other grounds will be raised at the time of arguments with kind permission of this Hon'ble tribunal.

*It is therefore, most humbly prayed that on acceptance of the instant Service Appeal, the Respondents be directed to sanction and release all back benefits w.e.f date of registration of F.I.R till the charge resumption of the Appellant, with all ancillary benefits in form of salaries.*

*Any other relief not specifically asked for, may also be extended in favor of the Appellant.*

Dated: 10-01-2022

Appellant  
 Through  
 Javed Iqbal Gulbela  
 Advocate, Supreme Court,  
 Pakistan,  
 &  
 Saghir Iqbal Gulbela,  
 Advocate, High Court,  
 Peshawar

**NOTE: -**

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Advocate.

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

In S.A No-\_\_\_\_\_/2023

Afsar Ali Khan

· VERSUS

Govt of Khyber Pakhtunkhwa & Others

**AFFIDAVIT**

I, Afsar Ali Khan S/o Raed Ullah Khan R/o Bargokand, P/o Gokand, Tehsil Dagar District Bunir, do hereby solemnly affirm and declare on oath that the contents of the instant Service Appeal is correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

  
DEPONENT

CNIC:15101-0379155-9

CELL: 0344-4568551

Identified by:

**Javed Iqbal Gulbela**  
Advocate, Supreme Court of  
Pakistan



**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

Service Appeal No. \_\_\_\_/2023

Afsar Ali Khan

**VERSUS**

Registrar, Peshawar High Court Peshawar.

**ADDRESSES OF PARTIES**

**APPELLANT**

*Afsar Ali Khan*, Computer Operator, District Courts, Buner.

**ADDRESSES OF RESPONDENTS**

1. Peshawar High Court Peshawar, though Registrar.
2. The District & Sessions Judge/Zilla Qazi, Buner.
3. The Senior Civil Judge (Admn) Buner at Dagger.
4. The Civil Judge -I/JM Buner at Dagger.
5. The District Accounts Officer, Buner.

**Dated: 10-01-2022**

*Through*

**Appellant**

**Javed Iqbal Gulbela**  
Advocate, Supreme Court,  
Pakistan.



میں پہرہ کے عقبے ایسا لکھوں میں لکھتے ہیں بڑا بایا وقت میرا تھا ہے  
 بنا اور نہ کیا کسی اور نے بھی دیکھا ہے۔ وہ بتا دے گا کہ اس کی حالت  
 مال کی طرف قتل کے الزام تو میرے قتل کے آدین لکھا گیا تھا میرے  
 لپہرہم نے قتل کرنے کو ترک کر لیا تھا یہاں نے اہل لیسٹول کے لیے جانے کا  
 برصواف برد کسان بلا اور عوام اور پول Sd دستور لکھتے ہیں سے دستگی  
 بہت لقمہ سائیکے ہا لپٹ کے دیج میرے پر قتل کیا گیا تھا یہاں لکھا ہے  
 ہا دستور شدت کی قسمی میں لکھتے ہیں کہ یہاں سے حوالہ لکھا ہے  
 ہو کہ قتل کے حقائق اور پارٹون الود جو وہ ہیں جس کے مخالف قتل کے  
 سرد صورت طالع ہرک ہو کہ لکھتے ہیں کہ یہاں لکھا ہے کہ یہاں  
 میرے مال کے حوالے سے کیا لکھا ہے کہ یہاں لکھا ہے کہ یہاں لکھا ہے  
 اداں حقوق کے لکھتے ہیں کہ یہاں لکھا ہے کہ یہاں لکھا ہے  
 کہ یہاں لکھا ہے کہ یہاں لکھا ہے کہ یہاں لکھا ہے  
 عازا حراسہ لکھتے ہیں کہ یہاں لکھا ہے کہ یہاں لکھا ہے  
 میرا دیکھنے میں کہ یہاں لکھا ہے کہ یہاں لکھا ہے  
 کہ یہاں لکھا ہے کہ یہاں لکھا ہے کہ یہاں لکھا ہے  
 لیس اڈ حراسہ قتل کے حوالے سے یہاں لکھا ہے کہ یہاں لکھا ہے  
 یہ کہ یہاں لکھا ہے کہ یہاں لکھا ہے کہ یہاں لکھا ہے  
 کو اطلاع دے گی ہے یہ لکھا ہے کہ یہاں لکھا ہے

A-Si. Pina Baba  
 29-8-18

Attested to be  
 True copy  
 Annu

JAVED IQBAL  
 SUPREMACY  
 SUPREMACY  
 SUPREMACY  
 SUPREMACY

دستخط

ہندہ

اطلاع کے لیے اطلاع دینے کا دستخط ہوگا یا اس کی مہر نشان لگایا جائے گا۔ اور اس پر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حرف الف بیا سرخ روشنائی  
 ایک لازم یا شہر علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان جہاں موزوں ہوں، لکھا جائے۔

In the Court of AZIZ MUHAMMAD  
ADDITIONAL SESSIONS JUDGE TILZAT ZILBA QAZI  
BUNER (AT DAGGAR)

Sessions Case No. 1077 of 2018

Date of Institution: 25.09.2018

07.09.2019

Date of Decision: 17.09.2020

THE STATE

VERSUS

(1) AFSAR ALI KHAN S/O REDULLAH KHAN  
(2) JEHAN ALAM S/O DOST MUHAMMAD KHAN  
Residents of Bar Gokand District Buner

CHARGE:

Case FIR No. 1017 dated 29.08.2018 U/s 302/404/427/34 PPC R/w  
S.15-AA Registered at PS Pir Baba District Buner

PRESENT:

Mr. Fazal Hadi, APP for the state.

M/s. Razaullah Khan, Rasheed Ali Khan and Ashraf Khan, advocates  
for complainant,

M/s. Hussain Ali and Aurangzeb Khan, advocates for accused.

JUDGMENT

1. Accused Afsar Ali Khan and Jehan Alam faced trial in case  
FIR No. 1017, dated 29.08.2018 U/s 302/404/427/34 PPC R/w  
S.15AA, PS-Pir Baba.

2. Facts of the case as spell out from the FIR, in brief, are that on  
29.08.2018, at about 12:55 hours, complainant Mian Syed  
Imran, made report to the local police, at the spot of  
occurrence, to the effect that deceased is his son, namely,

COPY  
BUNER  
Sessions Judge, Buner  
Authorized under 162 of  
PO No. 10 of 1986

Aziz Muhammad  
Additional Sessions Judge  
Buner



Muhammad Tariq. That on the eventful day, complainant along with his son, had come to Pir Baba Bazar. On return through Motorcar driven by Muhammad Tariq, when reached near the spot of occurrence, complainant felt some pain in his abdomen and asked his son to stop the car, at some distance, in order to ease himself. His son stopped the car and he went towards the trees, to attend the call of nature. In the meanwhile, at about 12.00 hours, he heard some fire shots and saw accused Afsar Ali and Jehan Alam, duly armed with Kalashnikov and pistol, respectively, were firing on the Motorcar, with intention to commit murder of his son. Due to fear and being empty handed, complainant did nothing and watched the whole episode. As a result of firing, son of complainant died on the spot while accused decamped towards the mountains. In addition to complaint, the occurrence might have been seen by someone other. The Motive behind the occurrence was advanced as blood feud enmity between the parties. The report of the complainant was reduced into writing in the shape of *Murasila* and was sent to Police Station through Constable Ashraf No. 2489, whereof its content culminated into FIR No. 1017 (ibid). The injury sheet and inquest report were prepared and the dead body was sent to Pacha Kalay Hospital for medical examination under the escort of Constable Amjad Ali No. 690.

JAVED IQBAL GULBELA  
Associate  
Supreme Court of Pakistan  
(ASC# 5317)

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ATAKHAD  
Sessions Judge's Office

3. After registration of the case, investigation was entrusted to Saleem Yousaf SI (PW-15) who proceeded to the spot and prepared site plan (Ex PW-15/1) on the pointation of complainant. During the course of spot inspection, he had taken into possession 10 empties of 30 bore, 21 empties of 7.62 bore, broken pieces of glasses of the Motorcar and blood through cotton from the Motorcar. The house of accused was raided but they were not found. The blood stained clothes of deceased, Rs.7080/- taken from the pocket of garments of deceased, having bullet marks, were taken into possession, vide recovery memo, (Ex PW7/1). The license copy of pistol bearing No.342/DC(b) Dated 10.09.2012 alongwith holster produced

by Muharrir of the Police Station were taken into possession and sealed into parcels. The Motorcar of deceased in damaged condition has also been taken into possession by the investigating officer. The blood stained articles and empties recovered from the spot were sent to FSL for chemical analysis, reports whereof received and placed on file. The attested copy of FIR No.1399 dated 29.08.2018 U/s 212-PPC R/w S.15AA of Police Station Daggar registered against accused was placed on file. To establish the motive behind the occurrence, the FIR No.491 dated 10.09.2012 U/s

302/324/148/149-PPC of Police Station Pir Baba was brought on record. The list of legal heirs of deceased was prepared and

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TRUE COPY  
EXAMINER  
District & Sessions Judge Buner  
Authorized Under 132 of 1973  
AQ No-10 of 1982

17-9-2020  
JAFAR AHMAD  
Additional Sessions Judge Buner

JAVED IQBAL GULBERA  
Advocate  
Supreme Court of Pakistan  
(ASC#5317)

placed on file. After the occurrence, accused absconded, therefore, they were proceeded U/s 204 and 87 Cr.PC. The crime Scene Branch had handed over some pictures to investigating officer and those were placed on file. To proceed against accused U/s 88 Cr.PC, investigating officer had applied for filing a complaint under the relevant provision. After completion of investigation, he handed over case file to SHO Akram Khan for submission of *Challan* U/s 512 Cr.PC, who did the same, accordingly.

4. On 29.04.2019, accused facing trial surrendered themselves before the court of Hon'ble Sessions Judge/ZQ, Buner by filing an application for pre-arrest bail. On producing the copy of ad-interim bail, Khan Sher ASI (PW-14) issued their formal card of arrest. On 11.05.2019, their bail before arrest was recalled and they were arrested, accordingly. The accused were produced before the court of concerned Judicial Magistrate for procuring their physical custody and two days custody was granted. During the course of interrogation, they had made pointation of the place of occurrence, vide pointation memo (Ex.PW-14/2). The weapons of offence, i.e. Kalashnikov bearing No. 17133793, China made having fixed charger (sealed into parcel No.9), 30 bore pistol without number (sealed into parcel No.10) were produced by one Khurshid Khan, which were taken vide recovery memo (Ex.PW-2/3), in

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASO # 5317)

(15)

CRIME CONF  
OFFICE OF THE JUDGE  
Additional Sessions Judge ZQ  
BUNER  
17.9.2019

17.9.2019  
AZIZ MUIJAN  
Additional Sessions Judge ZQ  
Buner



-13-

the presence of marginal witnesses and in this respect Section 15-AA was also added in FIR. The accused were again produced before the court of concerned Judicial Magistrate for recording their confessional statement but they refused and were sent to Judicial Lock-up. The recovered weapons of offence and empties recovered from the spot, were sent to FSL for chemical analysis, the report whereof received and placed on file. After completion of investigation the case file was handed over to SHO concerned for submission of Supplementary Challan, who did the same accordingly.

5. On receipt of Challan and after observing the legal formalities of S. 265-C Cr.PC, the accused facing trial were formally charged sheeted, but they did not plead guilty and claimed trial. To bring home the guilt of the accused, prosecution produced as many as 15-PWs, the gist of their deposition is given below:

- i. Hazrat Hakim ASI (PW-1). Upon receiving Murasila from Ismail Shah ASI, he converted its contents into FIR (Ex. PA)
- ii. Ghulam Sher No: 505 (PW-2). Being the marginal witness of recovery memo. (Ex. PW2/1) he witnessed the recovery of blood, some pieces of glasses, 10 empties of 30 bore and 21 empties of 7.62 bore. Likewise, he had also witnessed the pointation of place of occurrence, by the accused facing trial. Similarly, the weapons of offence had also allegedly been produced by one Khurshid in his presence.

(151) A)

**TRUE COPY**  
**EXAMINER**  
District & Sessions Judge Bench  
Amb, Muzaffargarh, Dist. of  
R.G. No. 10 of 1984

17-9-2020  
AZIZ ISHUNAMAD  
Additional Sessions Judge  
Bural

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC 15317)



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- iii. DFC. Safdar No.585 (PW-3). He was entrusted with warrants U/S 204 Cr. PC and proclamation issued U/s 87 Cr. PC against accused facing trial.
- iv. Ihtesham-ul-Haq HC (PW-4). In his presence, Investigating officer took into possession the damaged Motorcar of deceased, bandolier and license copy of pistol belonging to deceased.
- v. Constable Kalim Khan No.1100 (PW-5). He has taken parcel No. 1, 5, 6 through Rahdari No. 399/21, dated 31.08.2018 and parcel No. 3,4 through Rahdari No. 400/21 dated 31.08.2018 with application, for transmission to FSL and delivered the same to in-charge FSL, whereby parcel No. 3 and 4 were returned due to some deficiency. The same were handed over to Muharrir investigation. Later on, the aforementioned parcel 3 & 4 were again handed over to him for transmission to FSL.
- vi. Amjad Khan No.690 (PW-6). The dead body of deceased Muhammad Tariq was shifted to hospital under his escort for postmortem examination.
- vii. Muhammad Tariq (PW-7). He had produced the blood stained garments of deceased and Rs. 7080/- recovered from the side pocket of his shirt, to Investigating officer.
- viii. Ismail Shah Khan ASI (PW-8). Being the reporting officer, he reduced into writing the report of complainant in shape of Murasida. He has also prepared injury sheet and inquest report of deceased as (Ex PW8/2) and (Ex PW8/3) respectively. He has taken into possession the

ADDITIONAL JUDGE  
 Sessions  
 District  
 Faisalabad  
 30.08.2018

17-9-2018  
 ADIL MUHAMMAD  
 Additional Sessions Judge  
 District Faisalabad

JAVED IOBAI GULBELA  
 Advocate  
 Supreme Court of Pakistan  
 (ASC # 5317)

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Motorcar of deceased bearing No AN 1220 Buner, in damaged condition, blood stained Bandolier of pistol and copy of license of pistol, vide recovery memo. He has captured picture of the deceased and exhibited the same as (Ex.PW8/4). After medical examination, he had handed over the dead body to his relatives.

ix. Dr. Riaz Ali Khan CMO THO, Pir Baba (PW-10). He had examined the dead body of deceased Muhammad Tariq and furnished his report (Ex.PW9/1) and endorsement on his report (Ex.PW9/2). On examination he had found the following injuries on the dead body:

1. 1cm-1.5cm entrance wound on right temporal region, 3cm-3.5cm exit wound on left post auricular region with irregular margins.
2. 5cm-5.5cm lacerated wound on upper surface of frontal bone.
3. 1cm-1.5cm 21 entrance wounds at the region of right scapula, 8cm-9cm exit wound three on left flank region and two 2cm-3cm exit wound on left chest.
4. 10cm-11cm burst out wound with broken bone at lower part of right arm.
5. 1cm-1.5cm four entrance wounds near right auxiliary region, 1cm-1.5cm four exit wounds near left axilla.
6. 7cm-8cm burst out entrance wound at lower end of right leg above ankle joint, 8cm-9cm burst out exit wound on medial side of right lower leg.
7. 1cm-1.5cm entrance wound at anterior surface of right thigh at lower end.
8. 1cm two entrance wound at front of thigh.
9. 3cm-4cm lacerated wound at right side of lower back.

x. Said Dawood Shah SI (PW-10). He has submitted

TRUE COPY  
EXAMINER  
District & Session Judge Buner  
Authorized under 187 of  
S.O. No-10 of 1986

17.9.2020  
AZIZ MUHAMMAD  
Additional Sessions Judge Buner  
Buner

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC # 5317)

(154) A

supplementary Challan (Ex.PW-10/2) against accused facing trial.

xi. Constable Muhammad Zaib No:908 (PW-11), He had taken parcels No. 3, 4, 9 & 10 alongwith application for transmitting it to FSL, vide receipt Rahdari No. 102/21 dated 16.05.2019, and delivered the same to the concerned authorities. In this respect he had received acknowledgment receipt.

xii. Mian Said Imran S/o Muhammad Said Mian (complainant) (PW-12), He is the complainant in present case when appeared in Court has taken same stance as taken by him in first report in shape of Murasila. He had nominated accused facing trial for the commission of alleged offence.

xiii. Adnan S/o Mian Said Imran (PW-13). He is the son of complainant. In his presence, complainant and deceased had allegedly left their house for Pir Baba Bazar.

xiv. Khan-Sher ASI (PW-14). After arrest of accused, he has made supplementary investigation in the case and upon completion, handed over the case file to SHO concerned, for submission of Challan.

xv. Saleem Yousaf SI (PW-15). After registration of the case, he investigated the same and upon completion, handed over case file for submission of Challan U/s 512 Cr.PC against the accused.

6. Prosecution closed its evidence, therefore, in order to afford an opportunity to explain circumstances appearing in evidence against the accused, they were examined U/s 342 Cr.PC. They

EXAMINER  
Additional Sessions Judge Buner  
Authorised by No. 187 of  
437 No. 10 of 2014

17.9.2020  
AZIZ MUHAMMAD  
Additional Sessions Judge Buner

JAVED IQBAL GULBEELA  
Advocate  
Supreme Court of Pakistan  
(ASC/5317)

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have denied all allegations leveled against them. Their case has been of denial of the implication; however, they projected their false implication in the case and posed innocence. They neither opted to lead evidence in their defence nor wished to be examined on oath U/s 340(2) Cr.PC.

7. Mr. Fazal Hadi APP for the State, assisted by M/s. Razaullah Khan, Rasheed Ali and Ashraf Ali, Advocates, learned counsel for complainant, argued that prosecution has proved its case through cogent and reliable evidence. That accused have directly been charged in a promptly lodged FIR. That the occurrence had taken place on the broad day light and the parties were known to each other, therefore no question of wrong identification arise. That recoveries from the spot, supported the venue of crime. That after the occurrence, accused facing trial remained absconder for sufficient time, which corroborates the case of prosecution. That medical evidence fully supports the case of prosecution. That motive has not been denied by accused facing trial, during the course of evidence as well as in their statements recorded U/s 342 Cr.PC. That prosecution relying on the solitary statement of complainant, whose presence on the spot has been established through cogent and reliable evidence. That conviction can be based on the solitary statement of an eye witness, if found reliable. That despite the lengthy and searching cross

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JAVED IQBAL GULBELA  
Advocate  
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ALIZ MUHAMMAD  
Additional Sessions Judge  
Rawalpindi



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examination, the defense failed to shatter his testimony. They placed reliance on the following judgments of Superior Courts: 2001 SCMR 1474, 2017 PCr LJ 1130, 2010 MLD 1376, 2020 PCr LJ 387, 2011 MLD 1214, 2012 PCr LJ 545, 2006 SCMR 1786, 2010 PCr LJ 676, 1995 PCr LJ 313, 2007 SCMR 830, PLD 1996 Supreme Court 305, 2002 SCMR 203, 2011 SCMR 872, 2017 MLD 739, 2011 SCMR 177, 2003 PCr LJ 699.

8. On the other hand Mr. Hussain Ali Advocate, assisted by Mr. Aurangzeb Khan advocate, learned counsel for accused, inter alia, contended that the prosecution has badly failed to prove its case against accused facing trial. That preliminary investigation has been conducted before the registration of the case. That the recoveries are highly doubtful as no independent witness has been associated to the alleged recovery proceeding. That the alleged pointation does not fall within the ambit of Article 40 of Qanun-Shahadat. That the case of prosecution is full of doubts.

He requested for acquittal of accused facing trial, being innocent. They placed reliance on the following judgments of Superior Courts:

2017 SCMR 486, 2017 PCr LJ 327, 2018 PCr LJ Note 192, 2019 PCr LJ 401, 2012 YLR 1152 Lahore, 2008 SCMR 6, 2017 SCMR 1468, PLJ 2012 Cr.C (Lahore) 875 (DB), PLJ 2012 Cr.C (Lahore) 860 (DB), 2007 MLD 100, 2011 SCMR 1190, 2015 PCr LJ 81 Peshawar, 1998 PCr LJ 943.

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examination, the defense failed to shatter his testimony. They placed reliance on the following judgments of Superior Courts:

- 2001 SCMR 474, 2017 PGr LJ 1130, 2010 MLD 1376, 2020 PCr LJ 387, 2011 MLD 1214, 2012 PCr LJ 545, 2006 SCMR 1786, 2010 PGr LJ 676, 1995 PGr LJ 313, 2007 SCMR 830, PLD 1996 Supreme Court 305, 2002 SCMR 203, 2011 SCMR 872, 2017 MLD 739, 2011 SCMR 177, 2003 PCr LJ 699.

8. On the other hand Mr. Hussain Ali Advocate, assisted by Mr. Aurangzeb Khan advocate, learned counsel for accused, inter alia, contended that the prosecution has badly failed to prove its case against accused facing trial. That preliminary investigation has been conducted before the registration of the case. That the recoveries are highly doubtful as no independent witness has been associated to the alleged recovery proceeding. That the alleged ponation does not fall within the ambit of Article 40 of Qanun-Shahadar. That the case of prosecution is full of doubts. He requested for acquittal of accused facing trial, being innocent. They placed reliance on the following judgments of Superior Courts:

- 2017 SCMR 486, 2017 PGr LJ 327, 2018 PGr LJ Note 192, 2019 PGr LJ 401, 2012 YLR 1152 Lahore, 2008 SCMR 6, 2017 SCMR 1468, PLJ 2012 Cr.C (Lahore) 875 (DB), PLJ 2012 Cr.C (Lahore) 860 (DB), 2007 MLD 100, 2011 SCMR 1190, 2015 PGr LJ 81 Peshawar, 1998 PGr LJ 943.

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AZIZ MUHAMMAD  
Additional Sessions Judge



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

10. The case of prosecution is that accused facing trial have murdered Muhammad Tariq in presence of complainant Mian Syed Imran. The motive set up as complainant was charged for the murder of father of accused Afsar Ali. In order to prove its case, prosecution relying on the ocular as well as circumstantial evidence. To establish its case through ocular evidence, the prosecution relying on the sole testimony of complainant Mian Syed Imran, who also happened to be the father of deceased therefore, in presence of such close relation and deep rooted enmity with accused facing trial, he legitimately be termed as interested witnesses and his statement is to be thrashed out with due care and caution. In order to believe an interested witness the prosecution has to establish the presence of witness at the spot and his evidence must be corroborated by some strong piece of evidence. Reliance is placed on 1998 SCMR 25

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attested under 187 of  
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17.9.2020  
M. AZIZ MUHAMMAD  
Additional Sessions Judge Feroz

(c) Penal Code (XLV of 1860) S-302/34

Appreciation of evidence: Interested witness

Courts in a case involving capital punishment

will not base conviction of an accused solely on

the testimony of interested witness unless such

evidence finds corroboration by some other

independent and unimpeachable piece of

evidence or circumstance in the case.

JAVED QADAR QURESHI  
Advocate  
Shrine Road, Feroz Khan  
(AEC # 5377)

11. Scrutinizing the testimony of complainant on the above touch stone, the same reveals that, on the eventful day, he, along with his son Muhammad Tariq went to *Pir Baba Bazar*. On return, when reached to the spot of occurrence, he felt some abdominal pain, therefore, asked his son to stop the car and went towards the trees for attending the call of nature. In the meanwhile, accused facing trial came there and committed the murder of complainant's son, by way of firing. Undeniably, both the parties were residents of village *Bar Gokand* far away from the spot of occurrence at a distance of 25/30 Kilometers. Nothing available on file to establish that how the accused came to know about the presence of deceased and complainant at the spot of occurrence, as it was per chance, that complainant felt some abdominal pain and stopped the car for attending the call of nature. The testimony of complainant further reveals that on the day of occurrence he along with his son Muhammad Tariq (deceased) had gone to *Pir Baba Bazar* and the incident took place while they were coming back from *Pir Baba*, therefore, the said PW happens to be a chance witness. The statement of this PW for that matter, the whole case file, are completely dormant that for which particular purpose, he in the company of deceased went to *Pir Baba Bazar*. Hence, in the circumstances, it was incumbent upon the complainant and investigating officer to have rendered sound reasons to establish

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AZIZ MUHAMMAD  
Magistrate Sessions Judge Buner

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SUDHRA  
Advocate  
District Court, Buner



his presence, at the spot of occurrence, otherwise, his testimony would squarely fall within the category of chance witness. Though, the investigating officer tried his best to collect some evidence to prove the presence of complainant with the deceased at the relevant time by recording the statement of one Adnan son of complainant, who entered into witness box as PW13. Before recording his statement, the learned defence counsel raised an objection that statement of said PW recorded U/s 161 Cr.PC, has not been provided to accused, as required U/s 265-C Cr.PC. The record shows that on 11.07.2019, the copies were given to accused within the meaning of 265-C Cr.PC and in this respect their thumb impressions were taken on the margin of order sheet, hence the same being order of the court of competent jurisdiction, has the presumption of truth, therefore, the objection of learned defence counsel, is not sustainable. The said PW Adnan deposed that complainant and Muhammad Tariq, had left their house in his presence for P.M. Baba Bazar. Record shows that for the first time, he had appeared before the local police for recording his statement U/s 161 Cr.PC on 20.09.2018, after 22 days of the alleged occurrence. Nothing available on file to justify his long silence. Therefore, his statement is not worth of reliance. In a case titled "Muhammad Asif vs the State" reported in 2017.SCMR 484, the Hon'ble SC of Pakistan held that:



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 Additional Sessions Judge  
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 Advocate  
 Supreme Court of Pakistan  
 (ASC-5397)

"Even one or two days unexplained delay in recording the statement of eyewitness would be fatal and testimony of such witness could not be safely relied upon"

Similarly, in another case titled "Mian Khan etc vs The state" reported in MLD 2018-226, it is held that:

(d) Criminal Procedure Code (V of 1898)---  
---S. 161---Statement of witnesses before police---Delay---Effect---Statement of prosecution witnesses to be recorded as promptly as possible, without giving any opportunity to improve upon and subtract from what he had seen---Delayed recording of the statement of the witness would be fatal and sounded death knell for the prosecution case.

12. The contents of FIR Transpires that the alleged occurrence had taken place at 1200 hours while the matter was reported at 1255 hours at the spot of occurrence. Till the arrival of local police, the complainant was with his deceased son and waiting for arrival of the police. Neither he informed any of his relative nor tried to shift the dead body to hospital or Police Station. The prosecution was unable to explain that for what purpose the complainant remained silent spectator with the dead body for about 55 minutes. The conduct of complainant was unnatural and unbelievable. The complainant claimed to have witnessed the occurrence and being so, a most natural and prompt reaction on his part to shift the deceased to hospital or to Police Station, if at all, he was present there, but he did not make any attempt to take the deceased to hospital and also did not inform the police rather remained with the dead body on

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Additional Sessions Judge Bunc

the spot for unknown reasons. In cross examination, he stated that after 05 or 06 minutes of the occurrence, some person through a Motorcar came there, to whom he had requested for informing the local police, however, those persons have not been de-boarded from their Motorcar to shift the deceased to Police Station or hospital and left the spot straight away. Such stance of the complainant is also not appealable to a prudent mind, that those persons without de-boarding from Motorcar, would have left the complainant in the company of his deceased son. Only the consistency in the statements of PWs not necessary, their conduct and statement must be acceptable to human prudence. In this respect reliance is placed on 1998

SCMR 25

(d) Penal Code (XLV of 1860)---S.302/34---  
 Appreciation of evidence ---Factors to be considered --- Courts in order to test the testimony of a witness should not only consider whether there is consistency in the narrative but should also consider whether the version is probable or not.

13. The Site Plan shows that complainant was at the mercy of the accused but no threat was extended to him, such unavailable courtesy extended by the accused person to the complainant, knowing well that he would depose against him. Perusal of the record followed by statement of the complainant Mian Syed Imran, further reveals that on 10.09.2012, one Redullah Khan was murdered and for the said murder complainant along with

JAVED IQBAL GULBELA  
 Advocate  
 Supreme Court of Pakistan  
 (AS # 5317)

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PHOTOCOPY  
 BY  
 M. H. HANIF  
 Director of  
 Information & Publicity  
 Ministry of Law  
 Islamabad  
 17/9/2023

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 AZIZ MUHAMMAD  
 Additional Secretary  
 J-9/2023

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others, were charged. Amongst the accused, effective role of firing upon the deceased Redullah Khan was attributed to the complainant of present case, Mian Syed Imran. Needless to mention that deceased Redullah Khan in the above referred case, was father of accused Afsar Ali Khan and brother of accused Jehan Alam. A bare look of the testimony of complainant/eye witness of the occurrence of present case would reveals that during chief examination, he stated that for the murder of father of accused Afsar Ali, he was charged, however, acquitted by the august Peshawar High Court. The prosecution has also brought the attested copy of above referred FIR on record and exhibited the same as (Ex.PW15/8), therefore on all accounts, the motive is an established fact from record of the case in hand. In such eventuality, a question arises in a prudent mind that admittedly the accused party had a strong motive against complainant of the present case, then why they had chosen to kill his son Muhammad Tariq, when even effective role of firing upon the deceased Redullah Khan in that case attributed to Mian Syed Imran, despite the fact, that he was empty handed at the relevant time, then it is still a mystery that why he was spared by the accused party. Such conduct of the accused were also not appealable to a prudent mind and making the presence of complaint at the spot of occurrence, highly doubtful.

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 Additional Sessions Judge, Buner

**JAVED IQBAL GULBELA**  
 Advocate  
 Supreme Court of Pakistan  
 (ASC # 5317)

14. According to the site plane (Ex:PW15/1), accused Afsar Ali Khan was shown on point No.3 in front of Motorcar while accused Jehan Alam was shown at point No.2, on the eastern side of the road. The spot of occurrence was surrounded by mountains and field having trees, the accused could have concealed themselves there and without showing their identity could accomplish their target and there was no need to come on point No.2 and 3; hence, it shows that the occurrence has not been taken place in the mode and manner as alleged by prosecution. Moreover, such behavior on the part of accused ran counter to natural human conduct.

In the above circumstances, in view of this court, prosecution failed to establish the presence of complainant on the spot of occurrence, at the relevant time.

It is established principles of administration of justice that whenever the ocular version furnished by the alleged interested witness of the concurrence is discarded, being not believable, then other corroborative or circumstantial evidence has little value with regard to proving of guilt of an accused. Though, the medical evidence furnished by Doctor Riaz Ali Khan (PW9), is supporting the case of prosecution to the extent that deceased Muhammad Tariq had received multiple fire arm injuries on different parts of his body, however, when the direct

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 Advocate  
 Supreme Court of Pakistan  
 (ASC # 5317)



evidence fails, the medical evidence, being corroborative in nature, would not rescue the case of prosecution.

16. Moving on to the recovery of Kalashnikov and pistol, which were shown as weapons of offence by the investigating officer. Admittedly, the said weapons have not been recovered from the direct possession of accused facing trial rather those were allegedly produced by one Khurshid Khan. The said Khurshid Khan was not produced by the prosecution, during the course of trial to depose against accused facing trial. Besides, the alleged weapons of offence were sent to FSL, alongwith empties allegedly recovered from the spot of occurrence and as per FSL report, the same were not fired from those weapons. Furthermore, before the arrest of accused, empties recovered from the spot, were sent to FSL for determination that whether those were fired from one or more weapons. As per FSL report, the 40 empties of 30 bore were fired from different weapons which also not supporting the prosecution case, however during trial, the complainant tried to fill up said lacuna in his case by stating in his chief examination that accused Afsar Ali came near the deceased from the front side and taken his (deceased) 30 bore pistol then the accused might have fired upon the deceased with his own pistol. Such fact has for the first time introduced by complainant while recording his statement as PW12. The learned defence counsel confronted him with

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 R.O. No. 19 of 1984

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**MUHAMMAD**  
 District & Sessions Judge Buncer

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**JAVED IQBAL GULBELA**  
 Advocate  
 Supreme Court of Pakistan  
 (ASC # 5317)

contents of FIR and his statement recorded U/s 512 Cr.PC, whereby the same was not found therein, hence, such portion of the statement of complainant can validly be termed as dishonest improvement just to bring his case in-line with the other prosecution evidence.

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17. Though after the occurrence accused facing trial have remained out laws for a considerable period, but mere absconsion of accused is not sufficient to hold a person guilty of an offence unless charge against him established through cogent evidence, which is not the case in hand, therefore, no importance can be attached to their abscondence. Reliance is placed on 2017

SCMR.P.144 as under:

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

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Advocate  
Supreme Court of Pakistan  
Authorised Signatory  
17-9-2017

18. The other piece of evidence on which prosecution relying is the pointation of place of occurrence by accused, during the custody of police. Such Pointation through accused was a futile exercise on the part of investigation officer. The place of occurrence had already known to him, therefore, there was no need to confirm on the pointation of accused facing trial, hence, the alleged pointation by accused, not falling within the ambit of Article 40 of Qanoon-e-Shahadat Order, 1984, having no evidentiary value.

17-9-2017  
JAVED IQBAL  
Advocate  
Supreme Court of Pakistan

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC # 5317)

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It is cardinal principle of criminal jurisprudence that accused are assumed to be innocent till their guilt is proved to the hilt. In case of every doubt, they are entitled to benefit of the same. Under these circumstances prosecution has not been able to establish its case beyond reasonable doubt and as such accused are entitled to benefit of doubt, accordingly, accused Afsar Ali Khan and Jehan Alam are acquitted from the charges leveled against them. Accused are in custody, they be set free, immediately, if not required in any other case. Case property be disposed of, after expiry of period of limitation, if any, in accordance with law. File be consigned to the record room after necessary completion and compilation.

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Announced  
17.09.2020

AZIZ MUHAMMAD  
Additional Sessions Judge/IZQ-III,  
Buner  
AZIZ MUHAMMAD  
Additional Sessions Judge/IZQ-III,  
Buner

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CERTIFICATE

Certified that this judgment consists of (20) pages. Each page has been read over and signed by me after making necessary

AZIZ MUHAMMAD  
Additional Sessions Judge/IZQ-III,  
Buner  
AZIZ MUHAMMAD  
Additional Sessions Judge/IZQ-III,  
Buner

CD No: 22533 corrections therein.  
Date of Application 22-8-20  
Date of Receipt of File 22-8-20  
Date of Presentation 22-8-20  
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Date of Delivery 22-8-20  
Signature

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC # 5317)

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DISTRICT SESSIONS JUDGE  
 DISTRICT PUNJAB  
 Receipt No: 162  
 Date: 24/9/2020  
 For action:  
 Signature: 4

محترم جناب ڈسٹرکٹ اینڈ سیشن جج صاحب ضلع بونیر

عنوان: درخواست براد اجازت Joining of Service

جناب عالی:

گذارش کیجاتی ہے کہ من سائیل سال 2007 سے بحیثیت کمپیوٹر آپریٹر ڈسٹرکٹ جوڈیشری بونیر کا مستقل ملازم ہے اور اپنا ڈیوٹی ادا کر رہا تھا کہ مورخہ 29/08/2018 کو من سائیل کے خلاف ایک بے بنیاد اور غلط FIR نمبر 1017 بہ جرم 302-404-427/34 تپ تھانہ پیر بابا چاک ہو کر اس وجہ سے من سائیل ڈیوٹی پر حاضر ہونے سے قاصر رہا۔ اور پھر من سائل نے ڈیوٹی پر حاضر ہو کر باقاعدہ درخواست گزار بنی ہے جس میں غیر حاضری کی تفصیل درج ہے۔ جس پر کارروائی شروع ہو کر آپ صاحبان کے پیشرو معزز ڈسٹرکٹ جج صاحب بونیر نے بروئے چھٹی نمبر Buner 1175-78/DSJ, مورخہ 03/06/2019 من سائیل کے خلاف جاری کارروائی/Departmental Proceeding مذکورہ بالا FIR کے ختمی فیصلہ تک خاموش رکھا ہے۔ اب معزز ٹرائل کورٹ نے بروئے تفصیلی فیصلہ مصدرہ 17-09-2020 من سائیل کو مذکورہ FIR میں بری کیا ہے اور میری بے گناہی ثابت ہو چکی ہے۔ اس وجہ سے من سائیل اپنی ڈیوٹی پر حاضر ہونا چاہتا ہے۔

لہذا آپ صاحبان سے استدعا کی جاتی ہے کہ من سائیل کے خلاف جاری کارروائی Departmental Proceeding کو بوجہ بالا داخل دفتر فرمایا جائے اور من سائیل کو اپنی ڈیوٹی حاضری کی اجازت فرمایا جائے۔

آپ کا تابع فرمان

AP

آفسر علی کمپیوٹر آپریٹر

المرقوم: 22/09/2020

Date 24-09-2020

JAVED IQBAL GULBELA  
 Advocate  
 Supreme Court of Pakistan  
 (ASC # 5317)

بخدمت جناب معزز ڈسٹرکٹ اینڈ سیشن جج صاحب بونیر بمقام ڈگر

عنوان: درخواست بھرا عطا کی اجازت بابت حاضری کن سائیکل بنسٹ ڈیوٹی خود/Joining of Duty

جناب عالی: درخواست حسب ذیل عرض ہے۔

- (1) یہ کہ سائیکل آپ کے زیر سایہ ڈسٹرکٹ جوڈیشیری بونیر میں بحیثیت کمپیوٹر اپریٹر سال 2007 سے کام کر رہا ہے اور اس دوران اپنی ڈیوٹی انتہائی محنت سے انجام دی ہے اور کبھی بھی کوئی غیر حاضری نہیں کی ہے۔
- (2) یہ کہ کن سائیکل کے خاندان کا درجہ بیہ میں ایک خاندان سے دشمنی چلی آ رہی ہے اور مذکورہ خاندان انتہائی خطرناک ہے اور باثر ہے اور انہوں نے مورخہ 10/09/2012 کو مجھ پر میرے والد اور چچا زاد پر قاتلانہ حملہ کر کے نتیجہ کے طور پر میں شدید زخمی ہوا اور الدام، چچا زاد ام قتل ہوئے۔ نقل FIR لف ہیں۔
- (3) یہ کہ مورخہ 29/08/2018 کو جب عدالت کی چھٹیاں تھی اور میں نجی کام کے سلسلے ضائع سوات میں تھا کہ ہمارے دشمن کے خاندان کے ایک فرد پر کسی ملزم/ملزمان نامعلوم نے فائرنگ کر کے اس میں وہ فوت ہوا، لیکن مذکورہ دشمنوں نے سابقہ عداوت کے وجہ سے مجھے غلط طور پر ملزم نامزد کر کے میرے خلاف تھانہ پیر بابا میں رپورٹ کی۔ جس کا علم ہونے پر میں انتہائی ذہنی تناؤ کا شکار ہوا اور دشمنوں کے سابقہ کردار اور انحال کو دیکھتے ہوئے مزید خوف کا شکار ہوا اور اس وجہ سے اپنے گھر بار کو چھوڑا، کیونکہ ہمارے اور دشمن خاندان کے گھر آسنے سامنے ہیں اور مجھے ان سے شدید خطرہ لاحق تھا۔ اور اس وجہ سے مورخہ 01/09/2018 کو ڈیوٹی پر حاضر نہ ہو سکا۔ اس کے بعد مجھ پر مزید ذہنی تناؤ بڑھتا گیا اور میں ذبیہ خود سے باہر نہاتا کہ اپنی جان کی حفاظت کر سکوں۔ اور اس دوران ایک رشتہ دار کو آپ کے روبرو چھٹی کیلئے درخواست پیش کرنے کا بھی کہا تھا۔
- (4) یہ کہ حال ہی میں میرے رشتہ داروں نے مجھے تسلی دی اور میری حوصلہ افزائی کر کے میں ذبیہ خود آیا اور مذکورہ غلطی بے بنیاد دعویٰ باری میں BBA حاصل کرنے کیلئے عدالت میں درخواست گزار رہا ہے۔
- (5) یہ کہ درخواست BBA میں حاضری کے دوران مجھے میرے ساتھیوں نے میرے درخواست بابت چھٹی کا نہ ہونے کا ذکر کیا۔ حالانکہ میں نے اپنے رشتہ دار کو درخواست بابت چھٹی آپ صاحبان کو پیش کرنے کا کہا تھا۔
- (6) یہ کہ میری غیر حاضری تصدیق نہیں تھی بلکہ موجودہ بالا تھی اور اب سائیکل اپنی ڈیوٹی پر حاضر ہونا چاہتا ہے تاکہ اپنی قانونی ڈیوٹی انجام دے سکے۔ اور اپنی خاندان کی کفالت کر سکے۔

لہذا استدعا کی جاتی ہے کہ کن سائیکل کو اپنی ڈیوٹی Join کرنے کی

اجازت دی جائے۔

انسر علی خان ولد رید اللہ خان سکشن برکود

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC# 5317)

BEFORE THE HONORABLE DISTRICT & SESSIONS JUDGE/ZILLA  
QAZI BUNER.

**Subject:** Application/representation for allowing the back benefits including the monthly salaries to the applicant/undersigned from the month of September 2018 till the month of September 2020 or as deemed proper & Just in the eyes of law.

Respected Sir

The undersigned/Applicant most respectfully submitted the following few lines and hope your sympathetic consideration.

1. That the applicant while serving as Computer Operator under your kind supervision and administration was falsely and with malafide intention Charged in Case FIR No.1017 dated 29-08-2018 P.S Pir Baba u/s 302/404/427/34 PPC on the date and day on which the applicant was in District Swat for certain domestic affairs and in this respect was on leave because of the summer vacation of the Honorable courts.
2. That the applicant was informed about his false implicated later on.
3. That due to intense fear and tension the applicant could not come back to his home district for some time and instructed a relative to inform the office of your goodself but later on it came to my knowledge that no intimation was brought before your good office.
4. That the applicant surrendered himself before the learned and competent court through submitting petition for Pre-arrest-bail dated 29-04-2019.
5. That bail before arrest was declined and the applicant was sent to Judicial Lock up.

Received  
By  
24-9-22

JAYED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC # 5317)

6. That after the conclusion of trial the court of learned Additional District & Sessions Judge-III/IZQ Buner vide judgment dated 17-09-2020 acquitted the applicant along with another from the charge levelled against.
7. That after acquittal from the charge, the applicant moved application for resuming his duty on 24-09-2020 as such vide office order dated 08-10-2020, the learned District & Sessions Judge Buner while withdrawing his suspension, the applicant was directed to resume his duty at once. It is pertinent to mention here that the applicant vide his application for joining of the service, prayed for consigning the departmental proceedings to record room on the basis of his acquittal.
8. That the absence of the applicant from his duty was not intentional but for the reason of his false implication in the above mention case.
9. That while resuming his duty the applicant was permitted to obtain the Salaries from the time he resumed his official duty and for the time since lodging the false FIR and later on surrendering himself and sending him to judicial lock up, the applicant was not provided the monthly salaries.
10. That under F.R Rule 53 read with F.R 54, the applicant after acquittal from the charge is entitled for all back benefits including his Monthly emoluments. (The referred to rules are annexed).
11. That on a decision by the Honourble, Balochistan Service Tribunal reported in 2005 PLC (C.S) 450, while allowing the appeal of the appellant against the order of dismissal, the learned Tribunal directed his reinstated in Service with all back benefits as such the applicant is also entitled to all his back benefits on resuming his official duty (The referred to Judgement is enclosed herewith)
12. That the August Supreme Court of Pakistan in a Judgment published in 2002 SCMR 57 held in a Service case in which the Civil Servant who was acquitted from

the charge in criminal case, was dismissed from service by departmental authority and his appeal before the learned Punjab Service Tribunal was also dismissed, set aside his dismissal and directed that the applicant/civil servant be reinstated in service with back benefits for the period he had not been gainfully employed elsewhere.

It is therefore, most respectfully submitted that keeping under considerations, the facts and law as mentioned and submitted above, the applicant may be allowed all back benefits since the registration of the false FIR against him in which he has been acquitted including the amount outstanding as monthly salaries and other allowances. Any other relief appropriate in the eye of law and justice may also be granted in favor of the applicant.

Yours Obediently,

*Afsar Ali Khan*

Afsar Ali Khan,  
Computer Operator in the  
Court of CJ-V Buner

24-09-022

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC #5317)



**DISTRICT & SESSIONS JUDGE/ZILLA QAZI, BUNER**

Email: dsjbuner@yahoo.com

Ph: +92-939-510434

Fax: +92-939-512162

No. \_\_\_\_\_ /DSJ, Buner

Dated at Buner the 08/10/2020

Office Order

Mr. Afsar Ali, Computer Operator of this establishment was charged in case FIR No:1017 dated 29.08.2018 under section 302/404/427/34.PPC Police Station Pir Baba, District Buner, therefore, the official was kept under suspension for a period of 03 months vide order bearing No:1507-09/DSJ Buner dated 24/09/2018 in disciplinary proceeding, later on, the same was extended further for 90 days vide No.514-516/Dsj Buner dated 06/03/2019. Upon his written reply dated 09.05.2019, the Departmental proceedings were kept held in abeyance till the final proceedings of trial court vide order No.1175-78/DSJ dated 03/06/2019.

Now, on 24.09.2020, the official concerned submitted application wherein he requested for resuming of his official duty on the ground that he has acquitted in the subject criminal case by the learned trial court on 17.09.2020 (Copy of judgment annexed).

In view of the above facts, the suspension of Mr. Afsar Ali, Computer Operator is hereby withdrawn and the official is directed to resume duty in the court of learned Civil Judge-I/Judicial Magistrate, Buner at Daggar at once and disciplinary proceedings will go ahead till completion.

*(Signature)*  
Muhammad Farhatullah Khan  
District & Sessions Judge/ZQ  
Buner at Daggar

OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZILLA QAZI, BUNER

No 1827-30 /DSJ/Buner Dated Daggar the 08/10/2020

Copy forwarded for information to:

1. The Senior Civil Judge (Admn) Buner at Daggar
2. The Civil Judge-I/JM Buner at Daggar
3. The District Accounts Officer, Buner.
4. Official concerned.

*(Signature)*  
District & Sessions Judge/ZQ  
Buner at Daggar.

Sessions Judge/Zilla Qazi  
Buner at Daggar.

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC #5317)



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Fax: +92-939-512162

No. 187 /DSJ, Buner

Dated Daggar the 10/11/2019

To,

Mr. Afsar Ali S/o Raidullah Khan  
Resident of village Bar Gokand,  
Tehsil Daggar, District Buner.  
(Computer Operator, District Judiciary Buner)

**SUBJECT: NOTICE/EXPLANATION**

Memo:

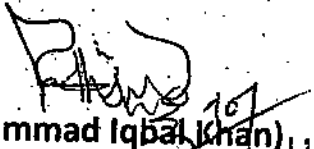
DISTRICT

You, the official named above, attached to the Court of Civil Judge-IV/JFC, Buner, as reported by your Presiding Officer (JFC) Buner;

- 1) That you remained absent from duty without obtaining leave with effect from 01.09.2018.
  - 2) That explanation was called from you vide letter No. 1406/DSI/Buner dated 07.09.2018 and you were asked to explain your position within 07 days but you did not submit any reply and continuously remained absent from your official duty w.e.f. 01.09.2018 to 24.09.2018, which led to your suspension from service for the period of 03 months.
- And, in spite of suspension/explanation, you neither bothered to attend the office nor resumed your official duty till date, thus habitually absenting yourself from official duty without obtaining leave from the competent authority which shows your laxity and least interest towards your official duty.

Therefore, this notice is hereby issued to you with the direction to resume your official duty within 15 days of receipt of this notice and explain your position in the matter as to why disciplinary action under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011, should not be initiated against you.

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC # 5317)

  
(Muhammad Iqbal Khan)  
District & Sessions Judge/ZO  
Buner at Daggar



**DISTRICT & SESSIONS JUDGE/ZILLA QAZI, BUNER**

E-mail: [dsibuner@yahoo.com](mailto:dsibuner@yahoo.com)

Ph:+92-939-510434

Fax:+92-939-512162

No. \_\_\_\_\_ /DSJ, Buner

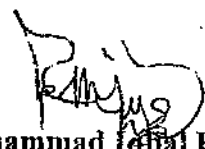
Dated at Buner the 03/06/2019

Office Order

In continuation of this office order bearing No.1507-09/DSJ dated 24/09/2019, wherein Mr. Afsar Ali, Computer Operator attached to the court of Civil Judge-IV/JFC Buner has been suspended from service, due to his absentia and departmental proceeding was initiated against him and it was reported that he is absconded in criminal case.

Now the official concerned has submitted his written reply wherein he stated that his absence was not willful but was the result of above case. Report of Superintendent of this office also specks that he is involved in criminal case and presently confined in District Jail Daggar.

In view of above circumstances and report of superintendent, the departmental proceeding against Mr. Afsar Ali, Computer Operator, is held in abeyance till the final decision of trial court.

  
Muhammad Iqbal Khan  
District & Sessions Judge/ZQ  
Buner at Daggar

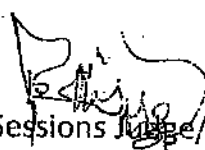
OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZQ, BUNER AT DAGGAR.

No. 1175-78 /DSJ, Buner

Dated Daggar the, 03/06/2019

Copy forwarded for information to:

1. The Senior Civil Judge, Buner at Daggar.
2. The Civil Judge-IV/JFC, Buner.
3. The District Accounts Officer, Buner.
4. Official concerned.

  
District & Sessions Judge/ZQ  
Buner at Daggar

E:\Sessions Court\F.Ghani\Officer Order\Officer order Earned leave.doc

JAVED IQBAL GULBELA  
Advocate  
Supreme Court of Pakistan  
(ASC # 5317)





**DISTRICT & SESSIONS JUDGE/ZILLA QAZI, BUNER**

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Ph: +92-939-510434

Fax: +92-939-512162

No. \_\_\_\_\_ /DSJ, Buner

Dated at Buner the \_\_\_\_\_

Office Order

Mr. Afsar Ali, Computer Operator of this establishment was charged in case FIR No.1017 dated 29.08.2018 under section 302/404/427/34 PPC Police Station Pir Baba, District Buner, therefore, the official was kept under suspension for a period of 03 months vide order bearing No.1507-09/DSJ Buner dated 24/09/2018 in disciplinary proceeding later on, the same was extended further for 90 days vide No.514-516/Dsj Buner dated 06/03/2019. Upon his written reply dated 09.05.2019, the Departmental proceedings were kept held in abeyance till the final proceedings of trial court vide order No.1175-78/DSJ dated 03/06/2019;

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In view of the above facts, the suspension of Mr. Afsar Ali, Computer Operator is hereby withdrawn and the official is directed to resume duty in the court of learned Civil Judge-I/Judicial Magistrate, Buner at Daggar at once and disciplinary proceedings will go ahead till completion.

**Muhammad Farhatullah Khan**  
District & Sessions Judge/ZQ o/c  
Buner at Daggar

OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZILLA QAZI, BUNER

No 1827-30/DSJ/Buner

Dated Daggar the 08/10/2020

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2. The Civil Judge-I/JM Buner at Daggar.
3. The District Accounts Officer, Buner.
4. Official concerned.

District & Sessions Judge/ZQ  
Buner at Daggar o/c  
Sessions Judge/Zilla Qazi,  
Buner at Daggar.

**JAVED IQBAL GULBELA**  
Advocate  
Supreme Court of Pakistan  
(ASC/5317)

## وکالت نامہ

بعدالت: سروسز ٹریبونل حیدرآباد حوالہ

افسر علی خان بنام حلوین

منجانب ایڈووکیٹ دعویٰ سروسز ایپل

تاریخ 10 - 07 - 2023

باعث تیسرے آنکھ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جوابدہی

بمقام کینیڈا کے لیے جاوید اقبال گل بیلب ایڈووکیٹ سپریم کورٹ آف پاکستان

کو بدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشگی کا کوڈ یا بزرگیہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر دالت کروں گا، اگر پیشگی پر من مظر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کی کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کوکل پر داخنتہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب کو عرضی دعویٰ و جواب دعویٰ اور درخواست جرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپروائشی و راضی نامہ فیصلہ پر خلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوفی ڈگری یا طرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا نیکی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر وہی اور ویسے ہی اختیارات حاصل ہوں گے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشگی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سند رہے۔

موزنہ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

افسر علی خان رکن پریس الزمان پونیر

BC-10-7824

17301-1498005-7

Javed Iqbal Gul