

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR AT CAMP COURT ABBOTTABAD.

Appeal No. 110/2019

Date of Institution ... 23.01.2019

Date of Decision ... 17.09.2020

Gul Muhammad S/O of Sadbar Khan, Resident of Pattan, Tehsil Pattan, District Kohistan Lower/Police Constable (BPS-07) at Dassu Kohistan.

... (Appellant)

VERSUS

Regional Police Officer, Hazara Region Abbottabad and one other.

... (Respondents)

**Present:**

MR. ABDUL SABOOR KHAN,  
Advocate

--- For Appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General

--- For respondents.

MR. MIAN MUHAMMAD,  
MR. MUHAMMAD JAMAL KHAN

--- MEMBER(Executive)  
--- MEMBER(Judicial)

**JUDGEMENT.**

**MIAN MUHAMMAD, MEMBER:-** Brief facts of the case are that the appellant was serving as constable (BPS-07) in respondent-department. He was imposed major penalty of dismissal from service vide order dated 20.01.2014 on the allegation of involvement in criminal case nominated in FIR NO.29 dated 25.02.2013 under Section 9 (C) of Control of Narcotic Substances Act 1997, Police Station Lal Muhammad Shaheed Besham District Shangla. On conclusion of the trial, the appellant was sentenced and convicted (life imprisonment and fine of Rs. 1,00,000) by the Trial Court. The appellant challenged it before the Peshawar High Court but the Peshawar High Court also maintained the judgement of the lower court. The appellant also challenged the judgement of both the courts before the

august Supreme Court of Pakistan and the apex court accepted appeal of the appellant and acquitted him of the charges level against him, vide detailed judgement dated 12.09.2018. Thereafter, the appellant filed departmental appeal on 05.10.2018 which was partially accepted to the extent that the appellant was reinstated in service but the intervening period was treated as leave without pay, vide order dated 30.11.2018, hence, the present service appeal.

02. We have heard the pro and counter arguments put forth by the learned counsels for the parties and perused the available record as well as additional material/relevant court cases in support of their respective plea.

03. The learned counsel for the appellant vehemently contended that since the appellant was in custody and it was beyond control of the appellant to attend his duty, therefore, he was entitled to all back benefits. He referred to second proviso under Section-17 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which stipulates that **“provided further that where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine”**. In support of his arguments, he relied on para-6 and 7 of the 2013 SCMR 752, 2003 SCMR 726 and 1999 SCMR 2870.

04. The learned Assistant Advocate General advanced counter arguments that being a personnel of disciplined Force, the appellant was nominated in FIR No. 29 dated 25.02.2013 under Section 9(C) of CNSA and his acquittal was the outcome of “benefit of doubt” extended to him by the court. Moreover, departmental proceedings and judicial proceedings may start from an identical charge(s), can run parallel to each other on the same set of facts and yet may end differently. It was

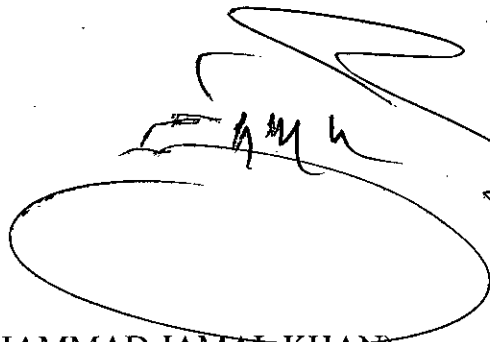
further contended that the appellant did not actually perform his duty, hence, "no work no pay" is the principle applied to him. The department has already taken a lenient view when major penalty of "dismissal from service" was set aside and he was reinstated in service, declaring the period when he was out of service, as "Leave without pay". He relied on 2004 SCMR 13089 (citation-C) and judgement of Khyber Pakhtunkhwa Services Tribunal dated 02.12.2019 in service appeal No. 1230/2018 titled Zahoor Iqbal versus PPO and others.

05. Spirit of the Court cases relied on in support of the plea of the appellant particularly that of 2004 SCMR 1308, is that there must be some documentary evidence to establish the fact that the appellant during the intervening period when he remained out of service, was not engaged in work anywhere to gain financial benefits. Similarly, in Civil Appeal No. 1230/2018 titled Zahoor Iqbal versus Provincial Police Officer Khyber Pakhtunkhwa and others; The Services Tribunal even took into account the lenient view of respondent-department when the major penalty of "**dismissal from service**" was converted into "**reduction in pay by two stages**" and it set aside that penalty. The appellant was reinstated in service w.e.f 08.05.2018 but without any financial.

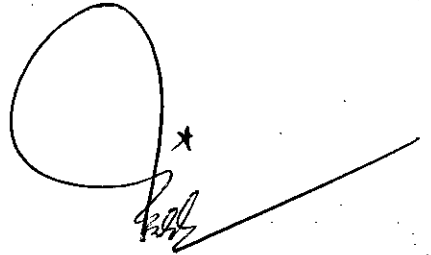
06. As a sequel to the above, we have arrived at the conclusion that the appellant was acquitted as a result of "benefit of doubt" which also stands honourable acquittal as interpreted by the august Supreme Court of Pakistan. The respondent department has taken a lenient view by converting his major penalty of dismissal from service after having considered his plausible reasons on 29.11.2019 in orderly room. Thus, he has been given departmental relief after due consideration to his plea at the department level. As he was out of service since 25.02.2013 till 30.11.2018 and he actually did not perform duty in the respondent-department due to his own conduct, therefore, the authority while reinstating the appellant in service, has

rightly treated the period of his absence as "leave without pay". We, therefore, find no merit in the case to intervene the order dated 30.11.2018, as such the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.


ANNOUNCED  
17.09.2020



(MUHAMMAD JAMAL KHAN)  
MEMBER(J)



(MIAN MUHAMMAD)  
MEMBER(E)  
Camp Court Abbottabad

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	17.09.2020	<p><u>Present.</u></p> <p>Mr. Abdul Saboor Khan ... For appellant Advocate</p> <p>Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General ... For respondents</p> <p>Vide our detailed judgment of today, we, therefore, find no merit in the case to intervene the order dated 30.11.2018, as such the appeal is dismissed. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 17.09.2020</p>  <p>(Mian Muhammad) Member (Executive)</p> <p>(Muhammad Jamal Khan) Member (Judicial)</p>

Due to covid ,19 case to come up for the same on / /  
at camp court abbottabad.

Reader.

Due to summer vacation case to come up for the same on 117  
9 / 20 at camp court abbottabad.

  
Reader

17.12.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Akhtar Zaman, Inspector (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 23.01.2020 for arguments before D.B at Camp Court Abbottabad.



(Hussain Shah)

Member

Camp Court Abbottabad



(M. Amin Khan Kundi)

Member

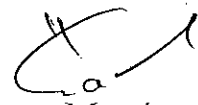
Camp Court Abbottabad

23.01.2020

Appellant in person present. Mr. Muhammad Jan, DDA for the respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings on 17.02.2020 before D.B at camp court Abbottabad.



Member




Member

Camp Court A/Abad

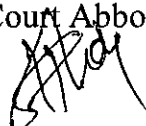
10.07.2019

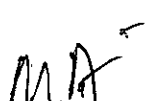
Counsel for the appellant and Mr. Akhtar Zaman, Inspector alongwith Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Representative of the department submitted written reply on behalf of respondents No. 1 & 2. Case to come up for rejoinder and arguments on 10.09.2019 before D.B at Camp Court Abbottabad.

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

17.09.2019

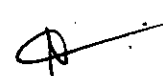
Counsel for the appellant and Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Case to come up for rejoinder and arguments on 20.11.2019 before D.B at Camp Court Abbottabad.

  
(Hussain Shah)  
Member  
Camp Court Abbottabad

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

20.11.2019

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Akhtar Zaman, Inspector for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned but as a last chance. To come up for arguments on 17.12.2019 before D.B at Camp Court, Abbottabad.

  
Member

  
Member  
Camp Court Abbottabad

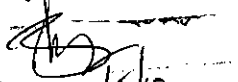



20.05.2019

Counsel for the appellant Gul Muhammad present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Education Department. He was imposed major penalty of dismissal from service vide order dated 20.01.2014 on the allegation of involvement in criminal case vide FIR No. 29 dated 25.02.2013 under section 9 (C) of CNSA Police Station Lal Muhammad Shaheed Besham District Shangla. It was further contended that after conclusion of the trial, the appellant was sentenced and convicted by the trial court. The appellant challenged the said before the worthy High Court but the worthy High Court also maintained the judgment of the lower court. It was further contended that the appellant also challenged the judgment of both the courts before the august Supreme Court of Pakistan and the apex court accepted the appeal of the appellant and acquitted him from the charges level against him vide detailed judgment dated 12.09.2018. Thereafter, the appellant filed departmental appeal on 05.10.2018 which was partially accepted to the extent that the appellant was reinstated in service but the intervening period was treated as leave without pay instead of back benefits hence, the present service appeal. Learned counsel for the appellant further contended that since the appellant was in custody and it was beyond the control of the appellant to attend the duty therefore, the appellant was entitled for back benefits. ✓

The contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to limitation and all other legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter, notice be issued to the respondents for written reply/comments for 10.07.2019 before S.B at Camp Court Abbottabad.

Appellant Deposited  
Security & Process Fee




  
27/5/19

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

**Form- A**  
**FORM OF ORDER SHEET**

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

Case No. 110/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/1/2019	<p>The appeal of Mr. Gul Muhammad received today by post through Mr. Abdul Saboor Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 23/1/19</p>
2-	25-1-19	<p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>21-3-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
21.03.2019		<p>None present on behalf of the appellant. Notice be issued to appellant and his counsel for attendance and preliminary hearing for 20.05.2019 before S.B at Camp Court Abbottabad.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member Camp Court Abbottabad</p>

**BEFORE THE SERVICE TRIBUNAL**  
**K.P.K PESHAWAR**

Service appeal No 110 of 2019

Gul Muhammad.....Appellant

**VERSUS**

Regional Police Officer, Hazara Region  
Abbottabad. ....Respondents

**APPEAL**

**INDEX**

S#	Description of documents	Annexure	Page#
1.	Memo of Appeal	-	1-6
2.	Affidavit	-	7
3.	Correct address of Parties		8
4.	Copy of order dated 20.08.2014.	A	9
5.	Copy of Judgment dated 12.09.2018.	B	10-12
6.	Copies of departmental appeal	C	13
7	Copies of order dated 30.11.2018.	D	14
7	Wakalat Nama	--	15

**Dated 19.01.2019**

  
**GUL MUHAMMAD**  
(Appellant)

Through:-

  
**ABDUL SABOOR KHAN**  
Advocate High Court

0334-5574289

**BEFORE THE SERVICE TRIBUNAL**

**K.P.K PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 98

Dated 23/1/2019

Service appeal No 110 of 2019

Gul Muhammad, Son of Sadbar Khan,  
resident of Pattan, Tehsil Pattan, District  
Kohistan Lower/Police Constable BPS 07 at  
Dassu Kohistan.

.....Appellant

**VERSUS**

- 1) Regional Police Officer, Hazara Region  
Abbottabad.
- 2) District Police Officer, District Kohistan  
at Dassu.

.....Respondents

Filed to-day  
Registrar  
23/1/19

**APPEAL UNDER SECTION 4 OF KPK**  
**SERVICE TRIBUNAL ACT, 1974**  
**AGAINST THE ORDER DATED**  
**30.11.2018 WHEREBY RESPONDENT**  
**NO 01 PARTIALLY ALLOWED THE**  
**DEPARTMENTAL APPEAL OF THE**  
**APPELLANT, REINSTATED HIM INTO**  
**SERVICE, BUT PERIOD OF ABSENCE**  
**HAS BEEN TREATED AS LEAVE**  
**WITHOUT PAY, INSTEAD OF WITH PAY.**

**PRAYER:-**

On acceptance of the instant appeal, the period of absence of the appellant treated as leave without pay may graciously be modified to with Pay and respondents be directed to give/grant back benefits, back service and other admissible perks and privileges to the appellant in consequence of his reinstatement into service, vide order dated 30.11.2018.

**Respectfully Sheweth:-**

1. That, appellant was appointed as police constable at District Kohistan, on 23.07.1998.
2. That, on 25.02.2013, petitioner was falsely involved by local police of police station Besham, District Shangla in a false case vide FIR No 29 dated 25.02.2013 under section 9(C) of CNSA, 1997, due to said reason, Respondent No 02 dismissed the appellant from service vide order dated 20.08.2014.

**(Copy of order dated 20.08.2014 is annexed as annexure "A" ).**

3. That, the appellant was acquitted of the false charges by the August

Supreme Court of Pakistan vide Judgment dated 12.09.2018.

**(Copy of Judgment dated 12.09.2018 is annexed as annexure "B").**

4. That, after earning clean acquittal, appellant filed a departmental appeal with respondent No 01 on 05.10.2018. which was allowed and appellant was reinstated into service vide order dated 30.11.2018 but the period of absence and the period in which the appellant remained out of service was treated as leave without pay instead of with pay/back benefits.

**(Copies of departmental appeal and order dated 30.11.2018 are annexed as annexure "C & D").**

5. That, the appellant is only aggrieved to the extent of treating the period of absence as leave without pay instead of with pay, hence, this appeal inter alia on the following amongst other grounds.

### **GROUND:-**


- A) That, appellant remained behind the bars in the aforesaid criminal case with effect from 25.02.2013 till he was released from Jail on 19.09.2018 in consequence of the judgment of the apex court dated 12.02.2018.

- B) That, the appellant was not paid his salaries/Jail allowances during his incarceration with effect from 25.02.2013 till he was released on 19.09.2018 for which he was entitled as under trial prisoner under the law on the subject.
- C) That, the appellant never remained willfully absent from duty and during the intervening period he was also not enjoying any gainful job, therefore, he is legally entitled to back benefits, but Respondent No 01 did not grant the same vide order dated 30.11.2018 despite having reinstated him into service.
- D) That, it is well settled by now that reinstatement of an employee into service is always followed by back benefits of the intervening period.
- E) That, the appellate authority (Respondent No 01) has not cited any legal reason for treating the period of absence of the appellant as leave without pay, hence to the extent of which, order dated 30.11.2018 passed by respondent no 01 calls for modification treating the period of absence as leave with pay.

**PRAYER:-**

On acceptance of the instant appeal, the period of absence of the appellant treated as leave without pay may graciously be modified to with Pay and respondents be directed to give/grant back benefits, back service and other admissible perks and privileges to the appellant in consequence of his reinstatement into service, vide order dated 30.11.2018.

**Dated 19.01.2019**

  
Gul Muhammad  
(Appellant)

Through:-

  
**ABDUL SABOOR KHAN**  
Advocate High Court

**VERIFICATION :**

I, Gul Muhammad, Son of Sadbar Khan, resident of Pattan, Tehsil Pattan, District Kohistan Lower/Police Constable BPS 07 at Dassu Kohistan, do hereby solemnly affirm and declare that the contents of fore-going Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed form this Honorable Tribunal.

  
**GUL MUHAMMAD**



**BEFORE THE SERVICE TRIBUNAL**  
**K.P.K PESHAWAR**

Service appeal No \_\_\_\_\_ of 2018

Gul Muhammad.....**Appellant**

**VERSUS**

Regional Police Officer, Hazara Region  
 Abbottabad. ....**Respondents**

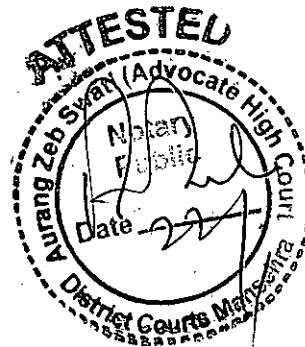
**APPEAL**

**AFFIDAVIT**

I, GUL MUHAMMAD, SON OF SADBAR KHAN, RESIDENT OF PATTAN, TEHSIL PATTAN, DISTRICT KOHISTAN LOWER/POLICE CONSTABLE BPS 07 AT DASSU KOHISTAN. DO HERBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT THE NO SUCH SUBJECT MATTER APPEAL HAS EVER BEEN FILED BEFORE THIS HONORABLE COURT NOR PENDING NOR DECIDED. THAT THE CONTENTS OF FORE-GOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.

Dated: 19.01.2019

  
**GUL MUHAMMAD**  
**DEPONENT**



7

**BEFORE THE SERVICE TRIBUNAL**  
**K.P.K PESHAWAR**

Service appeal No \_\_\_\_\_ of 2018

Gul Muhammad.....**Appellant**

**VERSUS**

Regional Police Officer, Hazara Region  
Abbottabad. ....**Respondents**

**APPEAL**

**CORRECT ADDRESSES OF THE PARTIES**

**APPELLANT:**

Gul Muhammad, Son of Sadbar Khan,  
resident of Pattan, Tehsil Pattan, District  
Kohistan Lower/Police Constable BPS 07 at  
Dassu Kohistan.

**RESPONDENTS:**

- 1) Regional Police Officer, Hazara Region  
Abbottabad.
- 2) District Police Officer, District Kohistan  
at Dassu.

**Dated 19.01.2019**

  
**GUL MUHAMMAD**  
(Appellant)

Through:-

  
**ABDUL SABOOR KHAN**  
Advocate High Court

Handwritten: 19-01-2019

ORDER

Enquiry  
S. R. Khan

Annex A

9

The order will dispose of the departmental enquiry initiated against Constable Gul Muhammad No. 152 on the score of allegations that he absented him-self from duty vide Daily Diary No. 17, dated 23-02-2013 without any leave/ permission to his seniors. MHC Police Station Battera reported that he being a member of discipline force involved in criminal case vide FIR No. 29, dated 25-02-2013 u/s 9-CNSA Police Station Lal Mohammad Shaheed Besham District Shangla.

On this Mr. Saecd Ahmad Malik DSP/Hqrs: Dasso was appointed as enquiry officer and he submitted finding report that, till decision of court enquiry will be pending, of the decision of court, the enquiry of accused constable again sent to DSP/Hqrs: for further comments/ enquiry. During the enquiry it came to the notice that trail court of Session Judge Shangla announced decision in the case. The Session Judge awarded life imprisonment and fine Rs. 100000/- (one lac) rupees. The decision of the court obtained which is attached with enquiry file.

From the circumstances mentioned above it is evident that he was habitual trafficker/peddler of narcotics. His involvement in the case shows that he is a black stigma for police force and brought had name of the police department, hence due to his involvement in above mentioned case he is dismissed from service from the date of absence under Police disciplinary Rules - 1975 with immediate effect.

(AKBAR, G.L.I)  
District Police Officer,  
Kohistan

OB NO 07-

Dated: 22/01/2014

September 2019.

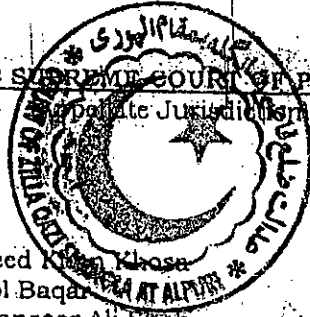


(MUHAMMAD NASIM)  
District & Sessions Judge/Zilla Qazi,  
SHANGLA

(3)

P-10

IN THE SUPREME COURT OF PAKISTAN



Anwar B

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa  
Mr. Justice Maqbool Baqar  
Mr. Justice Syed Mansoor Ali Shah

**Criminal Appeal No. 415 of 2017**

(Against the judgment dated 15.01.2015 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Criminal Appeal No. 222 of 2013)

*Gul Muhammad*

...Appellant

versus

*The State, etc.*

...Respondents

For the appellant:

Mr. Ziaur Rehman Khan, ASC

For the State:

Mr. Zahid Yousaf Qureshi,  
Additional Advocate-General,  
Khyber Pakhtunkhwa


Date of hearing:

12.09.2018

**JUDGMENT**

**Asif Saeed Khan Khosa, J.:** Gul Muhammad appellant had allegedly been apprehended by a raiding party while carrying a bag containing Charas weighing 12 kilograms and subsequently some samples taken from the recovered substance had statedly been tested positive by the Chemical Examiner. In this backdrop the appellant was booked in case FIR No. 29 registered at Police Station Besham, District Shangla on 25.02.2013 for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 and after a regular trial the appellant was convicted by the trial court for the said offence and was sentenced to imprisonment for

**ATTESTED**

  
Court Associate  
Supreme Court of Pakistan  
Islamabad

life and to pay fine which conviction and sentence of the appellant were subsequently upheld and maintained by the High Court. Hence, the present appeal by leave of this Court granted on 21.08.2017.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties who have undertaken to exercise.

3. According to the prosecution, after the alleged recovery of narcotic substance from the appellant's possession the recovered substance was handed over by Muhammad Zaman Khan, S.H.O. complainant (PW1) to Muhammad Ali, Moharrir for safe custody of the recovered substance at the local Police Station but the record shows that the said Muhammad Ali, Moharrir had neither been produced before the trial court nor he had made any statement under section 161, Cr.P.C. confirming safe custody of the recovered substance. It is also evident from the record that some samples of the recovered substance had later on been handed over to Mansoor Ahmed, F.C. for their transmission to the office of the Chemical Examiner but even the said Mansoor Ahmed, F.C. had not been produced before the trial court and no statement of his under section 161, Cr.P.C. had been recorded. This shows that safe custody of the recovered substance and safe transmission of the samples of the recovered substance to the office of the Chemical Examiner had never been established before the trial court through any independent evidence. It has already been held by this Court in the cases of Amjad Ali v. The State (2012 SCMR 577) and Ikrumullah and others v. The State (2015 SCMR 1002) that in a case where safe custody of the recovered substance or safe transmission of the samples of the recovered substance is not proved by the prosecution there an accused person cannot be convicted in such a case.

4. For what has been discussed above this appeal is allowed, the conviction and sentence of the appellant recorded and upheld

ATTESTED

Court Associate

**DISTRICT JUDICIARY SHANGLA**  
OFFICE OF THE DISTRICT & SESSIONS JUDGE/ ZILLA QAZI, SHANGLA.

P-12-A

Attested  
19/09/2019

# 0996-850001  
# 0996-851001  
ail: dsjshangla@gmail.com

No. 2636 /D&S/J/ZQ (SI)  
Dated: 19/09 /2018

To:- The Superintendent,  
Central Jail Haripur.

Subject: **RELEASE WARRANT.**

Criminal Appeal No.415 of 2017

Gul Muhammad Vs The State and others

**CASE FIR NO.29 DATED 25.02.2013**  
**U/S 9 (C) CNSA P/S BESHAM DISTRICT SHANGLA.**

Whereas, accused Gul Muhammad s/o Sadbar Khan r/o Pattan, District Kohistan was charged in case FIR No. 29 dated 25.02.2013 u/s 9 (C) CNSA, Police Station Besham, District Shangla. The said accused was convicted and sentenced u/s 9 (C) CNSA for life imprisonment and to pay a fine of Rs. 1,000,00/- (One lacs) or in default thereof to undergo one year SI. Benefit of section 382 (B) Cr.P.c was extended to the accused by the then Sessions Judge/Zilla Qazi, Shangla at Camp Court, Swat vide Judgment dated 18.09.2013

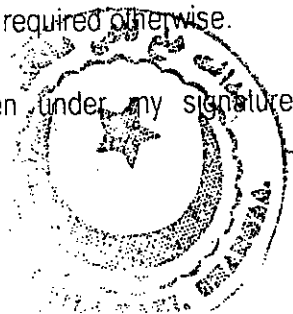
And whereas the convict preferred Criminal Appeal No.222 of 2013 before, Hon'ble the Peshawar High Court Mingora Bench (Dar-ul-Qaza), Swat, which was dismissed vide Judgment dated 15.01.2015.

And whereas the convict preferred Criminal Appeal No.415 of 2017 before apex Supreme Court of Pakistan, Islamabad against the Judgment dated 15.01.2015 passed by Hon'ble the Peshawar High Court Mingora Bench (Dar-ul-Qaza) Swat. The appeal has been allowed by The Supreme Court of Pakistan and the conviction and sentence of the appellant recorded and upheld by the Courts below has been set aside and the accused has been acquitted of the charge by extending the benefit of doubt vide Judgment dated 12.09.2018 (Attested copy of Judgment is enclosed).

Now, this is authorize & require you, to release forthwith the said convict in the subject case, if, not required otherwise.

September 2019.

Given under my signature and seal of the Court today on 19<sup>th</sup>



(MUHAMMAD NASIM)  
District & Sessions Judge/Zilla Qazi,  
SHANGLA

*Arrested*  
*19/01/2019*

**APPEAL FOR REINSTATEMENT IN SERVICE AGAINST THE ORDER OF DPO KOHISTNA**

*Arrested*  
*C-2874/PA*  
*8/15/18*

Respected sir,

It is submitted that :-

1. I was appointed as Constable in District Kohistan on- 23.07.1998.
2. During my posting in PS Battered I was dismissed from service on the following allegation :  
" that I absented myself from duty vide Daily Diary No. 17, dated 23.02.2013 without any leave /permission to my senior Officers, MHC Police Station Barrera reported that he being a member of discipline force involved in criminal case vide FIR No. 29, dated 25.02.2013 u/s 9-CNSA Police Station Lal Muhammad Shaheed Bisham District Shangla".
3. I was awarded punishment of life imprisonment and fine rupee RS.100000 /- by the order of session Judge Shangla in the above cited case.
4. I preferred an appeal before the honorable Supreme court of Pakistan against the order of session judge district Shangla and the board of honorable 3 judges work kind enough to acquit me with the following remarks:-  
"For what has been discussed above this appeal is allowed, the conviction and sentences of the appellant recorded and upheld by the courts below are set aside and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if no required to be detained in connection with any other case".
5. I hereby solemnly affirm and declare that on the day of occurrence I was sitting on the hotel in Basham for taking tea where a number of persons were also sitting for taking meal and tea. A bag was also put by one person near to my chair without my knowledge. Suddenly a Police party of PS Bisham raided to hotel and took in to possession the sad back and put Chars init and victimized me in the same. Reasons were that a few days earlier an altercation took place between me and a Constable (DFC) in PS Bisham closed to the Inspector Muhammad Zaman SHO PS Basham as he used abusive language against the Hazara Police and I forbade him not to use such like a mars against us (Hazara Police). They hit a plan and implicated me in a fabricated narcotic case. That is why the honorable judges Supreme Court of Pakistan acquitted me of the charges level against me.
6. In the light of above humble submissions I request in your kind honor that I may kindly be reinstated in service keeping in view judgment of the honorable of supreme court of Pakistan and my explanation please.
7. I shall pray for your long life and prosperity.

*NO-4869/PA,*  
*dated 8.10.2018*

*DPO Kohistan*  
*For comments,*

*RPO Hazara*

Yours obedient Servant

*(Gul Muhammad)*

Ex-Constable Kohistan Police

*5/10/18*

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules 1975 submitted by *Ex-Constable Gul Muhammad No.152* Kohistan District against the order of minor punishment i.e. *Dismissal From Service* awarded to him by the DPO Kohistan vide his OB No: 07, dated 20.01.2014.

Facts leading to punishment awarded to him are that he absented from duty vide Daily Diary No.17, dated 23.02.2013 without any leave/permission from his senior. MHC Police Station Baltera reported that he being a member of disciplined force involved in criminal case vide FIR No.29, dated 25.02.2013 u/s 9-CNSA Police Station Lal Muhammad Shaheed Besham District Shangla.

He was awarded i.e. life imprisonment and Fine Rs 100000/- (One-Lack) by the District & Session Judge, Shangla, Camp Court at Swat, vide Judgment dated 21.08.2017. The decision of District & Sessions Judge, Shangla was also maintained by Honorable Peshawar High Court Mingora Bench (Darul Qaza) Swat.

The appellant was released from the August Supreme Court of Pakistan, Islamabad, vide judgment dated 12.09.2018.

After receiving his appeal, comments of DPO were sought, which were perused. The undersigned called appellant in O.R on 29.11.2018 where he explained plausible reasons. Therefore, due to August Supreme Court of Pakistan, Islamabad, vide judgment dated 12.09.2018 and his prolonged service I take lenient view and punishment awarded to him i.e. *Dismissal from Service* is set aside. He is reinstated in service. The period of absence and the period in which he remained out of service is treated as leave without pay and to be kept under special report for next five months.

REGIONAL POLICE OFFICER  
Hazara Region Abbottabad

No. 5690 /PA, dated Abbottabad the 30/11 /2018.

Copy of above is forwarded to the DPO Upper Kohistan w/r to his office Memo: No: 699, dated 22.10.2018 for information and necessary action.

Service Roll & Fauji Missal containing enquiry file are returned for your office record.

REGIONAL POLICE OFFICER  
Hazara Region Abbottabad



# وکالت نامہ

P-

15

بعدالت جناب خیبر پختونخواہ سروس ٹریبونل پشاور کمپ کورٹ ایبٹ آباد

ریجنل پولیس آفیسر وکیرہ

بنام

گل محمد

سروس اپیل

اپیلانٹ

منجانب:

باعث تحریر آنکہ!

## عبدالصبور خان ایڈووکیٹ ہائی کورٹ

اندریں مقدمہ عنوان بالا اپنی طرف سے برائے پیروی و جواب دہی بمقام پشاور ہائی کورٹ کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص زویز و عدالت حاضر ہوتا رہوں گا اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر منظر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پشاور کے علاوہ کسی اور جگہ پشوری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہونگے اگر مقدمہ مقام پشاور کے آگے یا پیچھے ساعت ہونے پر منظر کو کوئی نقصان پہنچے تو صاحب موصوف ذمہ دار نہ ہوں گے اور صاحب موصوف کو عرضی و دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی، اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے کا، ہر قسم کا بیان دینے اور سپردِ دانش و راضی نامہ و دستبرداری و اقبال و دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا فیصلہ ڈگری و اجراءے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ فیس کرنے کا مجاز ہوگا۔ بصورت ضرورت بدوران مقدمہ یا اپیل و نگرانی کسی دوسرے وکیل یا پیرسٹر کو بجائے خود یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو، پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ مجھے کل ساختہ پر داختمش ذات خود منظور و قبول ہوگا۔ لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے۔ مضمون وکالت نامہ من لیا اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

مورخہ 19.01.2019

گل محمد ولد سد بر خان ساکنہ پٹن ضلع کوہستان

Attested & Accepted

Abdul Saboor Khan

Advocate High Court

**BEFORE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR, CAMP COURT, ABBOTTABAD**

**SERVICE APPEAL NO. 110 /2019**

Gul Mohammad No. 02 Constable District Upper Kohistan.....**APPELLANT**

**VERSUS**

1. Regional Police Officer Hazara Range, Abbottabad.
2. District Police Officer, Kohistan..... **RESPONDENTS**

**PRELIMINARY OBJECTIONS**

1. That the appellant has no cause of action to file the instant appeal.
2. That the appellant has no focus standi.
3. That the appellant did not cause to this Honorable tribunal with clean hands.
4. That the appellant concealed and distorted the material facts from this honorable tribunal.
5. That the present appeal is hopelessly time barred.
6. That the present appeal has been filed just to pressurize and blackmail the respondents.
7. That all the proceedings have been done by the competent authority as per rule & law, hence the appeal is liable to dismissed without any further proceedings.

**COMMENTS**

**FACTS**

**Para-wise comments on behalf of respondents are as under.**

1. Pertain to record is incorrect, that the appellant was recruited as a police constable in this district on 23-07-1998. He was recruited as police constable with effect from 15-7-98, vide OB No. 149 dated 28-07-1998.
2. That the para No. 2 of the instant appeal as composed is incorrect, hence denied. The real facts is that the appellant was remained absent from law full duty vide daily diary No.17 dated 23-02-2013 without prior approval of competent authority and during the absence period a criminal case vide FIR No.29 dated 25-02-2013 U/S 9C, CNSA, of Police station Lal Muhammad Shaheed, Besham, District Shangla, was registered against him. The conduct of appellant being a member of police force was liable of departmental proceeding/action. Consequently, the appellant was dismissed by the competent authority under the law/ Rules on 20-01-2014.

3. In reply to Para No. 3 it is submitted that, the appellant was remained involve in ibid criminal case and convicted as life imprisonment by the District & Session Judge, Shangla on 21-08-2017. The August Supreme Court of Pakistan, Islamabad, released the appellant vide judgement dated 12-09-2018. The remaining para is incorrect hence denied.
4. In reply to Para No. 4 it is stated that, the appellate authority i.e. Regional Police Officer, Hazara Region, Abbottabad, (Respondent No.1) re-instated the appellant into service and period of absence and the period in which remained out of service is treated as leave without pay on this ground that the appellant did not entitled of pay and other allowances of his absent period.
5. In reply to Para No. 5 it is submitted that, the appellant was remained absent from lawful duty vide daily diary No.17 dated 23-02-2013 without prior permission from his seniors and involved in a criminal case vide FIR No.29 dated 25-02-2013 U/S 9C, CNSA, of Police station Lal Muhammad Shaheed, Besham, District Shangla. Furthermore, the appellant was sentenced as life imprisonment and Fine Rs. 100000/= (one lack) by the District & Session Judge, Shangla, Camp Court at Swat, vide Judgement dated 18-09-2018 and was behind the bar with effect from 18-09-2013 to 12-09-2018 i.e. 05 years, which shows his actual involvement in the above mentioned offence.

### GROUNDS

- a. That, the appellant was involved in criminal case vide FIR No.29 dated 25-02-2013 U/S 9C-CNSA, and in consequence he was awarded life imprisonment and fine rupees one lack by the District & Session Judge, Shangla, Camp court at Swat, vide Judgment dated 21-08-2017. The appellant was realized from the prison in compliance of the August Supreme Court of Pakistan, Islamabad, vide judgment dated 12-09-2018.
- b. That, the appellant was involved in the ibid criminal case. Therefore, being a member of disciplined force his conduct was not pardonable, so he was dismissed from service vide this office OB, No.07 dated 20-01-2014. The appellant remained behind the bar since long so he could not discharged his duty accordingly. If, he could not offered services, he does not entitle for salaries and other allowance of absent period.

- c. In correct that, the appellant was dismissed from service on dated 20-01-2014 from police department by competent authority. The appellant remained absent and did not provide service for the department, so he does not entitled for grant any kind of benefit from the government.
- d. Incorrect that, any employee may entitle of any kind of benefit if he discharged his responsibilities. Undue benefit will be burden on government exchequer.
- e. That, the appellate authority i.e. Regional Police Officer, Hazara Region, Abbottabad, (Respondent No.1) re-instated into service and period of absence and the period in which remained out of service is treated as leave without pay on this ground that the appellant did not discharged his job in the ibid period. Thus, without discharging duty grant of pay/ allowance is undue advantage for appellant.

**PRAYERS**

In view of above it is therefore, most humbly prayed that the instant service appeal does not hold any legal force which may graciously be dismissed.

*[Signature]*  
**Regional Police Officer,**  
 Hazara Region, Abbottabad  
 Respondent No. 1

*[Signature]*  
**District Police Officer,**  
 Upper Kohistan  
 Respondent No. 2  
~~District Police Officer,~~  
~~Upper Kohistan~~

*vetted  
 found correct  
 vetted subject to  
 attachment of all  
 relevant annexure  
 relate to the case*

*[Signature]*  
 3-  
 4/7/2019

**Deputy District Attorney**  
 Abbottabad

**BEFORE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR, CAMP COURT, ABBOTTABAD**

**SERVICE APPEAL NO. 110 /2019**

Gul Mohammad No. 02 Constable District Upper Kohistan.....APPELLANT

**VERSUS**

1. Regional Police Officer Hazara Range, Abbottabad.
2. District Police Officer, Kohistan..... **RESPONDENTS**

**VERIFICATION**

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.

**Regional Police Officer,  
Hazara Region, Abbottabad  
Respondent No. 1**

*[Signature]*  
**District Police Officer,  
Upper Kohistan  
Respondent No.2  
District Police Officer  
(Kohistan)**

*vettced  
found correct  
vettced subject to attachment  
05 annexure*

*[Signature]*

*4-7-2019*

**Deputy  
Abbottabad**

**BEFORE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR, CAMP COURT, ABBOTTABAD**

**SERVICE APPEAL NO. 110 /2019**

Gul Mohammad No,02 Constable District Upper Kohistan.....**APPELLANT**

**VERSUS**


1. Regional Police Officer Hazara Range, Abbottabad.
2. District Police Officer, Kohistan..... **RESPONDENTS**

**AFFIDAVIT/COUNTER AFFIDAVIT**

It is solemnly affirmed and declared that the content of the para-wise comments to the appellant file by constable Gul Mohammad No. 2 of this district are correct to the best of our knowledge and nothing has been concealed from this honorable Tribunal/Court .

**DEPONENTS**

**Regional Police Officer,  
Hazara Region, Abbottabad  
Respondent No.1**

  
**District Police Officer,  
Upper Kohistan  
Respondent No.2  
District Police Officer  
Kohistan**

**BEFORE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
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7. That all the proceedings have been done by the competent authority as per rule & law, hence the appeal is liable to dismissed without any further proceedings.

**COMMENTS**

**FACTS**

**Para-wise comments on behalf of respondents are as under:**

1. Pertain to record is incorrect, that the appellant was recruited as a police constable in this district on 23-07-1998. He was recruited as police constable with effect from 15-7-98, vide OB No. 149 dated 28-07-1998.
2. That the para No. 2 of the instant appeal as composed is incorrect, hence denied. The real facts is that the appellant was remained absent from law full duty vide daily diary No.17 dated 23-02-2013 without prior approval of competent authority and during the absence period a criminal case vide FIR No.29 dated 25-02-2013 U/S 9C, CNSA, of Police station Lal Muhammad Shaheed, Besham, District Shangla, was registered against him. The conduct of appellant being a member of police force was liable of departmental proceeding/action. Consequently, the appellant was dismissed by the competent authority under the law/ Rules on 20-01-2014.

3. In reply to Para No. 3 it is submitted that, the appellant was remained involve in ibid criminal case and convicted as life imprisonment by the District & Session Judge, Shangla on 21-08-2017. The August Supreme Court of Pakistan, Islamabad, released the appellant vide judgement dated 12-09-2018. The remaining para is incorrect hence denied.
4. In reply to Para No. 4 it is stated that, the appellate authority i.e. Regional Police Officer, Hazara Region, Abbottabad, (Respondent No.1) re-instated the appellant into service and period of absence and the period in which remained out of service is treated as leave without pay on this ground that the appellant did not entitled of pay and other allowances of his absent period.
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#### GROUND

- a. That, the appellant was involved in criminal case vide FIR No.29 dated 25-02-2013 U/S 9C-CNSA, and in consequence he was awarded life imprisonment and fine rupees one lack by the District & Session Judge, Shangla, Camp court at Swat, vide Judgment dated 21-08-2017. The appellant was realized from the prison in compliance of the August Supreme Court of Pakistan, Islamabad, vide judgment dated 12-09-2018.
- b. That, the appellant was involved in the ibid criminal case. Therefore, being a member of disciplined force his conduct was not pardonable, so he was dismissed from service vide this office OB, No.07 dated 20-01-2014. The appellant remained behind the bar since long so he could not discharged his duty accordingly. If, he could not offered services, he does not entitle for salaries and other allowance of absent period.



- c. In correct that, the appellant was dismissed from service on dated 20-01-2014 from police department by competent authority. The appellant remained absent and did not provide service for the department, so he does not entitled for grant any kind of benefit from the government.
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**PRAYERS**

In view of above it is therefore, most humbly prayed that the instant service appeal does not hold any legal force which may graciously be dismissed.

*[Signature]*  
 Regional Police Officer,  
 Hazara Region, Abbottabad  
 Respondent No. 1

*[Signature]*  
 District Police Officer,  
 Upper Kohistan  
 Respondent No. 2  
 District Police Officer,  
 Kohistan

*vetted  
 found correct  
 vetted subject to  
 attachment of all  
 relevant annexure  
 relate to the case*

*[Signature]*  
 4/7/2019

**Deputy District Attorney  
 Abbottabad**

**BEFORE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR, CAMP COURT, ABBOTTABAD**

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**VERSUS**

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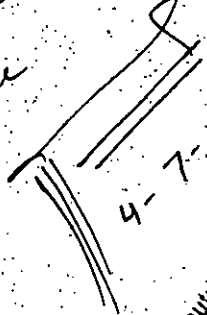
**VERIFICATION**

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.

Regional Police Officer,  
Hazara Region, Abbottabad  
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District Police Officer,  
Upper Kohistan  
Respondent No. 2  
District Police Officer  
Kohistan

*Vetted  
found correct  
vetted subject to attachment  
of annexure*

  
4-7-2019

Deputy  
Abbottabad