


FORM OF ORDER SHEET

Court of _____

Case No.- _____ **262/2023** _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/2/2023	<p>The appeal of Syed Asim Shah presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ .Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR <i>AB</i></p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO. 262 /2023

SYED ASIM SHAH

VS

S M B R & OTHERS

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APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 262 /2023

Mr. Syed Asim Shah, Ex-Kanongo (BPS-11),
Mohallah Pareech Khel, Utmanzai, District Charsadda.

..... **APPELLANT**

VERSUS

- 1- The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 2- The Commissioner Hazara Division at Abbottabad.
- 3- The Deputy Commissioner Kohistan, District Kohistan.

..... **RESPONDENTS**

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 21.03.2016 WHERRBY THE APPELLANT WAS REMOVED FROM SERVICE AND AGAINST THE INACTION OF THE RESPONDENT BY NOT DECIDING THE DEPARTMENTAL APPEAL WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

That on acceptance of the impugned order dated 21.03.2016 may very kindly be set aside and the appellant may please be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Respectfully Sheweth:

1. That appellant was an employ of the respondent department and was performing his duties as Kanongo BPS-11.
2. That during service the appellant was falsely charged in FIR No.501 dated 17.08.2015 under Section 302/34 PPC Police Station Charsadda. Copy of the FIR is attached as Annexure **A.**
3. That the appellant was arrested in the mentioned FIR and vide order dated 21.03.2016 the appellant was removed from service w.e.f 21.08.2015. Copy of the order dated 21.03.2016 is attached as Annexure..... **B.**

4. That the appellant was honorably acquitted from the mentioned charges in the captioned FIR on 15.09.2022 by the competent court of law. Copy of the judgment dated 15.09.2022 is attached as Annexure **C.**
5. That after honorable acquittal when the appellant approached the quarter concerned for joining his duties he was informed of the order dated 21.03.2016 whereby he was removed from service. That the appellant feeling aggrieved from the order mentioned above preferred departmental appeal on 10.10.2022. Copy of the departmental appeal is attached as Annexure **D.**
6. That the case of the appellant was corresponded between the competent and appellate authority vide letter dated 30.11.2022 and 19.12.2022 respectively, and vide letter dated 19.12.2022 the competent authority was requested to reinstate the appellant as he was/is honorably acquitted from the alleged charges. Copies of the letters are attached as Annexure **E & F.**
7. That appellant feeling aggrieved from inaction of the respondent by not deciding the departmental appeal within the statutory period of ninety days preferred the instant appeal on the grounds inter alia.

GROUNDS:

- A-** That the impugned order dated 21.03.2016 is against the law, facts, norms of natural justice and materials on the record.
- B-** That the appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C-** That no regular inquiry has been conducted into the matter.
- D-** That the impugned order dated 21.03.2016 is issued in hasty manner and no opportunity of personal hearing has been provided to the appellant.
- E-** That in the numerous judgment of the apex court of Pakistan it has been held that when an official if acquitted honorably than he has to be reinstate into service with all back benefit.
- F-** That no right of personal hearing and personal defense was given to the appellant.
- G-** That the respondents acted in arbitrary and mala fide manner while issuing the impugned order dated 21.03.2016.

- H- That the appellant has been discriminated on the subject noted above and as such the respondents violated the principle of natural justice.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the instant service appeal may kindly be accepted as prayed for.

Dated 31-01-2023



**APPELLANT
SYED ASIM SHAH**

Through:

**NOOR MUHAMMD KHATTAK
ADVOCATE SUPREME COURT**


KAMRAN KHAN


WALEED ADNAN


UMAR FAROOQ


MUHAMMAD AYUB

&


KHANZAD GUL

ADVOCATE

AFFIDAVIT

I, Syed Asim Shah, Ex-Kanongo (BPS-11), *Mohallah Poreachi Khat*
Umanzar DISH Charsadda, do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.



DEPONENT

3439191231 17101-35986043 171018735920-1
171015010804-7 171018735920-1
33489633002

03339321613 نام نمبر 0243368-7
7101-0243368-7 ابتدائی اطلاعی رپورٹ
03464046404 ابتدائی اطلاع ثبت جرم قابل دست اعمازی پولیس رپورٹ شدہ ذریعہ 152 مجموعہ ضابطہ نو جداری

ملع چار سہہ
1 تاریخ 17 17 10 16 4
501

تاریخ وقت رپورٹ 17 15 8	تاریخ وقت 17 15 8
نام و کنیت اطلاع دہندہ سید مختور شاہ ولد سید فیروز شاہ لیم 25/26 سال تکہ برنج خصل اعمازی	جاکسڈی نمبر 17 15 8
نمبر کیفیت جرم (معدومہ) حال اگر کو یا کیا ہیں 324-34	151
بائے ذمہ تامل قلم سے درست اعمازی کا زار نزد و زار حلال بخاری شاہ بابا	
نام و کنیت لڑے شوریہ باجوہ، مجاہد، غاصم	
کارروائی کی تفتیش کے متعلق کسی اگر اطلاع درج کرنے میں توقف ہو اور وہ بیان کرے	بیرسدگی تحریری عداسہ مقدمہ قائم کیا جاتا ہے
فائدہ سے روائی کی تاریخ وقت	بیرسدگی ڈاکٹ

ابتدائی اطلاع نیچے درج کرو۔

فعل باجوہ خان ASI در سبت نیشنل حضرت اللہ 137 جو اصل ہو کر بہ معون ذیل سے حدوت حنا صاحبہ صاحبہ چھ ماہ چار سہہ صبا لعل کولٹی ہسپتال چار سہہ آر جی جی سید مختور شاہ ولد سید مختور شاہ لیم 25/26 سال ساکن اعمازی محلہ برنج خصل کو ہزار ہا شاہ مبارک شاہ نے بحالت فیرو صبت کولٹی ہسپتال راکر جو در سبت بیوٹی ڈوواں میں ہے یوں دیورٹی آؤنا صک آج بوتہ وقوعہ ہائے وقوعہ ہو جو در سبت کما کہ اس دوران حسیان شریک باجوہ، مجاہد، غاصم لہران برکت شاہ علیہ ہا اسلام النین اور آئے ہی جو پستہ ادارہ نیشنل فائرنگ شروع کی جنکی فائرنگ سے میں نکل کر حق بیوا وجہ غدار و قبی تدار ہے و خود صدر عداسہ چار سہہ عدادہ ویان میں موجود کانٹی جنم در رہے میں اپنے فیرو صبت کا تہ علاقہ شریک باجوہ، مجاہد، غاصم لہران برکت شاہ ساکنان دہرہ آرم دعو دلار بیوں الفیہ مبارک شاہ ولد سید مختور شاہ لیم 18/19 سال نے رپورٹ مالاچی تاشی الیہ کا دیوانی پولیس صبت لہفتمہ سائل رپورٹ درج بالا ہو کر بیٹھ ہکر شاہا مسی اتا گمار سبت لیم کتے زیر بیان خود انگو کھا نبت کما گما اسی طرح تاشی کتہ نے قبی نامزد انگو کھا نبت کما جکی میں لہفتمہ کر تا یوں جیرو ح کا لقمہ ضرر حدوت کرتے موضوع غدار جہ رائے ڈاکٹری زیر خصا نبت اجمل 592 حوالہ ڈاکٹر غدار شاہ صاحب کما گما معون رپورٹ سے صورت جرم بالا بائی خاکر عداسہ بیوٹی تاملی عداسہ در سبت حضرت اللہ 137 اریال بخانہ ہے دشجو انگریزی نیشنل باجوہ خان ASI چھ ماہ چار سہہ کا دیوانی چھ ماہ آؤنا ہکر بیوٹی عداسہ صرف درج مالا ہو کر بیوٹی جرم بالا خاکر کما خاکر کتاول بیوٹی صبت عداسہ معون تفتیش حوالہ خیر خان CID چار سہہ تہہ جاتے ہی بیوٹی گزار شاہ ہے

ASAC PSCHD
17-8-2015

"B"

5-

(76)

OFFICE OF THE
DEPUTY COMMISSIONER
KOHISTAN

No.2/Rev/Est/ Vol -V. 4691-20 DC (KH).

Dated 21 /03/2016

OFFICE ORDER

Syed Asim Shah Kanungo (BPS.11) of this office absented himself from his official duty w.e.f 21/08/2015 till date. Notices were issued to him on his home address and through Daily Mashriq, Daily Aaj News Papers, published on 12/12/2015 but he did not attend his duty.

Keeping in view the above facts and after fulfilling codal formalities, major penalty (i.e Removal from service) is hereby imposed on the accused official (i.e Mr. Syed Asim Shah, Kanungo), under Rule 9 of S.O Rule 2011 w.e.f 21/08/2015 i.e from the date of his absence.

Deputy Commissioner,
Kohistan

Endst: No. 4691-981

Copy forwarded to the:-

1. Senior Member Board of Revenue & Estate Khyber Pakhtunkhwa Peshawar.
2. Commissioner Hazara Division Abbottabad.
3. District Account Officer Kohistan.
4. Assistant Commissioner Dasso.
5. Tehsildar Dasso, Kandahar.
6. Assistant Accounts/ District Nazir of this office.
7. Mr. Syed Asim Shah. Syed Showrin Shah Frige Khali Atmanzal Tehsil Charsada District Charsada
8. Personal File.

Deputy Commissioner,
Kohistan

"C"

-6-

In the name of Almighty Allah,
The Most Beneficent, The Most Merciful

Before **Muhammad Zahoor**

Additional Sessions Judge-1, Charsadda

Session Case No: 23/SC
Date of Institution: 06/03/2021
Date of Decision: 15/09/2022



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THE STATE

Versus

SYED ASIM SHAH

Son of Syed Shorain Shah & SYED MUJAHID SHAH

Son of Barakat Shah

R/O Pareech Khel Utmanzai
Tehsil & District Charsadda

(Accused)

CHARGED

Vide FIR: 501

Dated: 17/08/2015

U/S: 302/34 PPC

P.S : Charsadda

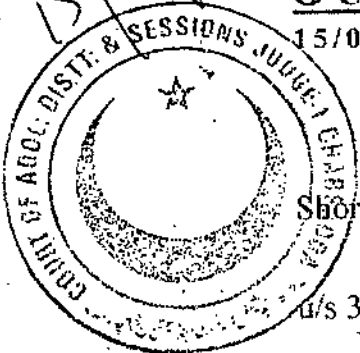
Present:

Mr. Sareer Khan Advocate for accused

Mr. Abdul Ahad Advocate for complainant

JUDGMENT:

15/09/2022



Syed Asim Shah and Syed Mujahid Shah sons of Syed

Shorain Shah are facing trial in Case FIR No.501, dated 17/08/2015,

U/s 302/34 PPC, P.S Charsadda.

2/2022

Brief facts of the case mentioned in the FIR are that on

26 JAN 17/08/2015, complainant/deceased then injured Syed Bakhtawar Shah

-7-

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reported the matter to the local police at casualty DHQ Hospital, Charsadda that at about 1610 hours, he was present at the place of occurrence, when the accused facing trial alongwith acquitted co-accused Syed Shorain Shah came and immediately started firing upon him with the intention to kill him, as a result of which, complainant/deceased then injured got hit and injured. Motive for the occurrence as reported by the complainant/ deceased then injured was altercation between the parties.

3. Upon this report, a murasila was drafted and sent to Police Station concerned with the request to register a case against the above named accused. As soon as it was received therein, a case was registered against them under Section 302/34 PPC of Police Station Charsadda dated 17/08/2015. After the completion of investigation, supplementary *challan* was submitted against them.

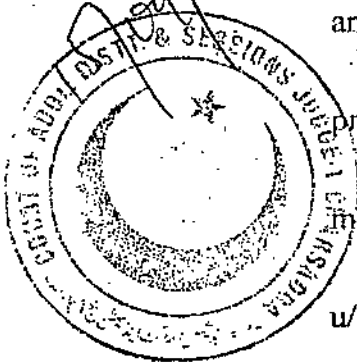
The accused were summoned by this Court. Copies of necessary documents were delivered to the accused and formal charge was also framed to which the accused pleaded not guilty and opted to face trial. After the receipt of the instant record / *challan* for trial, prosecution witnesses were summoned because formal charge had already been framed.



5. In order to prove its case, the prosecution produced as many as twelve (12) witnesses from PW-01 to PW-12. The gist of the evidentiary stuff with its appraisal and appreciation is given as under:-

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(PW.1) Munir Khan Inspector/CIO, on receipt of murasila and copy of FIR, he proceeded to the spot and prepared the site plan Ex. PB at the instance and pointation of the eyewitness. During spot inspection, he recovered and took into possession vide recovery memo already Ex. PW1/1, blood stained earth from the placed of deceased then injured and sealed the same in parcel No.1 (P-1). He vide recovery memo already Ex. PW1/2, took into possession blood stained garments of the deceased then injured consisting of Qamees (P-2), Shalwar (P-3) produced by Wali Khan and sealed the same in parcel No.2. The recovery memos were prepared in presence of marginal witnesses by affixing 3/3 monograms in the name of MK. He recorded the statements of PWs u/s 161 Cr. PC. He drafted application Ex. PW1/3 for FSL analysis of the articles in parcels No.1 and 2 and handed over the same to the Moharrir for sending to the FSL, the result whereof is Ex. PZ and is in positive. He prepared the list of legal heirs of the deceased which is



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Ex. PW1/4. After that he was sent for Target Hurdle and Tactical Course and the rest of investigation was handed over to Khwaja Khan SI.

21
(PW.2) Mir Bahadar retired DFC, was entrusted with warrants issued against the acquitted accused Shorain Shah Bacha and accused facing trial namely Mujahid and Syed Asim Shah. He has done proceedings under Section 204/87 Cr.P.C against all the accused. He recorded the statement of attesting witnesses on the back of the warrant and returned the same un-executed with his reports. The warrants are Ex PW2/1 to Ex PW2/3, his reports thereof as Ex PW2/4 to Ex PW2/6. He certified proclamation notices as Ex PW2/7 to Ex PW2/9 and his report thereof as Ex PW2/10 to Ex PW2/12.

(PW.3) Dr. Iraq Shah, CMO, examined deceased then injured Syed Bakhtawar Shah and found the following:

A firearm entry wound on upper abdomen measuring 1 x 1 cm.

A firearm exit wound on right interior abdomen measuring 3 x 6 cm with gut and abdominal organs out.

A firearm entry wound on right lower abdomen measuring 1 x 1 cm.

Weapon used: Firearm

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Nature: Dangerous.

Emergency treatment is given and patient was referred to LRH Peshawar for specialized treatment.

The report is Ex:PW3/1, which is in his hand writing and correctly bears his signature.

(PW.4) Jehangir Khan SI, correctly incorporated the contents of murasila into FIR Ex PA.

(PW.5) Khwaja Muhammad SI, applied for obtaining warrant u/s 204 Cr.P.C against accused facing trial and other co-accused, vide application Ex.PW5/, which were handed over to the DFC concerned for doing the needful, which returned un-served. Similarly, vide his application Ex.PW5/2 applied for obtaining proclamation notices u/s 87 Cr.P.C which were obtained in triplicate and were handed over to the DFC concerned for doing the needful. To the extent of accused facing trial he conducted the above mentioned proceedings while he also conducted investigation against acquitted accused Syed Shorain Shah.

(PW.6) Dr. Khalid (Rtd), MO, conducted autopsy on the dead body of deceased Bakhtawar Shah and found the following:

EXTERNAL APPEARANCE:

Symptoms observed before death:

Received dead

Information furnished by Police:

Hospitalized

Mark of ligature on the neck and dissection, etc:

Nil

Condition of subject stout emaciated, decomposed, etc, clothing:

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Stout, emaciated, decomposed etc, clothing. An average built young male body wearing gray shalwar, qamees which were blood stained with corresponding firearm defects. PM lividity and rigor mortis started developing.

Wounds, bruises, position, size, nature:-

1. A shot gun entry wound right outer and back of chest 7 x 7 cm in size , 16 cm below axilla.
2. Multiple (abt-20-20) pellet exit wounds front of whole abdomen and lower chest 0.2 to 0.4 cm in size.
3. FA entry (1 x 1 cm) left outer mid thigh with exit (2 x 2 cm) on left inner mid thigh.

INTERNAL APPEARANCE:

Cranium and Spinal Cord:

Healthy

Thorax:

Except larynx and trachea all the organs of thorax are injured.

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Abdomen:

Mouth, pharynx and esophagus, pancreas and bladder are healthy while rest of organs are injured.

Muscles, bones and Joints:

As per injury sheet.

Remarks:

In his opinion the deceased died due to injury to heart, both lungs, liver, stomach, spleen, kidney and intestines due to shot gun injury. PM report, clothes of deceased and dead body handed over to the police.

Probable time between injury and death: Hospitalized.

Injured: 17.08.2015

Died: 17.08.2015

Probable time between death and P.M: 1 to 3-hours.

PM report Ex PM consisting of 06 sheets including pictorial while inquest report Ex PM/1.

(PW.7) Madad Khan Inspector, has arrested all the accused vide card of arrest Ex PW7/1 after cancellation of interim

order dated 01/10/2019. Vide application Ex.PW7/2 produced the

accused facing trial before Judicial Magistrate for obtaining their

police custody which was accepted and two days custody was granted.

Vide application Ex.PW7/3 applied for further custody which was

declined and the accused was sent to judicial lock. He recorded their

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statement u/s 161 Cr.P.C. After completion of investigation the case file was handed over to SHO Noor Haider for submission of challan who submitted the same. The challan is Ex Pk.

(PW.8) Lal Badshah Khan ASI, reduced into writing the report in the shape of murasila Ex PA/1. He prepared the injury sheet of injured Ex PW8/1.

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(PW.9) Kashif Jan, is the marginal witness to the recovery memo Ex PW9/1, vide which the I.O took into possession from the place of deceased then injured some blood earth which is Ex P-1, sealed the same in parcel No.1.

(PW.10) Wali Khan, identified the dead body of the deceased Bakhtawar Shah before the police at LRH Peshawar at the time of preparation of his inquest documents whereon his signature was obtained and similarly he identified the dead body of Bakhtawar Shah before the doctor at the time of post mortem examination. As he was accompanied the deceased to the mortuary KMC Peshawar whereafter the post mortem examination clothes of the deceased was handed over to him which he produced to the I.O on the spot. His statement was recorded by the I.O. The I.O took into possession the

26 JAN 2023 blood stained garments of the deceased vide recovery memo

Ex.PW10/1 in his presence. The garments were consisting upon qameez Ex.P-2/1, shalwar Ex.P-3/1 badami in colour and were blood stained. The I.O sealed the same into parcel No.2 by affixing MK monogram.

28 (PW.11) Syed Mubarak Shah, reiterated the facts narrated by in the FIR Ex PA.

(PW.12) Tahir Hussain ASI, prepared the inquest report Ex PW12/1 of deceased Bakhtawar Shah and sent his dead body to the mortuary through constable Siraj ul Amin FC No. 5250.

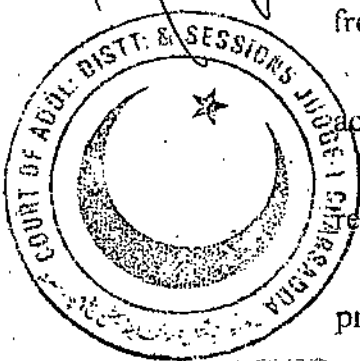
6. Thereafter, the prosecution closed its evidence and statement of accused was recorded U/s 342 Cr.P.C. When all the incriminating evidence has been put to the accused facing trial to afford them an opportunity to explain the circumstances, so put to them, they have not offered a shred of evidence to prove their innocence except by saying that they are innocent and have been falsely implicated. Accused facing trial discarded all the allegations leveled by the prosecution, however, they did not opt to be examined on Oath u/s 342(2) Cr.P.C or to produce defence evidence.

7. Learned state counsel, assisted by the complainant counsel argued that the accused facing trial have been directly charged

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in the instant case for causing the murder of a person. The incident has been reported with promptitude which rules out the possibilities of consultation, fabrication and false implication. Specific role have been attributed to the accused which further strengthens the case of prosecution. It was further argued that the prosecution has fully succeeded in proving its case against the accused facing trial through cogent, trust-worthy and confidence inspiring evidence by way of strong direct and circumstantial evidence. It was underscored on behalf of the prosecution side that there is complete consistency in the testimonies of the prosecution witnesses and no dent is available in the prosecution evidence which could be considered fatal for prosecution case. No material contradictions or discrepancies could be brought on record during the statements of PWs. They further added that site plan supports the prosecution version as recoveries of blood from the place of deceased and crime empties from the place of accused were made. They contended that positive FSL reports in respect of blood and blood stained garments also favour the prosecution case. A strong motive has been given in the FIR, which is dully corroborated by the witnesses. They argued that the accused



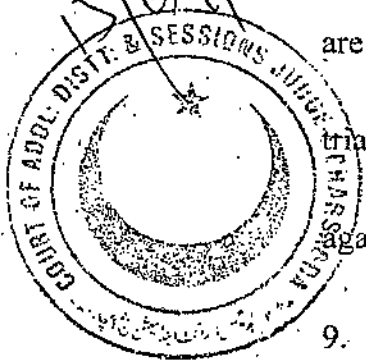
26 JAN 2023

facing trial soon after the occurrence remained absconder. Lastly, they prayed for awarding capital punishment to the accused facing trial.

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8. On the other hand, learned counsels for the defense argued that the accused facing trial are innocent and have falsely been implicated in the case in hand by the complainant party. Learned defense counsel further argued that the prosecution case is full of dents and doubts which in no way connect the accused facing trial with the commission of the offence. He added further that the prosecution witnesses are not consistent in their depositions on material points and abundance of doubts exists on case record. Further maintained that there is no direct and indirect evidence available with the file which connect the accused facing trial with the commission of offence, as even no recovery or pointation had been made from the accused. He argued that medico-legal report and post mortem report are contradictory to each other. He submitted that the accused facing trial are innocent and they be acquitted from the charges leveled against them.

9. I have heard learned Dy.P.P for the state, assisted by learned counsel for complainant and leaned defense counsel for



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accused facing trial and explored the record with considerable degree of care.

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10. Facts as woven as per contents of FIR are that on 17.08.2015 at 1610 hours, the occurrence took place at Utmanzai Bazaar near Jalal Bukhari Shah Bacha Mazaar, the deceased then injured namely Syed Bakhtawar Shah s/o Syed Feroz Shah along with his brother Mubarak Shah, the deceased then injured, who was well oriented, reported the matter that Shorain Shah, Mujahid and Asim armed with weapon, started firing at him with the intention of killing.

11. The story of the prosecution case shows that the star witness in the instant case was the deceased/complainant and this case as per record mainly relies upon his dying declaration. Motive as per contents of FIR is verbal altercation.

12. Taking wisdom from the judgment of the August Peshawar High Court, Peshawar, reported in PLD 2012, Peshawar, for the purpose of guidance as in the instant case dying declaration of the deceased then injured is disputed, which reveals that for believing a dying declaration and convicting a person on its basis, the following essential conditions must be established by the prosecution.

26 JAN 2023

A. That the dying person was in full senses, conscious and alert to the surroundings, was fully oriented in space and time and was able to make a coherent speech.

B. That the dying declaration otherwise rings true and is sound in substance to be relied upon.

C. That it is free from promptness given by the outside quarter.

D. That the victim/dying person was in a position to identify his culprits and lastly:

E. That the doctor present at the occasion shall give a fitness certificate about the condition of the dying person.

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13. Keeping in view such parameters, perusal of the available record reveals that in the instant case, the medical report of injured now deceased is silent about his orientation and fitness. The police officer as well as the doctor were duty bound to mention the physical condition, fitness and orientation of the injured now deceased before recording the statement. Report was lodged at 1650 hours on 17.08.2015 while the deceased then injured died at 1810 hours as per

inquest report (Ex.PW12/1). The time of death of the deceased/complainant is 1810 hours, however, was controverted by

PW-10 (Wali Khan) who had identified the dead body at LRH Peshawar. This witness deposed in his cross examination that he had

received information of the death of deceased at about 0430 pm or

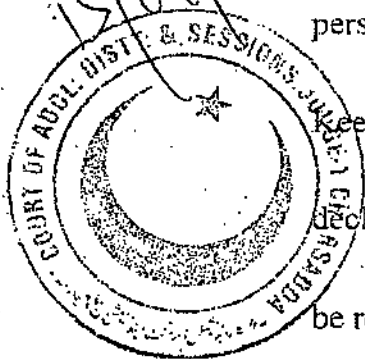
26 JAN 2023 05:00 pm. If so, the deceased might have died before 04:30/05:00 pm

and in such circumstances, recording of his dying declaration at 1650 hours became doubtful.

14. Perusal of medical report of the injured now deceased, however, shows that the doctor had examined him at 04:45 pm, which time falls before the time of report mentioned in the murasila. While on the other hand, PW-8 Lal Bacha ASI stated in his statement that when the injured was brought to the hospital, he first recorded his report and then referred for medical examination.

15. Taking further guidance from the dictum held in PLD 2015 Peshawar page 143, that the dying declaration is supposed to be recorded in the presence of either the magistrate or two independent witnesses, if the magistrate is not available. As per statement of PW-11 (Syed Mubarak Shah) in the instant case, people from the village had accompanied the injured to the hospital but none from those persons was associated as witness to the alleged dying declaration.

Keeping in view the above stated position with regard to dying declaration, it is held that the same is not proved and therefore, cannot be relied upon.



ATTEST

Site plan Ex.PB available on record shows that the same

23 JAN 2023

was prepared by the I.O concerned on the pointation of eye witness.

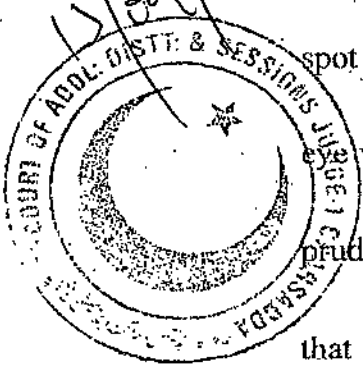
-19-

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Mubarak Shah. I.O of the case when appeared before the court for recording his statement deposed that he had prepared the site plan at 1755 hours at the day of occurrence, which means that the same was prepared before the reported time of death of the deceased but on the other hand while perusing the site plan reveals that the I.O has very clearly mentioned at point No.1 as per presence of deceased and this leads to a presumption that either the time of death is incorrectly mentioned and the deceased was died before 1755 hours or that the site plan and rest of the proceedings on the spot were not conducted at the reported time, meaning thereby that in such a situation, the record prepared by the investigation officer is not trustworthy. If it is admitted that deceased died before 1755 hours, it would support the statement of Wali Khan who said that he received information of death at about 04:30 pm or 05:00 pm. If it is presumed that the time of spot inspection is rightly mentioned as 1755 hours, presence of the witness Mubarak Shah is highly doubtful and not appealing to a prudent mind. During the arguments learned defence counsel stated that as per record of the prosecution the deceased then injured was brought to the hospital by Mubarak Shah and when he was referred to

25 JAN 2023

LRH Peshawar, how it is possible that his real brother would not



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accompany him particularly when he was reported in danger and in critical condition. This fact highlighted by the learned defence counsel is also meaningful keeping in view the particular culture in this part of the country. It is also clear from the record that there is no evidence of the presence of any other brother or closed relative of the deceased then injured with him and eventually it disputes the presence of Mubarak Shah at the alleged time of spot inspection. Moreso, in site plan the Mazaar of Jalal Bukhari as mentioned in the murasila has also not been shown therein.

17. Another major contradiction has been noted in the medical reports of the deceased furnished by the doctors, before and after the death. As per medico-legal report Ex.PW3/1:

1. A firearm entry wound on upper abdomen measuring 1x1 cm.
 2. A firearm exit wound on right pictorial abdomen measuring 3/6 cm with gut and abdominal organs out.
- A firearm entry wound on right lower abdomen measuring 1 x 1 cm.

As per post mortem examination report Ex.PM

1. A short gun entry wound right outer and back of chest 7 x 7 cm in size, 16 cm below axilla.
2. Multiple (about 20-20) pellet exit wounds front of whole abdomen and lower chest 0.2 to 0.4 cm in size.



23 JAN 2023

3. Firearm entry wound (1x 1 cm) left outer mid thigh with exit 2 x 2 cm on left inner mid thigh.

18. The numbers, dimensions and sizes of entry in both the reports are quite different from each other which means that either the doctor at DHQ hospital Charsadda had not examined the deceased then injured properly or the post mortem report is not correct. Whichever the case may be, two contradictory reports make further dint in the case of the prosecution which resultantly make the story of prosecution highly suspicious.

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19. As far as the point of abscondence of the present accused facing trial is concerned the record reveals that occurrence is of the year 2015 while accused facing trial were arrested on 10.10.2020. It is pertinent to note that abscondence alone could not be a substitute for real evidence. Mere abscondence of an accused would not be enough

of conviction. Abscondence no doubt is a relevant fact but it cannot be used as a corroborative piece of evidence, it cannot be read in isolation as has to be read along with a substantive piece of evidence

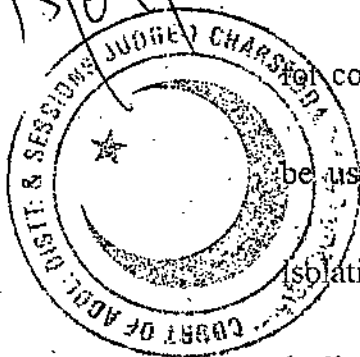
(reliance placed on PLD 1980, Supreme Court 201, 1986 SCMR

823, 2015 YLR 2413 Peshawar),

ATTEST

26 JAN 2023

No: 23/SC of 2021



20. The story woven in the instant prosecution case rotates around meaningful improbabilities and does not ring trustworthy. Motive of the occurrence although being a weak speice of evidence; however, not proved. The accused has undergone examination u/s 342 Cr.P.C wherein they neither opted to produce evidence nor had inclined to take oath in disproof of the allegations terming it false and raised the plea of their innocence. The prosecution is unable to bring forth and confront the accused with any inculpatory evidence.

21. For the purpose of conviction of accused, the prosecution is duty bound to prove its case beyond any shadow of doubt. As per Apex Courts of Pakistan in a judgment reported in PLD 1995 Supreme Court 1345, even a single suspicious circumstance, creating reasonable doubt, the accused be given the benefit of doubt not as a matter of grace or concession but as a matter of right. This view is also supported by August Peshawar High Court, Peshawar in a reported judgment 2013 YLR 196.

In the light of whatever was held, the facts and circumstances alleged qua the allegations against the present accused facing trial namely Mujahid and Asim bring about a meaningful room for doubts and fill the case of prosecution with many voids. In this backdrop the case against the present accused facing trial is replete

26 JAN 2025

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26 JAN 2025

No: 23/SC of 2021

36

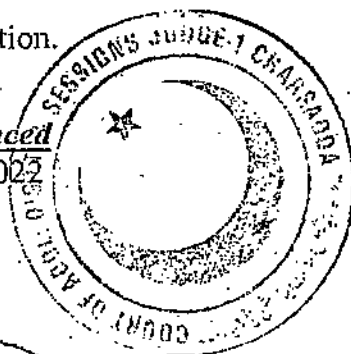
with a host of reasonable doubts and here the prosecution stands unable to substantiate the charge against the accused. In view of the available ocular and circumstantial evidence, since the story narrated in the FIR is not duly corroborated by the evidence produced before the court, resultantly, benefit of doubt is extended to the present accused facing trial namely Mujahid and Asim and they are acquitted from the charges leveled against them. They are on bail, their bail bonds stands cancelled and their sureties are discharged from the liabilities of bail bonds. Case property be kept intact till the expiry of period of appeal/revision, where after, be dealt with in accordance with law.

23. Pronounced in open court at Charsadda and given under my hand writing and seal of the court on this 15th day of September, 2022.

File be consigned to record room after its completion and

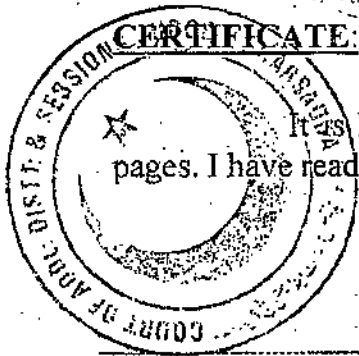
compilation.

Announced
15/09/2022



Muhammad Zahoor
Additional Sessions Judge-I,
Charsadda

17/09/22



It is hereby certified that this judgment consists of (19) pages. I have read each page and signed.

~~RECEIVED~~

26 JAN 2023

Muhammad Zahoor
Additional Sessions Judge-I,
Charsadda

17/09/22

10/10/2022

بخدمت جناب سینئر ممبر بورڈ آف ریونیو (SMBR) ریونیو پشاور خیبر پختونخوا

درخواست برآمد: بحال (Re-istate) فرمائے سائل

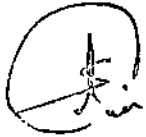
سید عاصم شاہ قانون گو (BPS-11) در ملازمت

جناب عالی!

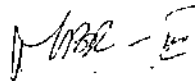
سائل حسب ذیل عرض فرمائیے:

- ۱- یہ کہ سائل کے خلاف غلط اور جھوٹ پر مبنی FIR درج ہوا تھا۔ جس میں بروئے چٹھی انگریزی سائل کو (Suspend) فرمایا گیا تھا (نقل چٹھی انگریزی لف ہے)۔
 - ۲- یہ کہ سائل نے مقدمہ بالا میں ٹرائل (Face) کیا ہے۔ اور بعد ازاں قلمبندی استغاثہ شہادت عدالت جناب ایڈیشنل سیشن جج صاحب چار سہ محمد ظہور خان نے سائل کو باقاعدہ طور پر باعزت بری کیا ہے اور مقدمہ / فیصلہ میں عدالت موصوف میں باقاعدہ طور پر یہ امر لایا گیا کہ مقدمہ برخلاف سائل مبنی بردروغ گوئی تھی (مقدمہ نقل لف ہذا ہے)
 - ۳- یہ کہ سائل چونکہ عدالت نے موصوف کو بے گناہ ثابت کیا ہے۔ بدین وجہ سائل اپنے ملازمت کو بحال کرنے کا متمنی ہے۔
 - ۴- یہ کہ فیصلہ عدالت حضور سے یہ امر واضح ہو گیا ہے کہ سائل نے (Major Penalty) سرزد نہیں کیا ہے۔ اور سائل بے گناہ جھوٹے مقدمات میں گھسیٹا گیا ہے۔
- لہذا استدعا ہے کہ بمنظوری درخواست ہذا سائل کو اپنے ملازمت پر بحال فرمانے کے احکامات صادر فرمایا جائے۔

العارض



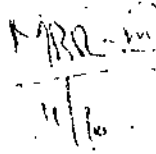
سید عاصم شاہ ولد سید شورشورین شاہ
(قانون گو) (BPS-11)

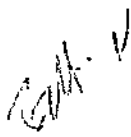


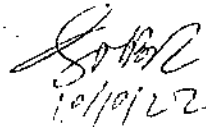


10/10/2022









12/10/22



11E"-25-

**OFFICE OF THE
DEPUTY COMMISSIONER
KOHISTAN UPPER**

No.PF-Asim/Estt./12278-80/DC KH

Dated Dasso the 30/11/2022.

0998-407002

0998-407001

dckohistan321@gmail.com

To

The Assistant Secretary (Estt :),
Govt. of Khyber Pakhtunkhwa,
Board of Revenue, Revenue & Estate Department
Peshawar.

Subject :-
Memorandum.

APPLICATION FOR RE-INSTATEMENT IN GOVT. SERVICE

Reference your office letter NoEstt:VII/General File/2021/32955 dated 23.11.2022. on the subject cited above.

It is stated that as per official available record of the applicant Mr. Syed Asim Shah Ex-Kanungo office of the undersigned, remained absent w.e.f 21-08-2015 without any prior information/ sanction of any kind of leave from the competent authority.

Due to his willful absence from official duty the then Deputy Commissioner Kohistan, being competent authority, terminated services of the applicant after fulfillment of all legal codal formalities, vide order No.2/Rev:/Estt:/Vol-V/4691-98/DC KH dated 21-03-2016.

It is pertinent to mentioned here that this office had no knowledge of the applicant being booked in criminal case and jailed. This office has never been informed about his criminal case by any court of law, Police or the applicant hereby. He was found absent in 2015, and under E&D Rules he was proceed against in this office for his absenteeism which resulted in his termination from service.

Now, as he was terminated under E&E Rules therefore, this office is of the opinion that the applicant cannot be reinstated in service after lapse of 5/6 years of his termination from service under Rules 4 sub section (b) clause (III) Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

Deputy Commissioner
Kohistan Upper

Endst: No. & Date Even:


Copy forwarded for information to the

1. Commissioner, Hazara Division, Abbottabad.
2. Mr. Syed Asim Shah s/o Shoreen Shah r/o Atma Tovi Tehsil & District Charsada w/r his application dated 28.11.2022.

Deputy Commissioner
Kohistan Upper

"F"

-26-

	GOVERNMENT OF KHYBER PAKHTUNKHWA, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT.
091-9212726	
No.Estt:VII/General File/New/2021/35440	091-9214208
	Peshawar Dated the 9/12/2022

To

The Deputy Commissioner,
Kohistan Upper.

SUBJECT: APPLICATION FOR RE-INSTATEMENT IN GOVT. SERVICE.

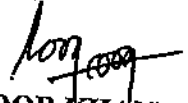
Sir,

I am directed to refer to your letter No. PF-Asim/Estt:/12071-72/DC/KH dated 24.11.2022 and to state that ESTA Code Chapter No 4, Conduct rules (Dismissal or Removal of government servants revealed that :-

- 1. When a Government servant is honourably acquitted in a departmental enquiry or trial in Court, the period of absence from duty on account of the suspension, dismissal or removal from service, has to be treated as period spent on duty. If the acquittal is otherwise than honourable, the period of absence on account of suspension, dismissal or removal will not be treated as period spent on duty unless the revising or appellate authority so directs. In this connection a question has arisen whether an acquittal on technical grounds or caused by lack of evidence should be deemed to be honourable acquittal and whether such acquittal leaves any discretion to decide whether the acquittal was or was not honourable for the purposes of determining the pay and allowances payable to such servant during the said period of absence.*
- 2. Government have considered the whole question and it has been decided that for the purposes of pay and other service matters, it is primarily necessary to consider whether or not an acquittal is honourable. When a servant is suspended he does not work for his master and should obviously get no salary for the period during which he has rendered no service. Service Rule, however, make provision for payment of a subsistence allowance during the period so that the servant does not starve. Where the servant might have been falsely involved in the case or inquiry, the State is prepared to compensate him fully, provided he satisfies that he has been honourably acquitted. The burden of proof is on him. In certain cases, it may be difficult for him to discharge this burden as in the case of a discharge on technical grounds where the merits of the case have not been discussed or gone into. It should be borne in mind that payment of salary during the period of suspension is a matter of favour and not a right even though the servant is finally acquitted. It may be noted that by his conduct he contributed to his implication in the case even though he was not guilty of the offence. Therefore, he will not be entitled to salary during the suspension period unless he satisfies Government that the case against him was absolutely false and that he has been honourably acquitted. On the other hand, it will not be presumed in every case of acquittal on technical grounds that the acquittal has not been honourable. Every case should, therefore, be decided on its own facts and circumstances and if the acquittal is held to be honourable the period of absence should be treated as spent on duty.*

Further to mention here that the official was charged in a criminal case therefore he was unable to inform the office. Now the official is acquitted by the Additional Session Judge I Charsadda and the charges levelled against him is not proved.

In view of the above it is therefore requested that the official may be re-instated into government service from the date of his termination i.e. 21.03.2016 please.


(NOOR KHAN)

Assistant Secretary (Estt)
Board of Revenue

-27-

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO: _____ OF 2023

Syed Asim shah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

SMBR

(RESPONDENT)
(DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____/_____/2023


CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

(BC-10-0853)

fec (15401-0705985-5)

KAMRAN KHAN


UMAR FAROOQ MOHMAND


WALEED ADNAN

&


MUHAMMAD AYUB
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)