FORM OF ORDER SHEET.

Court of	
Case No.=	265/ 2023

	[†] Cas	e No265/ 2023
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/2/2023	The appeal of Mr. Manzoor Khan presented today by Mr. Tahir Khan Advocate. It is fixed for preliminary licaring before Single Bench at Peshawar on Parcha
		Peshi is given to appellant/counsel.
		By the order of Chairman
		REGISTRAR,
-		
		,

<u>BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES</u> <u>TRIBUNAL PESHAWAR</u>

In S.A 265/2023

Manzoor Khan

<u>VERSUS</u>

Director Elementary & Secondary Education KPK & Others

INDEX

S #	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Affidavit		6
3.	Addresses of Parties		7
4.	Application for Condonation of Delay		8-10
5.	Copy of Appointment order dated 11-09-2006	"A" ·	n
6.	Copies of medical documents & leave application	."B & C"	12-16
7.	Copy of FIR	"D"	17
8.	Copy of Judgment dated 30-05-2022	. "E" *	18-35
9.	Copies of Impugned Office Order dated 18/09/2021 & Extract of Attendance	"F & G"	36-38
	Register		
10.	Copies of departmental appeal & impugned office order No. 636/F-No/A-20/C-IV dated 19-08-2022	"H & I"	39-44
11.	Copy of Medical Documents	J'	45-53
12.	Other Documents	,	
13.	Wakalat Nama		54

Dated: 61./03/2023

750

Through

Tahir Khan

&

Ahsan Sardar

Advocates High Court

Peshawar

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In S.A 265 /2023

Manzoor Khan Sweeper, Govt Girls Middle School Swati Gate, Peshawar, S/o Alam Sher R/o Swati Pathak, Mohalla Malik Mushtaqabad, Peshawar Cantt.

Appellant

- 1. Director Elementary and Secondary Education Khyber Pakhtunkhwa at Directorate of E & SE at G.T Road Peshawar.
- 2. District Education Officer (Female) Peshawar, at Directorate of E & SE at G.T Road Peshawar.

Respondents

SERVICE APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED OFFICE ORDER NO: 3893-98 DATED:18-09-2021, OF THE OFFICE OF DISTRICT EDUCATION OFFICER (F) PESHAWAR WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE AND AGAINST THE IMPUGNED OFFICE ORDER NO. 636/F. NO/A-20/C-IV DATED 19/08/2022, OF THE OFFICE OF ASSISTANT DIRECTOR (ADMN) DIRECTORATE OF E & SE KHYBER PAKHTUNKHWA PESHAWAR, WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS DISMISSED IN A CURSORY AND WHIMSICAL MANNER.

Respectfully Sheweth:-

1. That the Appellant is a bonafide citizen of Islamic Republic of Pakistan &hails from a respectable family.

- 2. That after going through the prescribed criteria laid down for the subject post, initially the Appellant got appointed as sweeper on fixed pay back in the year 2006 and later on, his services got regularized by the then Government of N.W.F.P back in the year 2008. (Copy of Appointment order dated 11-09-2006 is annexed as annexure "A")
- 3. That after getting onto the rolls of this prestigious department, the appellant remained a dutiful and pragmatic fellow who never left any stone unturned in performing of his duties and for the same reason, the Appellant was appraised on certain junctures by his high-ups for his work ethic and behavior.
- 4. That it was in the back drop of April 2021, when the Appellant was admitted in the hospital for his treatment and for the same reason, the Appellant remained in hospital till 12-06-2021. It is important to mention here that before admission into hospital, the Appellant was regularly performing his duties and in this regard the appellant also informed his high ups about his treatment. (Copies of medical documents & leave application are annexed as annexure "B & C" respectively).
- 5. That after discharge from the hospital, the appellant assumed his duties for two months when the most abominable event occurred and resultantly the Appellant was booked in a false, concocted and fabricated case bearing FIR No:1226 dated:06.08.2021 U/s 11-B CNSA, PS: Bhana Mari. (Copy of FIR is annexed as annexure "D").

- 6. That after the arrest in the above mentioned case and after conclusion of the trial, the appellant was honorably acquitted from the charges leveled against him. Needless to mention here that after the arrest, i.e., 06-08-2021, the Appellant remained in custody till 30-05-2022. (Copy of Judgment dated 30-05-2022 is annexed herewith as annexure "E").
- 7. That the Appellant was removed from service vide impugned office order No: 3893-98 dated 18-09-2021 on the alleged notion of willful absence from duty, which is illegal, unlawful and is liable to be set aside as the Appellant never absented from his duty and was regularly performing his duties till 06-08-2022. (Copies of Impugned Office Order dated 18/09/2021 & Extract of Attendance Register are annexed as annexure "F & G").
- 8. That thereafter appellant preferred departmental appeal against the impugned office order dated 18-09-2021. for his reinstatement into service, but the same was dismissed vide impugned office order No. 636/F-No/A-20/C-IV dated 19-08-2022. (Copies of departmental appeal & impugned office order No. 636/F-No/A-20/C-IV dated 19-08-2022 annexed as annexure "H & I")
- 9. That feeling aggrieved from the above mentioned episode, the Appellant preferred the instant Service Appeal upon the following grounds inter-alia:-

GROUNDS:

A. That the both the impugned office Orders are illegal, unlawful, void ab-initio & is liable to be set aside.

- B. That no Show-cause Notice was ever issued to the appellant, nor the same was ever communicated to the appellant and thus the appellant was remained unheard.
- c. That the Appellant remained admitted in hospital from 13-04-2021 to 12-06-2021 and that too after informing his high up about his treatment and after that the appellant assumed his duty and performed his duties till 06-08-2021 and on the same day the appellant was booked in a false and concocted criminal case and was remained in custody till 30-05-2022.
- D. That the absence from duty is neither deliberate nor willful but due to the above mentioned criminal case as after his arrest the appellant remained in custody till 30.05.2022.
- E. That under the mandate of article-04 of the constitution no one should be treated otherwise then in accordance with law, while article 25 postulates that alike are to be treated a like but here the case is volta facie and totally a different yard stick has been taken to treat the appellant.
- F. That where a law requires a think to be done in a particular manner then that has to be done in that very manner and not otherwise.
- G. That no opportunity of personal hearing was ever extended to the Appellant, hence the mandatory instruments of law are missing in case of the Appellant.
- н. That from every angle, the impugned Office order dated: 18-09-2021, and order dated 19-

08-2022, are illegal, unlawful, void ab-initio and is liable to be set aside.

That any other grounds not raised here, may graciously be allowed to be raised at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the instant Service Appeal, the impugned office order No: 3893-98 dated 18-09-2021 of the Office of District Education Officer **(F)** Peshawar, impugned office order No. 636/F-No/A-20/C-IV dated 19-08-2022, of the office of Assistant Director (Admn) Directorate of E & SE Khyber Pakhtunkhwa may kindly be set aside & by doing so, the appellant may graciously be reinstated into service with all back benefits.

Any other relief not specifically asked for may kindly be extended in favor of the appellant in the circumstances of the case.

Dated: 01 -02-2023

Appellant

Through

Tahir Khan

Ahsan Sardar

Advocates, High Court

Peshawar,

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

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Manzoor Khan

<u>VERSUS</u>

Director Elementary & Secondary Education KPK & Others

<u>AFFIDAVIT</u>

I, Manzoor Khan Sweeper Govt Girls Middle School Swati Gate Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In S.A	·/	/2	0	2	3
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Manzoor Khan

VERSUS

Director Elementary & Secondary Education KPK & Others

ADDRESSES OF PARTIES

ADDRESS OF APPELLANT

Manzoor Khan Sweeper, Govt Girls Middle School Swati Gate, Peshawar, S/o Alam Sher R/o Swati Pathak, Mohalla Malik Mushtaqabad, Peshawar Cantt.

ADDRESSES OF RESPONDENTS

- Director Elementary and Secondary Education Khyber Pakhtunkhwa at Directorate of E & SE at G.T Road Peshawar.
- District Education Officer (Female) Peshawar, at Directorate of E & SE at G.T Road Peshawar.

Dated: 01/03/2023

Appellant

Through

Tahir Khan

&

Ahsan Sardar Advocates High Court

Peshawar

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

In S	.A No.	·	/2023
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Manzoor Khan

VERSUS

Director Elementary & Secondary Education KPK & Others

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth,

- 1. That the Appellant is filing the accompanying appeal the contents of which may graciously be considered as integral part of the instant petition.
- 2. That the Appellant had preferred departmental appeal within one month after his acquittal order, but when the appeal was preferred, the appellant was not feeling well about his worsening medical condition due to which the appellant was unable to approach this Hon'ble Tribunal. (Copy of Medical Documents are annexed)
- 3. That delay in approaching this Tribunal was due to the aforementioned circumstances which was neither intentional, nor was under control of the Appellant.
- 4. That law also favour adjudication on merits and technicalities of any sort must always be ignored while reaching a just and fair disposal of any les.

- 5. That for proper disposal of the accompanying case on its merits, the condonation of delay is indispensible.
- 6. That not only the Appellant has got a prima facie case and having balance of convenience in his favour, but would suffer irreparable loss, if the instant petition is not allowed.

It is, therefore, most humbly prayed that on acceptance of the instant petition, the delay in filing the accompanying appeal may graciously be condoned and the accompanying appeal may very graciously be decided on its merits.

مرطو Appellant /Appellant

Through

Tahir Khan

Ahsan Sardar Advocates, High Court Peshawar.

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

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Manzoor Khan

VERSUS

Director Elementary & Secondary Education KPK & Others

AFFIDAVIT

I, Manzoor Khan Sweeper Govt Girls Middle School Swati Gate Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied application are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

פעפ DEPONENT

#FICE OF THE EXECUTIVE DISTRCIT OFFICER (SCHOOLS & LITERACY) PESHAWAR.

APPOINTMENT

In Pursuance of the powers delegated by the Provincial Govt: in the Local Govt: & Rural Development Department vide Notification No. SO (LG-1) 3-196 /EM/05 dated 20-9-2005.

The following Land Owners of District Peshawar (who have donated land free of cost for the construction of school building) of District Peshawar are hereby appointed against the Class-IV posts at the school noted against their each name @ Rs. 3500/- PM (Fixed) with effect from the date of taking

over charge on the terms and conditions below:-

S.	Name	Father Name	Address	Posted at / Designation
No]'		
1	Mr. Manzoor	Alam Sher	Swati Gate Peshav ar	GGMS Swati Gate Peshawar.
(-	Khan			/Sweeper
2	Waheedullah	Perveez Khan	Swati Gate Peshawar	GGMS Swati Gate Peshawar.
				/Naib Qasid

TERMS & CONDITIONS

1. Their services are purely temporary on fixed basis, which can be terminated at any time with out any notice in case of negligible / their performance is found unsatisfactory.

2. If they are over age or under age they will not be allowed to assume the charge of the post.

3. They should produce Health & Age Certificate from Civi: Surgeon Peshawar.

4. All candidates will produce Computerized NIC.

5. The initial period of their appointment will be two (2) years after which the contract will be renewed or other wise the competent authority keeping in view the performance of the candidate concerned and Govt: Pelicy.

6. They will be governed by such rules & regulation as may be issued from time to

time by the Govt:

7. The salary will be drawn from the date of their taking over charge.

Note: - (1) This office appointment order vide Endst: No.1493-1592 Dated. 07/12/2005 stand at S# 30 & 31 may be treated as cancelled, having not the posts sanctioned at that time.

(2) Charge report should be submitted to all concerned.

EXECUTIVE DISTRICT OFFICER SCHOOLS & LITERACY PESHAWAR

Endst: No. 1610-2/

Dated : 11/9 106

Copy of the above is forwarded for information to the:

1. P/S to Minister for Education NWFP Peshawar.

2. P/S to Secretary Schools & Literacy Department Govt; of NWFP Peshawar.

3. P/A to Director Schools & Literacy NWFP Peshawar:

4. District Accounts Officer Peshawar.

5. District Officer (M) Schools & Literacy Peshawar.

6. ADO Establishment.

7 Principal concerned.

8-11 Candidates concerned.

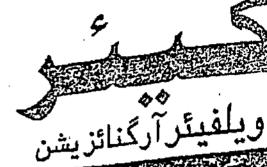
Cashiers Local office.

DISTRICT OFFICER (MALE)
SCHOOLS & LITERACY PESHAWAR

ATTRISTED



ORGANIZATION (REGD) Drug Addicted Treatment Center Name: MANZOR KILAN Clinical Record KICL:



To whom it KICI. SNO my Concern of Matter Down o talk of This is to certify that s/o Alam sher Uheun MANZOR -1Chan ALLI psychotic is admitted in our hospital on 13/04/2021 -Ame 01:30 PM. ater Wito Top- 928 12517 He will stay in the Cres . Istu-Hospital for a period of Mice months.

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Company Thank you for your Kindness forces ly, Contact Us

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CHAIRMAN HAJI KHAN AMIR

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ATTES

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مرضون ! جِمَّ برائ ملاج عالى سنشات

مع مشا ح علا 2 کملنے عمای سنرمین داخل کرا سی سیا ہے 11-7-212112-13-4-2021 2 ひにしていかしてからかとして من جوش عنابت كى عالم الله من علاج كراسلون سرال سر سفیسک مستک ہے۔

6/05/2021

tions Missees School

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منطورخان ولاعالم سير

Sweeper

GG MS Swate gate Pach.

ATTES





Malik Saif Ullah Cell: 0314-9006802

Nazim Neighbourhood Council CharKhana (94)

Ref No: Date: 27/14/2021

The Headmistress,

Govt Middle School(for Girls) Swati Gate.

Subject:

Applicatin for Three Months Medical Leave.

Madam.

With due respect it is stated that Mr. Manzoor Khan 5/O Alam Sher working as Class-4 in your school was admitted in the hospital on 13/04/2021 and thereafter he will stay in the hospital for the period of three months for your kind consideration copy of the report from the hospital is attached).

Therefore, it is humbly requested in your honor to grant him leave for three months. I shall be highly thankful to you and pray for your long life and prosperity.

ole Received 2021

Add: Madni Colony Near EDHI Center Swati Gate Peshawar.

Annexure "D" **(7)** ابتدائی اطلاعی ر پورٹ ۱۱ ع نسبت جرم قابل دست اندازی بولیس ربورث شده زیر دفعه ۱۵ انجموعه ضابطه فوجداری *18:30-23-608 Ext . المارع د بهنده و مستنفیث اوراس کا**ا** کی موبائل فون نمبر 17301-1650752-1 0321 9180017 م (مندوفعه) عالي الريحه ليا كيامويه بارتها شرييها ورسمين 17301-6984824-1 witer share in the standing Le resolution 2 con Welling ا کیا تاریخ و وفتت ابترال اطلاع يجوري لرو- رفي مديد أب غرووا مراسلم خانب حانه عديد حرط يعد طحوه بالهاع عداء كأساك معدد بالماء والم ما في ما منسب سي مع وشرون سي ما ما ما و و العد عماما الم و المعد عماما المديدات قرس ال من وي الما كان الما المن المنها مشام ما لك سا ملا في احد و عسلولوي إن من المناه عند المنافي المن المن المن المنافع الله المسلم المنافع الله المسلم المنافع المناف المعسيد المستراسية المستراد مع المراد مع المراد الم الماسي على الله الماسي الماسية الماس والمناكب والمعراب المعالية الم سال ما جديده ١١١١ سالغانه يه ي حدد الما مراد سي المناسات والمر بالمحالي وينع المرات وي على المرات وي المرات وي المرات الم المرام ورياواسلمون برون ولود بالأسراب ع بريالا والعالم المرا المالك والمالك المالك ا

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IN THE COURT OF SAIMA ASIM JUDGE SPECIAL COURT/ASJ-VI, PESHAWAR

Case No

155/SPC of 2021

Date of Institution

11/10/2021

Date of Decision

30/05/2022

STATE -VS. MANZOOR ALAM S/O ALAM SHER R/O SWATI PATTAK, PESHAWAR

Accused facing trial

FIR No. 1226, Dated 06/08/2021 U/S 11-B CNSA Police Station Bhana Mari, Peshawar

Mr. Khalid Khan Afridi, Senior PP for State
Tahir Khan Advocate for Accused

JUDGMENT

30/05/2022

Accused Manzoor Alam faced trial before this

Court in case FIR No. 1226, dated 06/08/2021 U/S

11-B CNSA registered at PS Bhana Mari,

Peshawar.

2. Brief facts of the case as narrated in the murasila/FIR are that; on 06/08/2021, during the course of gusht in the area, the complainant along with his companions,

State vs. Manzoor Alam

155/SPC 579021





came across a young person who seemed suspicious, the person disclosed his name as Manzoor Alam S/O Alam Sher R/O Swati Pattak, Peshawar. His body search led to recovery of 420 grams ICE from his side pocket, hence, the instant FIR.

- 3. After completion of investigation, challan was submitted against the accused. Accused was provided copies U/S 265-C Cr.PC and charge against him was framed, to which he pleaded not guilty and claimed trial. In order to prove its case against the accused, the prosecution produced as many as 07 witnesses. Gist of prosecution's evidence is as under:-
 - Musharraf Khan ASI was produced before the Court as PW-1, who stated on oath that, "on 06/08/2021 constable Wajid No.4642 brought the murasila, sent by Imran Khan ASI to the PS for registration of FIR against the accused. He correctly incorporated the contents of murasila into FIR Ex.PA which he verified to be in his hand writing and correctly bearing his signature. After registration of FIR he handed over the copy of FIR along with the relevant documents to the LO Appeal

Service & Session: Judy

State vs. Manzoor Alam

SISPC of 2021



Jan for investigation. He further submitted that the LO recorded his statement u/s 161 Cr.PC".

5. Muhammad Saced ASI was examined as PW-2 who stated on oath that, "during days of occurrence, he posted as MASI P.S. Bhanamari. On 06/08/2021, complainant Imran khan ASI brought the case property containing parcel No.1 and 2 to the P.S. Parcel No.1 contained 01 grain ICE, parcel No.2 contained 419 grams ice having monogram of BM. In this respect, he made entry in register No.19 regarding the case property. The attested copy of register No.19 is EX:PW2/1. The complainant also handed over to him the accused in the P.S. He kept the accused in P.S lockup. He handed over parcel No.1 containing 01 gram ICE vide receipt rahdari No.199/21 EX:PW2/2 to the Constable Farhan No.1168 for taking the same to FSL. Accordingly, he took the sample parcel to FSL, they after receiving the same endorsed his stamp upon receipt rahdari. In this respect, DD No.31 and 49 dated . 09/08/2021 EX:PW2/3 regarding departure and arrival of constable Farhan is available on file. On roturn to the PS he handed over the same receipt duly sampled by FSL authorities in the PSI He kept.

C 26 2 District & Sessions Judy.

State vs. Manzoor Alam



the remaining parcels in safe custody of PS Malkhana. The IO recorded his statement U/S 161 Cr.PC".

- 6. Daud Khan SI was examined as PW-3, who stated on oath that, after completion of investigation by the IO, he submitted complete challan EX:PW3/1 against the accused, which he verified to have his correct signature.
- 7. Farhan Ullah No.1168 appeared before the Court as PW-4 and stated on oath that, "during the days of occurrence he was posted as constable in PS Bhanamari, Peshawar. The Moharrir of the PS handed over to him parcel No.1 containing one gram ICE for taking the same to the FSL vide agreccipt RAHDARI No.199/21 EX:PW2/2.7 Accordingly, he took the sample parcel to the FSL and handed over the same to the official at FSL who after receiving the same endorsed their official stamp. On return to the PS he handed over the said receipt to the Moharrir. He further stated that his statement was recorded by the I.O U/S 161 Cr.PC".
- 8. Complainant Imran Khan ASI was examined as PW-5, who stated on oath that, "durage Repredevant days, he was posted as ASI in PS Bhanamari PP

. State vs. Manzoor Alam

55/SPC 6F2021

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(III)

Gul Abad, Peshawar. On 06/08/2021, he along with constable Races Khan No.6921, Wajid No.4642 were present at the above mentioned place on routine patrolling duty. In the meanwhile, a person in suspicious condition met with them, who was stoppéd. He disclosed his name as Manzoor Alam S/O Alam Sher R/O Swati Pattack. His personal search was conducted which led to the recovery of ICE from his side pocket, which on weighing came out to be 420 grams. He separated one gram of ICE . for sending the same to the FSL for analysis and sealed the same into parcel No.1 while the remaining 419 grams was sealed into parcel No.2 EX:P-1 and affixed 3/3 seals of BM monogram over the same and kept one monogram inside each parcel. He prepared the recovery memo EX:PW5/1and took into possession the above mentioned contraband. He also arrested the accused and issued his card of arrest EX:PW5/2. He also drafted the murasila EX:PA/1 and sent the same to the PS through constable Wajid No.4642 for registration of FIR. He also drafted an application EX:PW5/3 for sending the samples to the FSL. The site plan was also prepared at his instance and pointation. He als

State vs. Manzoor Alam

155/SPC of 2021 (Examiner)
155/SPC of 2021 (Examiner)

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2 and accused to the PS and handed over to the Moharrir. He verified the above mentioned documents to be correct and correctly bearing his signatures.

9. Wajid Ali constable was examined as PW-6, who stated on oath that, "on 06/08/2021, he alongwith Raees Khan and Imran Khan ASI were on gusht and present at Mushtaq Abad Chowk, in the meanwhile a young boy met them in suspicious condition, was stopped who disclosed his name as Manzoor Alam. Personal search of the accused was conducted and 420 grams of ICE was recovered from his side pocket. 01 gram was separated from spacket and scaled the same in parcel No.1 while the remaining quantity 419 gram were sealed into parcel No.2. The complainant affixed monogram BM over the parcels and also put 1/1 monogram inside the parcel. In this respect the complainant prepared recovery memo already EX:PW5/1 to which he is marginal witness. The I.O issued card

was handed over to him which he took to

handed over to the Moharrar for registration of FIR.

of arrest and also drafted the murasila. The murasila

State vs. Manzoor Alam

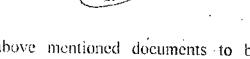


In this respect his statement was recorded by the LO 161 Cr.PC.

10. Appeal Jan ASI who conducted investigation in the case was examined as PW-7. He stated that, during the days of occurrence he was posted as SI at PS Mauri. After registration of` investigation was entrusted to him. On receiving copy of FIR, he visited the spot, prepared site plan EX:PB at the pointation of complainant. He recorded statements of PWs U/S 161 Cr.PC. Thereafter, he came back to the PS and recorded statement of Muharrar and scribe of FIR. Vide his application EX:PW7/1, he produced the accused before the learned JMIC, Peshawar for obtaining police custody but the application was turned down and accused was sent to the judicial lock up. He arecorded statement of accused U/S 161 Cr.PC. He gplaced on file the DD of complainant regarding his arrival to the PS EX:PW7/2. He also placed on file, copies of register No.19 & 21. He also received and placed on life FSL report EX:PZ. After completion of investigation, he forwarded the case file to the SHO for submission of challan. He verified the

District Course Production





- above mentioned documents to be correct and correctly hearing his signatures".
- 11. The prosecution closed its evidence. Statement of accused was recorded U/S 342 Cr.PC wherein he professed innocence, however, neither did he wish to produce anything in defense nor did he opt to be examined on oath as per the provisions of section 340 (2) Cr.PC.
- Public Prosecutor for the State argued that, the prosecution has successfully established the charge against the accused by leading consistent, coherent and confidence inspiring evidence, which does not have any material short-comings. The recovery of proved against him by prosecution witnesses and proved against him by prosecution witnesses and their testimonics have not been shattered. The forensic evidence also supports the stance of prosecution, which the accused has failed to rebut. Minor contradictions and discrepancies in details of facts are natural and it cannot be termed as fatal, thus, the accused deserve full punishment as the act

is against the whole society and, therefore,

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2.2 (Enwiseer)

District Court Peshawar

State vs. Manzoor Alam



requested for conviction of the accused, as prescribed by the statute.

13.Rebutting the same, learned defense counsel representing the accused was of the view that, prosecution witnesses have contradicted each other on material points and story of the prosecution as laid out in the FIR and benefit of the same must be extended to the accused. He further held that, police has failed to comply with provisions of Section 103 Cr. PC as no independent witnesses has been associated to the alleged recovery proceedings. It was further pointed out that, there are contradictions, on material points of the case, creating reasonable doubts and the accused deserve acquittal by extending him the benefit of doubt.

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- 14.Record has been gone through with valuable legal assistance being provided by the learned Senior Public Prosecutor for the state and learned counsel representing the accused, respectively.
- 15. The case of prosecution is based on alleged recovery of narcotics and it is held in the FIR that, during the course of routine patrol, the complainant stopped and searched the accused on being found suspicious, 420

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2 (Exantiner)

District Court Peshawar

State vs. Manžoor Alam.



thus arrested. Under the law, the prosecution is bound to establish its case independently rather than depending upon weaknesses of defense. (Reliance: "Muhammad Saeed vs State" PLD 2015 Peshawar 65, "Talib Hussain vs State" 2017 YLR 436). In criminal cases initial burden of proof is on prosecution and not on the accused to prove his innocence. Besides, conviction must be based on unimpeachable, consistent and trustworthy evidence and if any reasonable doubt exists, it must resolve in favor of the accused. (Reliance: "Haq Nawaz v State" reported in 2016 MLD 2057).

2015 2 Sessions Julys 1.

16.Law provides that, the prosecution is bound to establish its case independently instead of depending upon weaknesses of defense. (Reliance is placed on a case titled Talib Hussain v State, reported in 2017 YLR 436). In criminal cases, it is the prosecution who has to prove the case against the accused and the accused does not have to prove himself innocent, nonetheless, conviction must be based on unimpeachable, consistent and trustworthy evidence and if any reasonable doubt exists, it must resolve in favor of the accused. (Reliance: Haq Nawaz v State

2 2 12 (Pariner)
District Court Peshawar



2016 MLD 2057). In other words, the burden of proof of establishing the criminal culpability of accused is upon the prosecution to prove the guilt of accused beyond any doubt under Article 117 Qunun-e-Shahadat Order, 1984 which could never be shifted to the accused, unless the legislator by expressed terms commanded otherwise. (Reliance: "Raja Khurram Ali Khan v Tayyaba Bibi", reported in 2020 PLD 146 SC). Thus, the prosecution was never absolved of its duty to prove the charge beyond reasonable doubt, and it is not for the accused to prove his innocence rather the prosecution is obliged to prove the criminal liability of accused. (Reliance: "Allah Rakha v State", reported in 2020 P Cr.LJ 524 Lahore). Albeit, upon taking specific plea of defense the burden shifts to the accused within the meaning of Article 119 of Qanun-e-Shahadat Order 1984. (Reliance: 2017 P Cr. LJN 198 Lahore High Court).

17.In the present case, the complainant is an ASI who was not authorized under the law on the subject to have seized and arrested the accused.

18.It is vivid and glaring on record that, in the murasila, the amount of ICE shown to have been recovered

State vs. Manzoor Alam



grams. The earbon copy of murasila available on police file does not match the writing of the original copy of murasila. This fact can be further confirmed from nagal mad No.13, dated 06/08/2021, wherein recovery of 120 grams ICE has been shown against the accused facing trial. The complainant/PW-5 admitted writing of digit "4" with another pen in the FIRs as well as in judicial record.

- 19. The complainant/PW-6 in his cross examination admitted that, they were on gusht in official vehicle, whereas, recovery witness Wajid Ali/PW-6 stated in his cross examination that they were on gusht in private vehicle.
- 20. The spot witness Wajid Ali/PW-6 in his cross examination further admitted that, they did not come back to the PS after gusht, however, as per naqal mad No.13. dated 06/08/2021, the complainant/PW-5 mentioned that, he came to the PS after conducting proceedings at the spot, he came to the PS and locked up the accused in the PS.
- 21. Moreover, the occurrence took place on 06/08/2021 and the application for custody of accused was scribed on 07/08/2021, however, the order of Judicial

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District Court Peshawar

State vs. Manzoor Alam



Magistrate concerned, shows that his application for custody was turned down on 09/08/2021, which does not appeal to prudence as to how the accused was produced before the Court after 72 hours.

22.It is a matter of grave concern that Section 11-B CNSA provides a punishment which may extend to 10 years and it is the investigation to prove or disprove the allegation, which is required to be free and tair but the seizing officer did not bother to get the monogram prepared necessary for investigation process. This issue is well attended by the august Supreme Court in reported case Akhtar Iqbal v The State 2015 SCMR 291, wherein it was observed that parcels of recovered narcotics were sealed with the monogram (name initials) of an official who was not even posted at the PS at the time of alleged recovery. No explanation was offered as to why that the said parcel did not contain the monogram of recovered articles and accordingly, the accused was acquitted. Reliance is also placed on judgment dated 02.04.2019 rendered by Hon'ble Peshawar High Court, Bannu Bench in criminal appeal # 221-B of

30/3/22

2017.

(Ekaminer) | District Court Peshawar

State vs. Manzoor Alam



23.It is worth highlighting that the prosecution evidence is even inconsistent and extremely doubtful on the questions that, the sample parcels were handed over to PW-4 harban Ullah on 09/08/2021, sent to the FSL after lapse of 72 hours of time, mandatory for the same and the prosecution was unable to provide any plausible explanation for the safe custody of sample parcels and its safe delivery to the FSL.

24. There are many other contradictions in evidence which make the prosecution's case doubtful. The prosecution's evidence is inconsistent on material points of the case. Reliance is placed on Mishal Khan alias Misal Khan v The State 2017 YLRN 52 Peshawar and Sajjad Khan v State PLJ 2017 Cr.C Peshawar 261 (DB).

25. Though Section 25 of the Act ibid excluded the application of Section 103 Cr.PC but the alleged place of occurrence happens to be in a busy public area where, nonetheless, the LO did not bother to arrange any witness of the locality, who might have seen the accused in any manner which was quintessential.

26.In view of the above infirmities, deficiencies and contradictions, the prosecution has not succeeded to

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State vs. Manzoor Alam

discharge the initial burden of proof as the factum of recovery is not established and Section 29 of the Act ibid, would not absolve prosecution from its primary duty to prove a case beyond any reasonable doubt. The Hon'ble Superior Court in titled "Muhammad Yousaf'v State" reported in PLJ 2018 CRC Quetta 107 (DB) was pleased to observe that, under criminal justice system, burden cannot be shifted to accused, when prosecution has failed to establish recovery or to prove that, the recovered articles were contraband and also determined that failure of prosecution cannot be equated with failure of justice.

7. There need not be many circumstances creating suspicions and doubts in the prosecution case and if single circumstance creating reasonable doubt in a prudent toind about the guilt of the accused would be sufficient to discard the prosecution evidence and entitled the accused to its benefit, not as a matter of grace and concession but as a matter of right. (Rel: Riaz Masih v. The State 1995 SCMR 1730, Muhammad Hyas v. The State 1997 SCMR 25, Muhammad Akram v. The State 2009 SCMR 230, Aimal Khan v. The State 2012 MLD 1441, Saif Ullah v. The State 2012 YLR 2173, Shahab-Ud-



Precisor 19

Din v Muhammad Hashim Khan 2015 P Cr.LJ 81).

28.Indeed, a wrongful conviction devastates the whole society and it is the basic essence of Islamic jurisprudence that, it would be better to acquit 100 (hundred) culprits than convicting 01 (one) innocent sole; which had been transformed into the form of principle that acquitting by error, would be better than convicting by error. The said principle had institted and evolved into the theory of benefit of doubt. (Reference: Shahab Ud Din vs Muhammad Hashim Khan 2015 P. Cr.LJ 81). It is the basic essence of Islamic jurisprudence that mistake of Qazi/Juege in releasing a criminal is better than his mistake in punishing an innocent. (Rel: Fazal Muhammad v Zia Ul Haq 2016 P Cr.LJN 30).

38 5 27 27 Septiment & Septiment Constitution

Declaration of Human Rights, every one charged with penal offences has a right to be presumed innocent until proved guilty according to law in a public trial. Further Article 14 (2) ibid also states that everyone charged in criminal offence has a right to be presumed innocent until proved guilty according to law. Article 9 and Article 14 of the Constitution

ATTESTED

2 2 (Examiner)

District Court Park

State vs. Manzoor Alam

~ 155/SPC of 2021 ·





ORDER--24 30/05/2022

Senior PP for State present. Accused produced in custody. Arguments already heard.

Vide my detailed consolidated judgment of today comprising of eighteen pages, placed on file, accused Manzoor Alam is hereby acquitted from the accusation leveled against him. He be set at liberty forthwith, if not required in any other case. Case property be dealt in accordance with law after expiry of period of appeal/revision.

File be consigned to the Record Room after its necessary completion and compilation.

Announced Dated 30 03/2022

> Judge Special Court/ASJ-VI, Peshawar

Examiner)

District Court Feshawar



OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) PESHAWAR. Email I.D. emisfpeskawar@gmail.com

NOTIFICATION.

- 1. WHEREAS the Principal, Govt: Girls Middle techool Swati Gate Peshawar has reported that Mr. Manzoor S/O Aiam Sher, Sweeper, Govt: Girls Middle School Swati Gale Peshawar is absent from duty w.e.from February 2021 till date.
- 2. AND WHEREAS He was proceeded against under Khyber Pakhtunkhwa Govt: Servant rules 2011 for the charge of willful absence and show cause notice was published in leading Newspaper Daily AAJ 07.05.2021 and daily Mashriq dated 19.05.2021 to attend the Office of the DEO (F) Peshawar but neither he resumed the duty nor responded to these notices.
- 3. AND WHERAS The competent authority, District Education Officer (Female) Peshawar, after having considered the charges, evidence on record, and facts of the case is of the view that the charges of misconduct/willful absence from duty against the accused has been proved.
- 4. NOW THEREFORE, in exercise of the powers under Rules-4(b)iii of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary Rules 2011), competent authority District Education Officer (Female) Peshawar is pleased to impose Major Penalty of "Removal from Service" upon Mr. Manzoor S/O Alam Sher, Sweeper, Govt: Girls Middle School Swati Gate Peshawar with immediate effect. The period of his absence with effect from February 2021 till date is hereby treated as unauthorized absence from duty without pay.

(SAMINA GHANI) District Education Officer, (Female) Peshawar.

/P.F Manzoor Khan/ Sweeper/Dated Peshawar the_

Copy of the above is forwarded to the: -

- 1. Accountant General Khyber Pakhtunkhwa Peshawar.
 - 2. Director (E&SED) Khyber Pakhtunkhwa Peshawar
 - 3. Deputy Commissioner Peshawar.
 - 4. District Monitoring Officer Peshawar.
 - Cashier local office.
 - 6. Head Teacher, GGMS Swati Gate, Peshawar.

District Education Officer,

(Female) Peshawar

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Appellant remained in custody till 30-05-2022. (Copy of Judgment dated 30-05-2022 is annexed herewith).

- 7. That the appellant was removed from service vide impugned office order No: 3893-98 dated 18-09-2021 on the alleged notion of willful absence from duty, which is illegal, unlawful and is liable to be set aside as the Appellant never absented from his duty and was regularly performing his duties till 06-08-2022. (Copy of Impugned Office Order dated 18/09/2021 is annexed).
- 8 That feeling aggrieved from the above mentioned episode, the Appellant preferred the instant Departmental Appeal to your good-self office upon the following grounds inter-alia:-

GROUNDS:

A. That the impugned office Order 3893-98 dated 18-09-2021is illegal, unlawful, void ab-initio & is liable to be set aside.

B. That no Show-cause Notice was ever issued to the appellant, nor the same was ever communicated to the appellant and thus the appellant was remained unheard.



- c. That the Appellant remain admitted in hospital from 13-04-2021 to 12-06-2021 and that too after informing his high up about his treatment and after that the appellant assumed his duty and performed his duties till 06-08-2021 and on the same day the appellant was booked in a false and concocted criminal case and was remained in custody till 30-05-2022.
- D. That the absence from duty is neither deliberate nor willful but due to the above mentioned criminal case as after his arrest the appellant remained in custody till 30.05.2022.
- E. That under the mandate of article-04 of the constitution no one should be treated otherwise then in accordance with law, while article 25 postulates that alike are to be treated a like but here the case is volta facie and totally a different yard stick has been taken to treat the appellant.
- F. That where a law requires a think to be done in a particular manner then that has to be done in that very manner and not otherwise.
- G. That no opportunity of personal hearing was ever extended to the Appellant, hence the mandatory instruments of law are missing in case of the Appellant.



H. That from every angle, the impugned Office order dated: 18-09-2021 is illegal, unlawful, void ab-initio and is liable to be set aside.

It is, therefore, most humbly prayed that on 'acceptance of the instant Departmental Appeal, the impugned office order No: 3893-98 dated 18-09-2021 of the Office of District Education Officer (F) Peshawar may kindly be set aside & by doing so, the appellant may kindly be reinstated into service with all back benefits. The appellant also beseech and implore for personal hearing as well.

Dated: 25-06-2022

Appellant.

שיייפ אי Manzoor Khan

Sweeper (BPS-1) GGMS – Swati Gate Peshawar.





DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA PESHAWAR. /F.No/A-20/C-IV/Manzoor Sweeper

Dated Peshawar the

Phone: 091-9225344

Email: ddadmn.ese@gmail.com

Τo

The District Education Officer (Female) Peshawar.

Subject:

APPEAL.

Memo:

I am directed to refer to your latter No 373, dated 01/08/2022 on the subject cited above and to state that the appeal in r/c Manzoon Sweeper GGMS Swati Gate Peshawar has been examined/analyzed by this office hence inform the appellant concerned that his appeal has been rejected by the appellate authority.

Assistant Director (Admn)

Directorate E& Secondary Education Khyber Pakhtunkhwa, Peshawar

Endst; No.

Copy forwarded to the: -

Manzoor Sweeper GGMS Swati Gate Peshawar. 1.

PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

3. Master File.

Assistant Director (Admn)

Directorate E& Secondary Education Khyber Pakhtunkhwa, Peshawar

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क्षित्रका मध्ये, दिक्की द्वारा मध्ये । खनमग्रीहिनो ग्रिस्तीच्चीळ **विस्तित्वात्वर्गाहार्गहोडी छिन्।** विश्वारा**णहीडी** P. Name: Mr Manzoot Khan Age: 4/M Sex BM Date 15-09-22 (ch cough/fever/80%) fatig The BR-140/20 The klariced xi c/4 0 1009 Pesp: Br Spann wh chest The Augmentin By -0/4 116 Plan Plumen Tuleer closes Friend Sosp Acegye The Roard of The Telfast-120 Azler Bed red for announced انڈوسکو بی اور کالونیسکو لی کی سہومت موجود ہے Not Valid For Court AN ALL LAND VILLE CO. the heart was a selection الكاليانية (1966 ما يا يا الكالية) The state of the state of the etannight etekket tothe thelper " may be a

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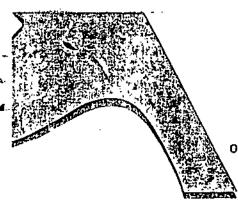
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Skin Specialist Dr. Dost Mohammad Khan

MBBS.RMP.FACP (America) Dormotology



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Our Performance is Quality Control Standard of Health Care Solutions.

Not for Medico Legal Cases

Name: MANZOOR KHAN

REF BY: DR: DOST MOHAMMAD SB

Investigation Reqd: FBC

Age/sex: M

Date: 18/12/022

Lab No: 125782

Complete Blood Count (CBC)

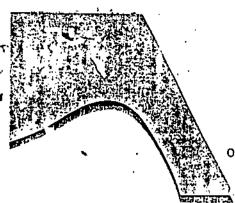
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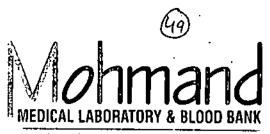
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Professor (Head)

Dr. Malik Zeb Khan

MBBS (Gold Medalist)
DCP (Pak), M.Phil (Pb)
Clinical Pathologist/Hematologist







Our Performance is Quality Control Standard of Health Care Solutions.

Not for Medico Legal Cases

Name: MANZOOR KHAN

REF BY:DR: DOST MOHAMMAD SB

Investigation Reqd: ALT

Age/Sex: Male

Date 18/12/022

Lab No: 125782

RESULTS

TEST	Result	Unit	Normal Range
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Professor (Head)

Dr. Malik Zeb Khan

MBBS (Gold Medalist)

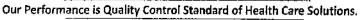
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Clinical Pathologist/Hematologist

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Not for Medico Legal Cases



Name: MANZOOR KHAN

REF BY: DR: M.IBRÁHIM SB

Investigation Reqd: FBC,

Age/sex: M

Date: 18/01/023

Lab No: 167382

Complete Blood Count (CBC)

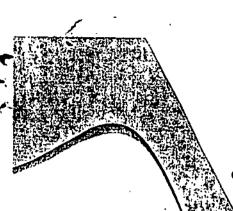
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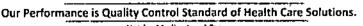
Professor (Head)

Dr. Malik Zeb Khan

MBBS (Gold Medalist) DCP (Pak), M.Phil (Pb) Clinical Pathologist/Hematologist







Not for Medico Legal Cases



Name: MANZOOR KHAN

Rfrd BY:DR: M.IBRAHIM SB

T.Reqd:H.PYLORI

Age/Sex:M

Date18/01/023

Lab No:167382

Helicobacter Pylori

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Professor (Head) Dr. Malik Zeb Khan MBBS (Gold Medalist) DCP (Pak), M.Phil (Pb) Clinical Pathologist/Hematologist



Lab No: 167382

Date 18/01/023

Age/Sex: Male



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Not for Medico Legal Cases

REF BY: DR: M.IBRAHIM SB Name: MANZOOR KHAN

Investigation Redd: LPT,s.

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Professor (Head)

Dr. Malik Zeb Khan

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25/2486-2880 1-48441 Sb-10841 JINO 0111-81-78 Accepted Tahir Khan 11 -/11) - 5805 - جستند كويس ل الخالم الماليل لا كمالك Ches. とじからかかるかいいなれるよろうかにこしてしまれてしよしようない ما المعادة الما من المان المرابع المعادة المعا عذله لاراساك سعرك ل المتقال مداية المناسك المناسك المناسك المناسكة التعالى يمتى يوني الإمام تي الأمانة تعالى المناهد المساهدة المانة للا يعتاد لل المانية المانية المانية المانية المنسعة سالم المالية الاندال المعالية الاندال المراجا المراجال المراجات المستداري كالمادر ولييك دريياد في الدافيان الدرفيات المكالك ويل ما حبكرون المالي المالية وشاك والمنابية ويدال المالي الدك الد بخرك كالراكية فالمالالا فالمراب والمتعارية والمعادرة والمعادرة المحاردة الم عقد مديرة بوالبابا ثما إياط ف سالت يوري بوي بوي المنظمة المنطقة 10-3/13 10 D /12 D XOX 7 A