

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 597/2014

Date of institution ... 28.04.2014
Date of judgment ... 30.11.2016

Shadman Hikmat Ex-Constable No. 724
S/O Hikmat Ali Khan,
R/O Shahbaz Azmat Khel Tehsil & District Bannu.

... (Appellant)

VERSUS

1. Province of Khyber Pakhtunkhwa through Inspector General of Police/
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Bannu Region, Bannu.
3. District Police Officer, Bannu.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 28.02.2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE BY RESPONDENT NO. 3 AND HIS DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 28.02.2014 WAS REJECTED BY RESPONDENT NO. 2 VIDE ORDER DATED 10.04.2014.

Mr. Shahzada Irfan Zia, Advocate.
Mr. Ziaullah, Government Pleader

.. For appellant.
.. For respondents.

MR. ABDUL LATIF
MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)
.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeal are that the appellant while serving as Constable, two FIRs No. 60 and 61 were registered against him under section-382 PPC at Police Station City Bannu. That the appellant was arrested by the local police and sent to jail, subsequently compromise was effected between the appellant/accused and both the complainants and resultantly on the basis of said compromise the appellant was released on bail in both the criminal case by learned Magistrate. That on 21.02.2014 a show-cause notice was served upon the appellant while

he was behind the jail, which he properly replied but respondent No. 3 refused to entertain reply of the appellant and hurriedly passed the impugned order dated 28.02.2014 whereby the appellant was dismissed from service on the charge of registration of criminal cases against him. That feeling aggrieved the appellant filed departmental appeal which was rejected vide order dated 10.04.2014 and hence the instant service appeal with a prayer that on acceptance of this appeal the impugned order dated 28.02.2014 and final order dated 10.04.2014 may be set-aside being illegal and void and directing the respondents to reinstate the appellant into service with all back benefits.

2. The learned counsel for the appellant argued that the appellant had been falsely implicated in two FIRs wherein the complainants effected compromise with the appellant and on the basis of the said compromises the appellant had been released on bail by the criminal court. He stated that in the said scenario the impugned order dated 28.02.2014 was unjustified, even pre-mature and passed without plausible reason. He further argued that the department was under legal obligation to wait for the outcome of the case in the criminal court before passing the impugned order of dismissal from service adding further that the august Supreme Court of Pakistan held time and again that till the criminal case was decided finally it was presumed that the accused facing a criminal charge was considered as innocent person placing reliance on judgment reported as NLR 2004 (Supreme Court) page-90. He further contended that impugned order was passed on 28.02.2014 but was given retrospective effect from 18.02.2014 which was illegal and against the judgments of the superior court adding further that the impugned order was void ab-initio and against the Constitution of Islamic Republic of Pakistan, 1973. He further argued that in cases where factual controversies were involved, holding of regular inquiry was must adding that in the instant case proceedings were conducted against the appellant in absentia while he was in police custody and ex-parte decision taken by the authority by adopting summery procedure hence impugned order was illegal, void and against the rules. He prayed that on acceptance of this appeal the impugned order dated 28.02.2014 by respondent 3 and the final order dated 10.04.2014 passed by respondent No. 2 may be set-aside and directing the respondents to reinstate the appellant in service with all back

benefits. He relied on case laws 1985 SCMR 1062, PLJ 2003 (S.C) 92, 2012 SCMR 165 and 1998 SCMR 1993.

3. The learned Government Pleader resisted the appeal and argued that the appellant was involved in two FIRs and recovery was made from him adding further that he was not acquitted but was only discharged on the basis of compromise. He further argued that acquittal in a criminal case would have no bearing on departmental proceedings and added that there were a number of judgments of this Tribunal where in-spite of acquittal in criminal cases decision on the basis of departmental proceedings were upheld by this Tribunal and stated that both criminal and departmental proceedings could be conducted independent of each other. He prayed that the appeal being devoid of any merits may be dismissed as proper show-cause notice was served on the appellant before passing of the impugned order. He relied on 2006 SCMR 554.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record, it transpired that the appellant was proceeded against on the basis of his involvement in FIRs No. 60 and 61 dated 17.02.2014 under section-382 PPC where he was released/acquitted under 249-A on 24.10.2014. He was dismissed from service vide impugned order dated 28.02.2014 after issuance of a show-cause notice dated 21.02.2014. The record reveals that instead of conducting a formal/regular inquiry and giving the appellant full opportunity of defence against the charges, summary procedure was adopted before passing of the impugned order of dismissal of the appellant from service. The impugned order also reveals that the same was given retrospective effect from 18.02.2014. Moreover the proceedings were conducted and completed in the absence of the appellant who was then behind the bar and outcome of the criminal case was then awaited. In the above scenario of the case, the Tribunal is of the considered view that legal procedure was not adopted before passing the impugned order and opportunity of fair trial was not provided to the appellant before condemning him. In the circumstances, the Tribunal is constrained to interfere in the case by setting-aside the impugned orders dated 28.02.2014 and 10.04.2014 and reinstating the appellant in service leaving the respondents at liberty to conduct de-novo inquiry against the appellant as per law/rules. The de-novo

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inquiry shall be completed within a period of two months of the receipt of this judgment and the appellant shall be provided full opportunity of defence. The intervening period since his dismissal from service shall be decided in the light of outcome of the de-novo inquiry. The appeal is decided in the above terms. Parties are left to bear their own costs.

File be consigned to the record room.

ANNOUNCED
30.11.2016




(PIR BAKHSH SHAH)
MEMBER



(ABDUL LATIF)
MEMBER

07.04.2016

None present for appellant. Mr. Muhammad Jan, GP for respondents present. Due to non-availability of learned counsel for the appellant as well as learned Member (Executive) is on leave therefore, case is adjourned to 28.7.16 for arguments.

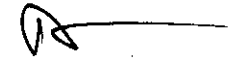

Member

28.07.2016

Counsel for the appellant and Mr. Yaqoob Khan, Naib Court alongwith Mr. Ziaullah, GP for the respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on ~~27.11.16~~ before D.B.

30.11.16


Member

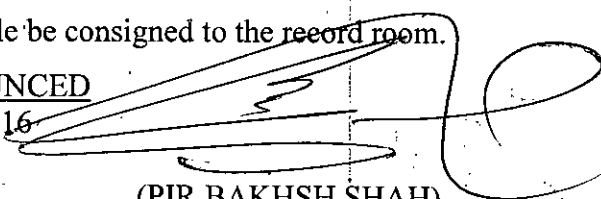

Member

30.11.2016

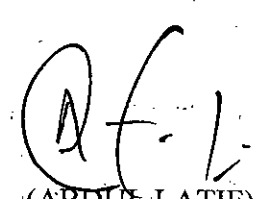
Counsel for the appellant and Mr. Asghar Ali, Head Constable alongwith Mr. Ziaullah, Government Pleader for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today placed on file, this appeal is disposed of as per the said detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.11.2016



(PIR BAKHSH SHAH)
MEMBER



(ABDUL LATIF)
MEMBER

DFA

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PESHAWAR.

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1. Province of Khyber Pakhtunkhwa through Inspector General of Police/
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
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.. For appellant.
.. For respondents.

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MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)
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JUDGMENT

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Facts giving rise to the instant appeal are that the appellant while serving as Constable, two FIRs No. 60 and 61 were registered against him under section-382 PPC at Police Station City Bannu. That the appellant was arrested by the local police and sent to jail, subsequently compromise was effected between the appellant/accused and both the complainants and resultantly on the basis of said compromise the appellant was released on bail in both the criminal case by learned Magistrate. That on 21.02.2014 a show-cause notice was served upon the appellant while

ground taken in the representation may please be considered as an integral part of this appeal (Copy of the Representation and order are attached as Annexure "E" , "F" respectively)

7. That the appellant feeling aggrieved from the above orders hence, filling this appeal on the following amongst other grounds inter alia

GROUNDS:

- a. That both the impugned orders of the respondents are illegal, unlawful, without authority, based on mala fide intention, against the nature justice, violative of the Constitution and Service Law and equally with out jurisdiction, hence the same are liable to be set aside in the best interest of justice.
- b. That both the impugned orders passed by respondent are very much harsh, without any evidence based on surmises & conjectures and is equally against the principle of natural justice.
- c. That respondent No. 3 has not taken into consideration the detail and plausible reply to the charge sheet but brushed aside it without any reason and grounds. Furthermore respondent No. 2 has not adopted proper procedure for disposal of departmental appeal/ representation thus the impugned orders are nullity in the eyes of law and are liable to be set aside.
- d. That the whole departmental file against appellant has been prepared in violation of law and rules as the enquiry officer has based his finding on assessment and speculations. The findings have not been based on sound reasons and any solid, material and cogent evidence.
- e. That the allegation leveled against the appellant are baseless, without any proof and cogent evidence and the allegation leveled against appellant is based on malafide intention and are concocted one. No proper opportunity of personal hearing has been provided to appellant. The enquiry officer has not adopted proper procedure nor any statement of any witness is recorded in presence of appellant nor he has been provided any opportunity of cross examination of any witness.

he was behind the jail, which he properly replied but respondent No. 3 refused to entertain reply of the appellant and hurriedly passed the impugned order dated 28.02.2014 whereby the appellant was dismissed from service on the charge of registration of criminal cases against him. That feeling aggrieved the appellant filed departmental appeal which was rejected vide order dated 10.04.2014 and hence the instant service appeal with a prayer that on acceptance of this appeal the impugned order dated 28.02.2014 and final order dated 10.04.2014 may be set-aside being illegal and void and directing the respondents to reinstate the appellant into service with all back benefits.

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POLICE DEPARTMENTORDER

This order will dispose of departmental inquiry, which has been conducted against ASI Ayub Khan, on the allegation that he while posted as SHO at Police Station Sher garh, was recommended for departmental proceeding for his inefficiency, corrupt practices, and involvement with smugglers of NCP vehicles. His attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection ASI Ayub Khan, was charge sheeted vide this office No. 862/R, dated 01.04.2015 and also proceeded against departmentally through Mr: Mian Ghous Gul DSP/Legal Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 577/LB dated 29.04.2015, as the allegation have been established against him and recommended him for Punishment.

The undersigned agreed with the findings of enquiry officer and the alleged ASI Ayub Khan, is hereby dismissed from service with immediate effect, in exercise of the power vested in me under the above quoted rules.

Order announced

O.S. No. 817

Dated 4/5/2015


(Gul Asad Afridi)
District Police Officer,
Mardan.

No. 4430-35/R, dated Mardan the 5/5/2015

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OAS: (DPO) Mardan.

Attested to be True Copy



respondents to reinstate the appellant in service with all back benefits. He relied on case laws 1985 SCMR 1062, PLJ 2003 (S.C) 92, 2012 SCMR 165 and 1998 SCMR 1993.

3. The learned Government Pleader resisted the appeal and argued that the appellant was involved in two FIRs and recovery was made from him adding further that he was not acquitted but was only discharge^d on the basis of compromise. He further argued that acquittal in a criminal case would have no bearing on departmental proceedings and added that there were a number of judgments of this Tribunal where in-spite of acquittal in criminal cases decision on the basis of departmental proceedings were upheld by this Tribunal and stated that both criminal and departmental proceedings could be conducted independent of each other. He prayed that the appeal being devoid of any merits may be dismissed as proper show-cause notice was served on the appellant before passing of the impugned order. He relied on 2006 SCMR 554.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that the appellant was proceeded against on the basis of his involvement in FIRs No. 60 and 61 dated 17.02.2014 under section-382 PPC where he was released/acquitted under 249-A on 24.10.2014. He was dismissed from service vide impugned order dated 28.02.2014 after issuance of a show-cause notice dated 21.02.2014. The record reveals that instead of conducting a formal/regular inquiry and giving the appellant full opportunity of defence against the charges, ^{summary} ~~summary~~ procedure was adopted before passing of the impugned order of dismissal of the appellant from service. The impugned order also reveals that the same was given retrospective effect from 18.02.2014. Moreover the proceedings were conducted and completed in the absence of the appellant who was then behind the bar and outcome of the criminal case was then awaited. In the above scenario of the case, the Tribunal is of the considered view that legal procedure was not adopted before passing the impugned order and opportunity of fair trial was not provided to the appellant before condemning him. In the circumstances the Tribunal is constrained to interfere in the case by setting-aside the impugned orders dated 28.02.2014 and 10.04.2014 and reinstating the appellant in service leaving the respondents at liberty to conduct de-novo inquiry against the appellant as per law/rules. The de-novo

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POLICE DEPARTMENT

MARDAN DISTRICT

ORDER

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In this connection Asi Ayub Khan, was charge sheeted vide this office No. 862/R, dated 01/04/2015 and also proceeded against departmentally through Mr. Mian Imtiaz Gul DSP/Legal Mardan, who after fulfilling necessary process, submitted his findings to undersigned vide his office endorsement No. 537/LB dated 29/04/2015, as the allegation have been established against him and recommended him for punishment.

The undersigned agreed with the findings of enquiry officer and the alleged ASI Ayub Khan, is hereby dismissed from service with immediate effect, in exercise of the power vested in me under the above quoted rules.

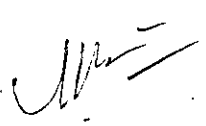
Order announed

O.B No. 817

Dated 4/5/2015

(Gul Afzal Afridi)
District Police Officer
Mardan

Attested to be True Copy



inquiry shall be completed within a period of two months of the receipt of this judgment and the appellant shall be provided full opportunity of defence. The intervening period since his dismissal from service shall be decided in the light of outcome of the de-novo inquiry. The appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.11.2016

(PIR BAKHSH SHAH)
MEMBER

(ABDUL LATIF)
MEMBER

BEFORE THE DIG MARDAN REGION-I MARDAN

Subject: APPEAL AGAINST THE O.B NO. 817 DATED 04-05-015 OF DISTRICT POLICE OFFICER MARDAN, WHERE BY THE APPELLANT WAS AWARDED THE PUNISHMENT "DISMISSEL FROM SERVICE".

R/Sir,

It is submitted that :

1. That the DPO Mardan had issued the charge sheet/ statement of allegation No.862/R dated 01-04-2015 against the Appellant with the following allegations:

"That ASI Ayub while posted as SHO Police Station Sher Garh, is recommended for departmental proceeding for his inefficiency, corrupt practices and involvement with smugglers of NCP vehicles" (Copy of charge sheet is annexed as Annexure "A").

2. That in the light of the charge sheet, a departmental inquiry was initiated against the appellant. The appellant submitted a comprehensive reply to the charge sheet before the inquiry officer which is reproduced below:

Brief facts of the issuance of the subject charge sheet are that on 21-03-2015, some unknown person send SMS to worthy IGP KPK Peshawar, regarding the alleged involvement of the petitioner with smugglers of NCP vehicles. Beside the said allegation, the petitioner was also blamed for inefficiency and corrupt practices. The petitioner do hereby submits Para wise reply to the allegations leveled in the charge sheet

a) INEFFICIENCY:

This allegation is incorrect. The petitioner had joined Police Department on 15-09-1991 as Constable and after passing Departmental examination, he was promoted to the rank of ASI . Due to his professional skills, he remained posted at different responsible jobs and completed his tenure up to the entire satisfaction of his superiors, which is on Record. If the petitioner was inefficient , then the competent authorities would never post him in the police stations, which is a job of higher responsibilities. The competent authorities had remarked the Petitioner as "EFFICIENT POLICE OFFICER" in his ACRs, Which is evident from his Service Record. It would not be out of place to mention here that the Petitioner had not been awarded any major/minor punishment regarding inefficiency during his 23 years of service. It is also added that the Petitioner had gained numbers of commendation certificates issued by DPO, DIG and IGP for his efficient performance in different cases which is evident from the petitioner service record. In the light of the best performance and efficiency, the worthy DPO Mardan promoted the petitioner as Sub inspector and on 03-08-2014 posted him as SHO PS Sher Ghar. During this period, the petitioner had recovered contraband, illicit Arms and ammunitions and arrested Pos wanted in heinous offences with the following details:

Attached to be True Copy

Arrest of Pos	Explosives	Narcotics	Arms & Ammunitions		
		Chars	KK	Pistois	Rounds
46	200KG	14 KG	7	29	500

2012 S C M R 165

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Amir Hani Muslim, JJ

DIRECTOR-GENERAL, INTELLIGENCE BUREAU, ISLAMABAD---Appellant

Versus

MUHAMMAD JAVED and others---Respondents

Civil Appeal No. 180-K of 2010, decided on 21st July, 2011.

(On appeal from judgment of Federal Service Tribunal, Karachi dated 30-3-2010 passed in Appeal No. 56(K) (CS) of 2008).

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 5---Penal Code (XLV of 1860), Ss. 302 & 310---Criminal Procedure Code (V of 1898), S. 345---Constitution of Pakistan, Art.212(3)---Reinstatement in service---Civil servant was acquitted from murder charge, on the basis of compromise effected upon payment of Diyat---Civil servant was dismissed from service as he remained absent from duty during the period in detention but Service Tribunal allowed the appeal and reinstated him in service---Plea raised by authorities was that payment of Diyat was equated with conviction in crime---Validity---Period of absence of civil servant was treated by competent authority as extraordinary leave, therefore, ground of his illegal absence was no more available for awarding any punishment to him---Offence was lawfully compromised and disposed of whereby civil servant was acquitted---Such acquittal of civil servant could not be taken as his disqualification, coming in the way of his reinstatement in service---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Appeal was dismissed.

Ashiq Raza, Deputy Attorney-General and Abdul Saeed Khan Ghorri, Advocate-on-Record for Appellant.

Abdul Latif Ansari, Advocate Supreme Court and Mazhar Ali B. Chohan, Advocate-on-Record for Respondent No.1.

Respondents Nos. 2 and 3, Pro forma Respondents.

Date of hearing: 21st July, 2011.

JUDGMENT

ANWAR ZAHEER JAMALI, J.---By leave of the court, this civil appeal, at the instance of Director General, Intelligence Bureau, Islamabad, is directed against the judgment dated 30-3-2010, in Appeal No.56(K)(CS) of 2008, passed by Federal Service Tribunal, Karachi (in short

FAR APPELLANT

the Tribunal), whereby the said appeal, preferred by respondent Muhammad Javed against his dismissal from service under the Removal from Service (Special Powers) Ordinance 2000, vide order dated 12-3-2008, after, no response of his departmental appeal dated 27-3-2008, was allowed, consequently order dated 12-3-2008 was set aside and his reinstatement in service was ordered, treating the intervening period of his absence as leave of the kind due.

2. Mr. Ashiq Raza, learned Deputy Attorney-General for the appellant, after brief narration of relevant facts, contended that respondent was involved in a murder case arising out of F.I.R. No.76 of 2004, Police Station Gharibabad Cantt. Hyderabad, which was subsequently compromised upon payment of diyat amount to the opposite party, therefore, it shall be equated as his conviction in the said crime, but the Tribunal ignoring this material aspect of the case, has ordered his reinstatement in service. He, however, did not dispute that the period of his absence from duty with effect from 3-9-2004 to 6-3-2005, which basically formed basis of such departmental action, was treated by the competent authority as extraordinary leave.

3. In reply, Mr. Abdul Latif Ansari, learned Advocate Supreme Court for the respondent contended that the Tribunal, in its impugned judgment, has aptly discussed the fact of compromise in the criminal case between the respondent and the opposite party, and rightly held that such compromise and consequent acquittal of the respondent in the said criminal case cannot be labeled as his conviction so as to entail consequences of his disqualification from service.

4. We have carefully considered the submissions made before us by the parties' counsel and also perused the material placed on record, which reveals that the period of absence of the respondent was treated by the competent authority as extraordinary leave, therefore, the ground of his illegal absence was no more available for awarding any punishment to him. Moreover, admittedly the offence arising out of F.I.R. No. 74 of 2006, Police Station Gharibabad, Cantt. Hyderabad was lawfully compromised and disposed of, whereby the respondent was acquitted. This being the position, a rightly urged by Mr. Abdul Latif Ansari, learned Advocate Supreme Court for the respondent, such acquittal of respondent cannot be taken as his disqualification, coming in the way of his reinstatement in service.

5. In view of the above, the impugned judgment of the Tribunal calls for no interference. This appeal is, therefore, dismissed.

M.H./D-11/SC

Appeal dismissed.

PLJ 2006 SC 921
[Appellate Jurisdiction]

Present: Rana Bhagwandas and Saiyed Saeed Ashhad, JJ.

HABIB BANK LTD.--Petitioner

versus

GHULAM MUSTAFA KHAIRATI--Respondent

C.P. No. 411-K of 2004, decided on 10.10.2005.

(On appeal from the order dated 12.3.2004 passed by Federal Service Tribunal at Karachi in Appeal No. 1472(K)/1998)

(i) Master and Servant--

---Law of--Applicability--Termination of respondent's service of employee of petitioner--Petitioner/bank was being managed run and controlled by Federal Government at the time when respondents service was terminated--Law of Master and Servant was thus, not applicable in as much as, petitioner bank was not a privately managed bank at that time and further employees of petitioner bank had been given guarantees and by that time Rules for petitioner's employees had been framed and were in existence--Respondent's service thus, could not have been terminated without issuing show-cause notice calling upon his explanation and holding of requisite inquiry. [P. 926] C

(ii) Service Tribunal Act, 1973 (LXX of 1973)--

---S. 2-A--Constitution of Pakistan (1973), Art. 212--Petitioner's contention that when impugned judgment was announced, Service Tribunal had ceased to have jurisdiction in as much as by that date petitioner bank after completion of privatization process had been handed over to new owner--Contention now being raised was not available to petitioner at the time when appeal was argued before Service Tribunal, therefore, Tribunal could not have considered and dilated upon the same which has been raised before Supreme Court for the first time--Petitioner did not raise such contention in its petition for leave to appeal--Such plea even otherwise would be of no help to petitioner in as much as, mere fact of privatization of Nationalized Institutions by way of transfer/sale of its controlling shares by Federal Government to private party would not be sufficient to oust jurisdiction of Service Tribunal to proceed with case of employees of such institution, as at the time of filing appeal before Service Tribunal he was civil servant as per terms of S.2-A of Service Tribunal Act, 1973--Subsequent development would not deprive or strip such civil servant of his status and the same would have no adverse effect on his pending appeal. [P. 925] A

(iii) Service Tribunal Act, 1973 (LXX of 1973)--

---S. 2-A--Civil Servant--Termination of respondents service on the ground that criminal case was registered against him and he was arrested in charge of criminal offence--Legality--Mere allegation of commission of an offence against a person and registration of F.I.R. in respect of certain offence against him would not ipso facto make him guilty of commission of such offence--Such person would continue to enjoy presumption of innocence until convicted by a Court of competent jurisdiction after a proper trial with opportunity to defend himself of allegations levelled against him--Removal of respondent on the ground that respondent had lost faith, confidence and trust of competent Authority being illegal order was not be sustainable in law. [P. 925] B

(iv) Service Tribunal Act, 1973 (LXX of 1973)--

---S. 2-A--Constitution of Pakistan (1973), Art. 212 (3)--Limitation Act (IX of 1908), Ss. 5 & 14--Appeal against termination of service--Limitation--Condonation of delay, assailed--Delay was condoned by Service Tribunal after minute and detailed examination of facts and circumstances of case, grounds advanced by respondent for delay and pronouncement made by Supreme Court in a large number of cases laying down principles for condonation of delay in filing appeals and applications etc--Service Tribunal having exercised its discretion judiciously and properly, interference in such exercise of discretion was not warranted.

[Pp. 927 & 928] D, E

2004 PLC (CS) 809; 2004 PLC (C.S) 802; PLD 2001 SC 176; 2004 SCMR 145; 1994 SCMR 2232; 2003 PLC (CS) 796 and 2004 SCMR 145, ref.

Mr. Shahid Anwar Bajwa, ASC & Mr. Ahmad Ullah Faruqi, AOR for Petitioner.

Mr. Suleman Habib-ullah, AOR for Respondent.

Date of hearing : 10.10.2005.

Order

Saiyed Saeed Ashhad, J.--This petition for leave to appeal has been filed by petitioner Bank assailing the judgment dated 12.3.2004 of the Federal Service Tribunal, (hereinafter referred to as the "Tribunal") in Appeal No. 1472(K)/1998 whereby the Tribunal has set aside the order of termination of the respondent and reinstated him in service with full

monetary and other consequential benefits.

2. Facts requisite for disposal of this petition are that respondent was employed as Senior Executive Vice President in Habib Bank Limited. He was involved in some criminal charges for which an FIR was registered and he was arrested therein. As a result of his arrest which prolonged on account of dismissal of his bail applications he could not perform his duties on the post held by him. The petitioner Bank after observing that the post could not be kept vacant for an indefinite period as it was not known when he would be enlarged on bail or released from the charges leveled against him and further that on account of his involvement in criminal acts they had lost faith and confidence in him, thus constraints on the part of the management from allowing to occupy a very senior and confidential position terminated his services with immediate effect in pursuance of Clause 15 of the Habib Bank Limited (Staff) Service Rules, 1981 on three months pay in lieu of notice.

3. The respondent submitted his representations legal notices etc but the petitioner Bank did not redress the grievance of the respondent on the ground that his termination was simpliciter and further that his service with the bank was governed by the principle of master and servant which gave ample power to the petitioner Bank to remove/terminate an employee after serving of notice or pay in lieu thereof and there was no requirement of providing opportunity of personal hearing.

4. As the petitioner Bank failed to redress his grievance the respondent approached High Court of Sindh by filing Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan. This petition was dismissed after incorporation of Section 2-A in the Service Tribunals Act, 1973 (hereinafter referred as the "Act"). It will be advantageous to reproduce the observations of the High Court regarding condonation of delay in filing appeal before the Tribunal as under:

"The petitioner, apart from the available pleas, would be free to apply for condonation of delay under Section 5 of the Limitation Act for the reason that the petitioner has been pursuing his petition diligently and in good faith."

5. The order of the High Court was challenged by respondent before this Court by way of CPLA No. 52 of 1998. The CPLA was dismissed vide order dated 4.6.1998 upholding the order of the High Court to the effect that the Tribunal would have the sole jurisdiction to proceed with the case of the respondent after incorporation of Section 2-A in the Act. Consequently respondent filed appeal under Section 6 of the Act on 4.4.1998.

6. The petitioner objected to the maintainability of appeal before the Tribunal on the ground of limitation. The Tribunal after minute and thorough examination of the provisions of Section 5 of the Limitation Act and taking into consideration the facts and circumstances of the case condoned the delay by placing reliance on the pronouncements of this Court laying down the principles for condonation of delay.

7. Feeling aggrieved and dis-satisfied with the impugned judgment the petitioner Bank filed this petition for leave to appeal.

8. We have heard the arguments of Mr. Shahid Anwar Bajwa learned ASC on behalf of petitioner and Mr. Suleman Habibullah learned AOR for respondent.

9. Mr. Shahid Anwar Bajwa in support of the petition raised the following three contentions,--

(i) that on 12.3.2004 when the judgment was announced, the Tribunal had ceased to have jurisdiction to proceed with the case of the respondent inasmuch as by that date the petitioner Bank after completion of privatization process had been handed over to Agha Khan Foundation as they had acquired 51% interest in the petitioner Bank whereafter it could not be said that the Bank was being run controlled and managed by the Federal Government thus depriving the respondent of the status of civil servants as per Section 2-A of the Act.

(ii) that the petitioner on account of his involvement in criminal acts and offences of serious nature for which FIR No. 98 of 1994 dated 26.12.1994 was registered by FIA under Sections 161/162 PPC read with Section 5(2) of Prevention of Corruption Act (II of 1947) was found to be dishonest unreliable, unscrupulous and tricky person becoming unfit for employment in an institution like a Bank where utmost trust respect credibility and honesty is required leaving no option with the Bank but to terminate his services ; and

(iii) that the Tribunal had erred in condoning the delay in filing the appeal by the respondent as no cogent plausible and satisfactory ground had been advanced by the respondent for the delay in filing the appeal and the Tribunal had acted in an arbitrary and fanciful manner in condoning the delay.

10. Mr. Suleman Habibullah, learned AOR appearing on behalf of respondent on the other hand supported the judgment of the Tribunal and submitted that the Tribunal had considered each and every aspect of the case in condoning the delay and minutely examined all the contentions of the counsel for the parties, as well as relevant provisions of the law applicable to the facts and circumstances of the case relating to the rights liabilities and obligations of the parties.

11. Relative to the first contention raised by Mr. Shahid Anwar Bajwa it is to be observed, that this contention was not available to the petitioner at the time when the appeal was argued before the Tribunal therefore, the Tribunal could not have considered and dilated upon the contention which has been raised for the first time today. The petitioner did not even raise this ground in their petition for leave to appeal filed by them in this Court. Even otherwise raising of this plea or ground before us would be of no help to the petitioner in view of the judgment of a larger Bench of this Court in Civil Petitions Nos. 204 to 240, 247, 248-K/2004 and 199-K/05 (Manzoor Ali and others vs. United Bank Ltd. and another)

12. Taking into consideration the second contention advanced by Mr. Shahid Bajwa it may be observed that it is a settled principle of law that where allegation of commission of an offence against a person and registration of FIR in respect of a certain offence or more than one offence against such person would not ipso facto make him liable of commission of such offence and he would continue to enjoy the presumption of innocence until convicted by a Court of competent jurisdiction after a proper trial with opportunity to defend himself on the allegations levelled against him in the present case the petitioner had acted with universal party and not haste for which no plausible explanation was provided by him either before the Tribunal or by Mr. Shahid Bajwa while arguing this petition in this Court. What was stated in support of re-employment was that the post occupied by the respondent was of Senior Executive Vice President which could not be kept vacant for a long period and that on account of the criminal offence committed by him he had lost faith confidence and trust of the competent authority for holding such a senior appointment. Both the grounds advanced by Mr. Shahid Bajwa do not appear to carry weight. As regards the contention that the post could not be kept vacant for long period, it may be observed that it could have been filled in by posting another officer or an additional charge of the post could have been given to another officer till such time the respondent's case had been decided by a competent Court. However, in case of conviction he would have lost his job. The petitioner could have repaired departmental proceedings against the respondent for his alleged criminal acts under their service rules known as Habib Bank Limited (Staff) Service Rules, 1981 (hereafter referred to as "Rules"). Removal of the respondent under clause 12 of the Rules on the ground that respondent had lost faith, confidence and trust of the competent authority was an illegal order which in the gap of termination simpliciter was in effect by way of punishment for the alleged criminal acts of respondent which were sub-judice before a competent Court and which subsequent were found to be baseless and false. Before the dismissal of the FIR and pendency of the criminal case the petitioner could have initiated departmental proceedings as the criminal case and the departmental proceedings are entirely different and being of extensive not inter-connected. Even after acquittal of respondent in criminal trial, departmental proceedings could have been instituted as the departmental proceedings are concerned with the self-discipline, good conduct, integrity and efficiency of the employees. For the above reliance is placed on the case of *Syed Muhammad Iqbal Jafri vs. Registrar, Lahore High Court* (2004 P.L.C. (2), 809).

13. Admittedly at the time when action of termination was taken against the respondent the petitioner bank was being managed, run and controlled by the Federal Government and though at that time the exact status of the employees of the Nationalized Banks could not be determined but the fact is that the law of Master and Servant had been applicable as the petitioner bank was no longer a privately managed bank and further that the employees of the petitioner bank had been given certain guarantees and sanction under the Banks (Nationalization) Act, 1974 (the Act) also an admitted fact that Service Rules for the petitioner employees had been framed and were in existence. The competent authority of the respondent bank had no power to terminate the services of the respondent without issuing show-cause notice to the respondent calling upon him to explain his conduct and holding an inquiry if so required, into the allegations. The competent authority thus acted not only in contravention of the provisions of law relating to the termination and termination of the employees of a nationalized bank but also violated the provisions of natural justice according to which no one can be condemned without providing him an opportunity of defending himself. Such order could not be said to be a legal, valid and proper order. The fact that the Service Rules in existence in the petitioner's bank did not have sanction backing would not give unlimited untrammelled and absolute power to the petitioner to ignore the same and to deprive the respondent of his right of access to natural justice. If any authority is required in support of the above proposition the same are available from the judgments in the cases of (i) *Arshad Jamal vs. N.W.F.P. Forest Development Corporation* and others (PLD 2001 SC 176) (ii) *The Managing Director, Sul Southern Gas Co. Ltd. vs. Sul Southern Gas Co. Ltd.* (2004 P.L.C. (2), 802), (iii) *The Managing Director, Sul Southern Gas Company Limited, Karachi vs. Ghulam Abbas and others* (2003 P.L.C. (2), 796), (iv) *Nawaz Ali vs. W.P.B.A through Manager and others* (2003 SCMR 142) and (v) *Ahmed Raza Khan vs. P.L.C. (1994 SCMR 232)*.

14. With regard to the contention that the Tribunal had erred in condoning the delay on the ground that no plausible satisfactory and sufficient ground was advanced by respondent for condonation of delay in filing the appeal, it may be stated that delay was condoned by the Tribunal after a mature and detailed examination of the facts and circumstances of the case. The grounds advanced by the respondent for the delay and the pronouncements made by this Court in a large number of cases laying down the principles for condonation or otherwise of the delay in filing appeals and applications are. The Tribunal while condoning the delay did not commit any illegality or material irregularity or acted arbitrarily or against the settled principles governing condonation of delay which would compel this Court to interfere with the exercise of discretion. In a large number of the cases this Court has pronounced that when discretion of condoning the delay in filing an appeal has been legally and properly exercised then same is not required to be interfered with. Reference may be made to the case of *Managing Director, Sul Southern Gas Company Limited, Karachi vs. Ghulam Abbas and others* (2004 P.L.C. (2), 796) wherein this Court while discussing the ambit of the discretionary power of the Tribunal to condonation of delay observed as under:

"Besides above reference, decision of the cases, on merits have always been encouraged instead of non-suiting this litigants for technical reasons including on limitation. In this behalf good number of precedents can be cited where question of limitation was considered sympathetically after taking into consideration the relevant facts. Reliance is placed on the cases of Muhammad Yaqub v. Pakistan Petroleum Limited and another (2000 SCMR 830), Messrs Pakistan State Oil Company Limited v. Muhammad Tahir Khan and others (PLD 2001 SC 980), Teekam Das M. Haseja Executive Engineer, WAPDA vs. Chairman, WAPDA (2002 SCMR 142). There are application from the appellant but no interference was made by this Court on the premises that Service Tribunal had passed order in exercise of its discretionary powers. In this behalf reference may be made to the case of WAPDA v. Muhammad Khalid (1991 SCMR 1765). Relevant para therefrom reads as under thus:

".....As regards the question that no application for condonation of delay had been filed by the respondent, the matter being one of the discretion the finding of the Tribunal cannot be set aside on a technicality alone...."

In the case of Nazakat Ali vs. WAPDA through Manager and others (2004 SCMR 145) this Court made the following observations:--

"....It hardly needs any elucidation that sufficiency of cause of condonation of delay being question of fact is within the exclusive jurisdiction of learned Federal Service Tribunal and once the discretion concerning condonation of delay was exercised judiciously by the Service Tribunal it cannot be disturbed by this Court without any justification which is lacking in this case. In this regard we are fortified by the dictum laid down in Syed Ali Hasan Rizvi v. Islamic Republic of Pakistan (1986 SCMR 1086), Muhammad Azhar Khan v. Service Tribunal Islamabad (1975 SCMR 262), Water and Power Development Authority v. Abdur Rashid Dar (1990 SCMR 1513) and Sher Bahadur v. Government N.W.F.P. (1990 SCMR 1519).

The conclusion arrived at by the learned Federal Service Tribunal being strictly in conformance of law and being well-based does not warrant any interference. The petition being meritless is dismissed and leave refused.

Perusal of the relevant portion of the judgment of the Tribunal dealing with this issue leaves no doubt that it had decided this issue after a thorough and very minute examination of the facts circumstances and the relevant case. This the exercise of discretion does not require to be interfered with.

16. For the foregoing facts, discussion and reasons this petition for leave to appeal is found to be without any substance. Accordingly it is dismissed and leave to appeal is refused.

(Aziz Ahmad Tarar) Petition dismissed.

1986 P L C (C.S.) 139

[Service Tribunal Punjab]

Before Abdul Hamid Chaudhry and Mian Faiz Karim, Members

LAL KHAN

versus

SUPERINTENDENT OF POLICE, SAHIWAL and another

Case No.95/1257 of 1985, decided on 15th September, 1985.

Civil service--

For Appellant

---Disciplinary action vis-a-vis criminal proceedings--Acquittal by criminal Court--Effect on departmental proceedings--Head Constable of Police involved in criminal case for alleged exchange of fire-arms in his custody in Malkhana--Departmental proceedings initiated on basis of criminal case registered--Show-cause notice served--Reply not considered satisfactory and penalty of dismissal from service imposed--Criminal Court acquitting accused for lack of evidence in support of charge--Departmental appeal rejected on plea that acquittal by criminal Court appeared to have been secured by winning over prosecution witness hence it was not honourable acquittal--Concept of honourable acquittal, in circumstances, held, imported unjustifiably--Service Tribunal accepting appeal, setting aside impugned penalty of dismissal order and awarding re-instatement with directions to treat intervening period as leave extraordinary without pay--Punjab Service Tribunals Act (1X of 1974), S.4.

Muhammad Sardar Khan v. Senior Member, Board of Revenue 1985 S C M R 1062 rel.

Masud Ahmed Riaz for Appellant.

A.G. Humayun, District Attorney for Respondents.

JUDGMENT

ABDUL HAMID CHAUDHRY (MEMBER).--Lal Khan, ex-Head Constable No.716, has filed this appeal under section 4 of the Punjab Service Tribunals Act, 1974, in which he has impleaded the Superintendent of Police, Sahiwal, and D.I.G., Police, Multan Range, Multan, as respondents.

2. By virtue of this appeal the appellant has prayed that the impugned orders, dated 9-7-1980 and 27-1-1985, be set aside and he may be re-instated in service, with effect from 9-7-1980, with full benefits of pay and allowances.

3. Brief facts of the case are that the appellant was served with a show-cause notice, dated 2-7-1980, by S.P. Sahiwal, on the following charge:-

"You Head Constable Lal Khan No. 716 while posted as Moharrir Malkhana Seder Sahiwal during the year 1980 committed gross misconduct inasmuch as that you in connivance with your Naib Muharrir Iqbal Masih used to exchange the guns and revolvers with ulterior

1986 P L C (C.S.) 222

[Service Tribunal Punjab]

Before Abdul Hamid Chaudhry, Member

ABDUL RAZZAQ

versus

SUPERINTENDENT OF POLICE, FAISALABAD and another.

Case No. 124/92 of 1985, decided on 14th October, 1985.

Civil service-----

FAR Appellant

Disciplinary action based upon criminal offence--Accused (appellant) facing criminal trial and disciplinary action simultaneously and dismissed from service by following show-cause notice procedure--Criminal Court acquitting accused under S. 249-A of Criminal Procedure Code, 1898 for want of evidence--Departmental appellate authority treating acquittal not as honourable dismissing appeal--Impugned dismissal order, in circumstances, set aside by Service Tribunal re-instating appellant with direction to treat intervening period as leave extra ordinary without pay--Punjab Service Tribunals Act (IX of 1974), S. 4.

Muhammad Sardar Khan v. Senior Member (Establishment), Board of Revenue, Punjab, Lahore 1985 S C M R 1062 rel.

Masud Ahmad Riaz for Appellant.

Haroon-ur-Rashid Cheema, District Attorney for Respondents.

JUDGMENT

Abdul Razzaq, ex-Constable No. 2466 of Faisalabad District has made this appeal under section 4 of the Punjab Service Tribunals Act, 1974, wherein he has impleaded the Superintendent of Police, Faisalabad and D.I.-G. Police, Faisalabad Range, Faisalabad as respondents.

2. By virtue of this appeal, the appellant has prayed that the impugned orders dated 8-5-1984 and 9-2-1985 be set aside. It has also been prayed that the appellant be re-instated in service with full back benefits of pay, allowances, etc.

3. Brief facts of the case are that on 7-3-1984 appellant while posted as Constable at P.S. Gulberg, Faisalabad went to Chak Jhumra and alongwith his co-accused Javed Iqbal also a constable, deprived Tariq Javed a student of his pair of new shoes and Rs.1,050 in cash. Case F.I.R. No.88 dated 7-3-1984 under section 382, P.P.C. was registered against them at P.S. Chak Jhumra on the report of Tariq Javed, The appellant and his co-accused secured their pre-arrest bail from Session Court, which was rejected on 21-3-1984 and they were arrested. After completion of investigation they were challaned in the case. The appellant and his co-accused were tried by the Ilaqa Magistrate and acquitted on 25-9-1984 under section 249-A, Cr.P.C. However, departmental proceeding under Punjab Police (E & D) Rules, 1975 by ,ay of General Police Proceedings in

which regular enquiry was not considered necessary were instituted against the appellant on 21-4-1984. He was served with a show-cause notice. His explanation written as well as oral was considered by Superintendent of Police, Faisalabad. His explanation was not found satisfactory and the appellant was dismissed from service by Superintendent of Police, Faisalabad vide his order dated 8-5-1984. The appellant made an appeal to the Deputy Inspector-General of Police, Faisalabad Range, Faisalabad and the appeal was rejected vide his order dated 9-2-1985 on the plea that no doubt the appellant has been acquitted but it did not amount to his honourable acquittal. Hence this appeal.

4. I have heard the parties i.e. Mr. Masud Ahmad Riaz, Advocate for the appellant and Mr. Haroon-ur-Rashid Cheema, District Attorney assisted by the representative of respondents.

5. The learned counsel for the appellant has submitted that the appellant has been dismissed as a result of show-cause notice served upon him, under the provisions of Punjab Police (E & D) Rules, 1975. No enquiry was held as required under the Efficiency and Discipline Rules in such cases. The learned counsel for the appellant has submitted that the appellant has been dismissed on the basis of the case F.I.R. No.88 dated 7-3-1984 under section 382, P.P.C registered against the appellant and co-accused. They were also arrested in the aforesaid case. The learned counsel for the appellant has referred to the order dated 25-9-1984 of the learned Magistrate 1st Class, Faisalabad and has submitted that the said Court has acquitted the appellant of the charge on the basis of which the appellant was punished and dismissed from service. The learned counsel for the appellant has also referred to the order dated 9-2-1985 of Deputy Inspector-General of Police, Faisalabad Range, Faisalabad and has submitted that on receipt of verdict of the learned trial Court, the Deputy Inspector-General of Police, Faisalabad vide his order dated 9-2-1985 rejected the appeal of the appellant on the basis that acquittal was not honourable. The appellant's counsel has pointed that keeping in view the above facts it is clear that the appellant has been dismissed from service only on account of involvement in case F.I.R. No.88 dated 7-3-1984. The learned counsel for the appellant has relied on the judgment of the Supreme Court of Pakistan in case of Muhammad Sardar Khan v. Senior Member (Establishment) Board of Revenue, Punjab, Lahore, reported as 1985 S C M R 1062. The ratio of the above judgment is that in view of the appellant's acquittal, appellant was entitled for re-instatement. The respondent No.2 wrongly held against the settled law that acquittal was not honourable and unlawfully rejected the appeal of the appellant.

6. On the other hand the learned District Attorney has contended that the appellant's acquittal was not a honourable acquittal and as such the decision of the Deputy Inspector-General of Police, Faisalabad Range, Faisalabad not to re-instate the appellant on this fact cannot be taken exception to. He has relied on the detailed order of the Deputy Inspector-General of Police, Faisalabad Range, Faisalabad dated 9-2-1985 and has reiterated the above position.

7. I have given my anxious thought to the arguments of the parties and have also perused the record of this case very carefully. I have examined the impugned order of the Superintendent of Police, Faisalabad dated 8-5-1984 which reads as follows--

"Since the Constable was formerly arrested by the local police and the case is still investigation in which his innocence has not yet been established, therefore, at this stage this affidavit has no legal/defensive value. The Constable's explanation is not found to be satisfactory. He is a criminal in police uniform anti is not worth retention in the police force. He is, therefore, dismissed from service w.e.f. 5-5-1984 forenoon. The period of his suspension, will be treated as such. Order announced."

The para. 4 of the impugned order dated 9-2-1985 of Deputy Inspector-General of Police, Faisalabad Range, Faisalabad is also reproduced as follows: -

"In this case the trying Court vide its judgment dated 25-9-1984 has acquitted the appellant under section 249-A, Cr.P.C. A perusal of the judgment would show that it does not amount to an honourable acquittal. The appellant has a criminal tendency and possesses a chequered service record having no less than 6 punishments to his discredit. He, therefore, cannot at all be considered fit to be a member of the Police Force. The appeal is rejected."

The above impugned orders show that the appellant had been held guilty only of criminal offence that he was involved in case F.I.R.No.88 dated 7-3-1984, registered against him and was arrested for the aforesaid case. I have also perused the judgment dated 25-9-1984 of Mr. Mukhtar Ali Mian, Magistrate 1st Class, Faisalabad through which the appellant has been acquitted. The last para of the said judgment is reproduced below: -

"An application for the acquittal of the accused was given under section 249-A, Cr.P.C. Due notice was given to the P.S.I., and arguments advanced by both the sides were heard. In this case the only documents which connects the accused with the offence is the recovery memo. vide which the Khusha is alleged to have been recovered from Javed Iqbal accused. This memo is attested by Ahmad Khan and Liaqat Ali. The former has been declared hostile and the evidence of the later, even if he supports the prosecution story will not be of any avail to the prosecution. No evidence has been led in support of the remaining part of the prosecution story, which fact does not stand proved. As a matter of fact this is a case of no evidence against the accused. The prosecution have failed to establish its case. The accused are, therefore acquitted under section 249-A, Cr.P.C. The case property be returned to the owner."

However, this judgment has been interpreted by the respondent No.2 that it was not an honourable acquittal and as such the appeal of the appellant was rejected,

8. Nevertheless, the law point has been settled by the latest judgment of their Lordship of the Supreme Court of Pakistan in the Civil Appeal No. 536 of 1980, Muhammad Sardar Khan v. Senior Member (Establishment) Board of Revenue, Punjab, Lahore decided on 20-3-1985 reported as 1985 S C M R 1062. Their Lordships have clinched the law point by their following dictum:-

"We are, therefore, of the view that the concept of honourable acquittal was unjustifiably imported by the learned Tribunal in determining the question of the validity of the appellant's removal from service. The reliance on this Court's judgment in Government of West Pakistan v. Mian Muhammad Hayat P L D 1976 S C 202, in so far as it related only to the question of pay during period of suspension, was inapt and irrelevant. For the foregoing reasons, this appeal is allowed with costs and the impugned order of appellant's removal from service dated 19-4-1977, shall be set aside, with the result that the appellant shall be re-instated in service with effect from the date the said order took effect."

Respectfully following the ratio of the above judgment, I am of the considered opinion that on the particular facts of this case, the above quoted dictum of their Lordships is fully applicable in the present case as well.

9. The upshot of the above discussion of the case is that the appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service from the date of his dismissal i.e.

1985 S C M R 1062

Present: Muhammad Haleem, C.J., Shafiur Rahman,

Zaffar Hussain Mirza and Mian Burhanuddin Khan, JJ

MUHAMMAD SARDAR KHAN--Appellant

For Appellant

Versus

SENIOR MEMBER (ESTABLISHMENT), BOARD OF REVENUE,

PUNJAB, LAHORE--Respondent

Civil Appeal No.536 of 1980, decided on 20th March, 1985.

(On appeal from the judgment and order of the Punjab Service Tribunal, dated 15-2-1979, in Case No.110 of 1978).

(a) Constitution of Pakistan (1973)--

---Art.212 (3)--Punjab Civil Servants (Efficiency and Discipline) Rules, 1975, r.9(a)--Punjab Civil Service Rules, Vol. I, Part I, r.7.3 (a)-Leave to appeal granted to examine contention that r.9(a), Punjab Civil Service (Efficiency and Discipline) Rules, 1975 which seemed to have been invoked in order to lay foundation for removal order passed against employee, was not attracted in case, in view of fact that conviction and sentence awarded to employee were set aside in appeal by High Court and r.7(3)(a), Civil Service Rules, Punjab, Vol. I, Part I was wholly irrelevant in circumstances of case.

(b) Civil Service Rules (Punjab)--

---Vol. I, Part I, r. 7 (3)(a)--Correctness of order of removal of service of civil servant--Application of r. 7(3)(a)--Extent.

Rule 7(3)(a) of Civil Service Rules (Punjab) deals with question of pay and allowances to which a civil servant would be entitled in case his suspension is subsequently held to have been unjustifiable or not wholly justifiable, or when a civil servant is re-instated after dismissal by revising or appellate authority. It is with reference to extent of pay and allowances to which a civil servant would be entitled in such situation with which rule clearly deals. It is not a rule dealing with substantive ground on which a civil servant would be liable to be removed from service. Apparently, therefore, this rule could not be lifted out of context for purpose of making it basis of penalty inflicted on a civil servant.

(c) Punjab Civil Servants (Efficiency and Discipline) Rules, 1975—

---Rr.5, 6, 7, & 9--Powers of relevant authority to inflict penalty on accused civil servant in disciplinary proceedings--Procedure elaborated--Order of removal proceeded upon basis of r. 9--Sentence of accused, if set aside and accused Officer is acquitted, very basis on which such order of removal from service stands, would disappear--Such order of removal, therefore, itself will be rendered ineffective and liable to be set aside--Such void order of removal cannot be propped up by any additional ground favoring removal, which would be against principles of natural justice

initiate proceedings against a civil servant if in his opinion sufficient ground exists for doing so. The authorized officer is then required to proceed against such civil servant if it is then within the discretion of the authorized officer to decide whether the case calls for a formal inquiry to be conducted or to proceed against him without such a formal inquiry by adopting the procedure laid

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1993

For Application

Government of Pakistan

M. A. Siddiqui, Raja Ahmad Khan and M. J. Ahmad, JJ.

PLASMA/1993/1111-Appellant

GOVERNMENT OF PAKISTAN THROUGH SECRETARY, FOOD, AGRICULTURE, LIVESTOCK AND FISHERIES DEPARTMENT, PESHAWAR AND OTHERS---RESPONDENTS

Decided on 2nd June, 1993.

On appeal from the N.W.F.P. Service Tribunal, Peshawar dated 24-8-1991 passed in April, 1992.

(1) Fundamental Rules---

... Civil servant was involved in a case under 23023A, P.F.S. ... against the accused civil servant on charges ... that allegations levelled against him were baseless---Appellate of civil ... was to be considered to have ... in case of acquittal ... had been cleared him from an ... Criminal Court was entitled to grant of ... and ... Such civil servant, therefore, was entitled to grant of ... and ... he remained under suspension on the basis of ...

Government of West Pakistan through the Secretary, P.W.D., Lahore, v. Mian Muhammad H. ... distinguished.

(2) Criminal Procedure Code (V of 1898)---

... Observations of Court in bail granting order are tentative in nature.

... Observations of the Criminal Court in the bail granting order are wholly unauthoritative ... of acquittal or conviction of the accused. The observations in the orders passed ... are always tentative in nature and as such, cannot be used by the ... in support of appeal of the accused.

(3) Criminal Trial---

... Doubt itself destroys the very basis of the prosecution case---Where the ... has been given to the accused, it cannot be said that charge has been ... unless it is proved on the ... that they are connected with the commission of crime and as such ... the end of justice---Even where benefit of doubt has been extended to ... to have been honorably acquitted.

(d) Criminal trial---

--- Acquittal ---All acquittals are "honourable" and there can be no acquittals which may be said to be "dishonourable".

All acquittals, even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals" All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.

That term "acquittal" has -not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service.

Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another 1994 PLC (C.S.) 693 ref.

Government of West Pakistan through the Secretary, P.W.D., Lahore v. Mian Muhammad Hayat PLD 1976 SC 202; Government of N.-W.F.P. v. I.A. Sherwani and another PLD 1994 SC 72 and Dictionary by Macmillan,

William D. Halsey/Editorial Director, Macmillan Publishing Co., Inc. New York, Collier Macmillan Publishers London" rel.

(e) Words and phrases---

--- Word "acquittal" ---Connotation.

Abdul Kadir Khattak, Advocate Supreme Court with Muhammad Zahoor Qureshi Azad, Advocate-on-Record for Appellant.

Hafiz Awan, Advocate Supreme Court with Muhammad Zahoor Qureshi Azad, Advocate-on-Record (absent) for Respondents Nos: 1 and 2.

Respondent No. 3: Ex parte

Date of hearing: 2nd June, 1998.

JUDGMENT

RAJA AFRASIAB KHAN, J.---On 21st of August, 1989 at 4-40 p.m. a case under section 302/34, P.P.C. was registered against Dr. Muhammad Islam and Fazal Haqqani on the statement of Muhammad Rahim with Police Station Katlang District Mardan for the murder of Sher Zamin. An Additional Sessions Judge, Mardan, after recording the statement of the complainant, Muhammad Rahim passed the following order on 9-6-1992:--

"Statement of the complainant has already been recorded and placed on file. He does not charge the accused for the commission of the offence. In view of his statement, the learned S.P.P. also gave statement that he wants to withdraw from the prosecution against the accused.

In view of the above statements, no case stands against the accused, therefore, no charge is framed against them and they are discharged/acquitted from the charge levelled against them in the present case. They are on bail, their bail bonds stand cancelled and sureties discharged. Case property, if any, be disposed of in accordance with law. File be consigned after completion."

It is evident that the accused have been acquitted in the case. At the time of incident, the appellant was posted as Veterinary Officer (Health) (B-17), Incharge Veterinary Dispensary, Katlang District Mardan. He was suspended from service with effect from 22nd of August, 1989 vide order dated 17-1-1990 because of his involvement in the aforesaid murder case. Nevertheless as pointed out above, he was acquitted of the murder charge by the trial Judge on 9th of June, 1992. On the strength of this order, the appellant moved an application on 29-6-1992 for his reinstatement in service. On 7-4-1993, the competent Authority accepted the application of the appellant and in consequence thereof, reinstated him in service with effect from 22nd of August, 1989. The period from 22nd of August, 1989 to the date of his assumption of duty i.e. 18-4-1993 was treated as extraordinary leave without pay. On 2nd of May, 1993, the appellant filed representation against the order dated 7-4-1993 which was rejected by Secretary Food, Agriculture, Livestock and Cooperative Department, Peshawar on 19th of June, 1993. The appellant then filed appeal before the N.-W.F.P. Service Tribunal praying for the payment of salary and allowances to him for the said period. This claim of the appellant was contested by the Government on the ground that the acquittal of the appellant was based on a compromise between the parties. This being the position, acquittal of the appellant cannot be held to be honourable so as to entitle him to full pay and allowances for the said period. The Tribunal vide its decision, dated 24th of August, 1994 dismissed the appeal observing:--

"The expression 'honourably acquitted' has not been defined in rules anywhere else. There is no reference in the Code of Criminal Procedure, to the term 'honourably acquittal'. In the ordinary sense 'honourable acquittal' would imply that the person concerned had been accused of the offence maliciously and falsely and that after his acquittal no blemish whatsoever, attaches to him. In cases where the benefit of doubt is given to him or where he is acquitted because the parties have compromised or because the parties on account of some extraneous influence have resiled from their statements then as held by the learned Division Bench of the erstwhile High Court of West Pakistan Lahore Seat in case reported as Sardar Ali Bhatti v. Pakistan (PLD 1961 Lah. 664) in spite of the acquittal of the person concerned, cannot be declared to have been 'honourably acquitted.' This decision has been upheld by the Hon'ble, Supreme Court of Pakistan in case reported as Government of West Pakistan through the Secretary, P.W.D. (Irrigation Branch), Lahore v. Mian Muhammad Hayat (PLD 1976 SC 202). The appellant having been acquitted on the basis of compromise with the complainant his acquittal cannot therefore be treated as honourable. (Emphasis supplied underlined).

It is for the revising authority or appellate authority to form its opinion on the material placed before it, whether such a person has been honourably acquitted or not. It is left to

the absolute subjective discretion of the authority. This Tribunal, therefore, dismiss the appeal. Parties are left to bear their own costs. File be consigned to the record."

Leave to appeal was granted by this Court on 14th of May, 1995.

2. Learned counsel appearing on behalf of the appellant submitted that the appellant was acquitted and as such, was entitled to be given the pay alongwith allowances for the period he remained under suspension. This position was contested by the respondents by saying that as a matter of fact, there was a compromise between the appellant and the complainant. It could not be said that the appellant had been honourably acquitted. The learned Law Officer drew our attention to the bail granting order, dated 16th of January, 1992 saying that an affidavit was given by the son of the complainant that the parties had entered into a compromise.

3. After hearing the learned counsel for the parties and perusing the record, we are inclined to hold that this is a case of acquittal pure and simple. The observation of the Criminal Court in the aforesaid bail granting order is wholly immaterial for the purposes of acquittal or conviction of the appellant. It has time and again been said that the observations in the orders passed in bail applications are always tentative in nature and as such, cannot be used by the parties for conviction or acquittal of the accused. In fact, these bail orders are always treated to be non-existent for the purposes of trial of the accused. The above order in the bail application has, therefore, to be ignored for all intents and purposes. The argument is thus repelled. The trial Judge in his order referred to above has unequivocally stated that the appellant has been acquitted of the charge. Needless to state that in all criminal matters, it is the bounden duty of the prosecution to establish its cases against the accused on the basis of reliable and credible evidence. In the case in hand, the prosecution failed to produce any evidence against the appellant. The testimony of the star witness namely the complainant did not involve him in the commission of the crime. This was, undoubtedly, a case of no evidence on the face of it. The Law Officer is unable to show that the parties have entered into a compromise. His simple word of mouth was not enough to hold that the parties had entered into compromise. Even in the cases where benefit of doubt has been given to the accused, it cannot be said that the charge has been established by the prosecution. The accused are to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the Commission of the crime and as such, deserve to be convicted to meet the ends of justice. The doubt itself shall destroy the very basis of the prosecution case. In this view of the matter, the accused shall be deemed to have honourably been acquitted even where the benefit of doubt has been extended to them. In case of *Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore* and another (1994 PLC (C.S.) 693), following observations were made:--

"There is hardly any ambiguity in these provisions and they do not present any difficulty. We are in no doubt that the provisions of clause (a) are attracted by the facts on the ground that the appellant was acquitted of the charge against him. Although, the department claims that this was the result of benefit of doubt, we would hold that the acquittal is honourable within the meaning of this rule. As a matter of fact, all acquittals are honourable and the expression 'honourable acquittals' occurring in clause (a) seems to be superfluous and redundant. It is one of the most valuable principles of criminal jurisprudence that for a judgment of conviction it is the duty of the prosecution to establish its case beyond all reasonable doubt. If it fails to do so, the accused will be entitled to acquittal and such acquittal will be honourable, even if it is the result of a benefit of doubt. The expression ~ benefit of doubt' is only suggestive. of the fact that the prosecution has failed to exonerate

itself of the duty of proving its case beyond all reasonable doubt.

In the present case, therefore, the appellant's acquittal of the charge of misconduct and his consequential reinstatement in service entitled him to full pay and remuneration of the entire period from 6-10-1980 to 12-2-1986 under F.R. 54(a) of the Rules. We hold that the provisions of F.R. 54(b) are not relevant and that they could not have been pressed into service by the Department in deciding the matter."

We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.

4. Be that as it may, we hold that the appellant was acquitted because there was not an iota of evidence available on record against him. Learned counsel for the respondents relied upon the rule laid down in *Government of West Pakistan through the Secretary, P.W.D., Lahore v. Mian Muhammad Hayat* (PLD 1976 SC 202), wherein it was held that the acquittal of the accused had to be honourable which would mean that the allegations were false. In our view, the above rule shall not apply to this case for the reason that the appellant in this case was tried and for lack of evidence, he was acquitted by the trial Court. In the referred case, the accused, Muhammad Hayat was never tried under any offence by any Criminal Court. It may also be noted that the provisions of F.R. 54(a) have been declared un-Islamic by the Shariat Appellate Bench of this Court vide *Government of N.-W.F.P. v. I.A. Sherwani and another* (PLD 1994 SC 72). In other words, the F.R. 54(a) under which the appellant has been deprived of his pay and other financial benefits, does not exist on the statute book. It is admitted by the learned counsel for the parties that term "acquittal" has not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service. According to "Dictionary Macmillan, William D. Halsey/Editorial Director, Macmillan Publishing Co., Incorporated New York, Collier Macmillan Publishers London" the words "acquit" and "acquittal" mean:--

"acquit"--quitted, -quitting. v.t. 1. to free or clear from an accusation or charge of crime; declare not guilty; exonerate: The jury acquitted him after a short trial. 2. To relieve or release, as from a duty or obligation: to acquit him of responsibility. 3. To conduct (oneself); behave: The team acquitted itself well in its first game. (Old French aquiter to set free. save, going back to Latin ad to + quietare to quiet)"

acquittal' ' n. 1. a setting free from a criminal charge by a verdict or other legal process. 2. Act of acquitting; being acquitted'."

The appellant was acquitted by the trial Judge as already pointed out above. It shall, therefore, be presumed that the allegations levelled against him are baseless. In consequence, he has not been declared guilty. In presence of above meaning of "acquittal" the appellant is held to have committed no offence because the competent Criminal Court has freed/cleared him from an accusation or charge of crime. The appellant is, therefore, entitled to the grant of arrears of his pay

and allowances in respect of the period he remained under suspension on the basis of registration of murder case against him. This appeal succeeds and is allowed with no order as to costs.

M.B.A./M-178/S

Appeal allowed

12.01.2015

Appellant with counsel and Mr. Mir Faraz Khan, Inspector (Legal) on behalf of respondents with Addl: AG present. Written reply received on behalf of the respondents, copy whereof is handed over to the learned counsel for the appellant for rejoinder on 30.04.2015.


Chairman


30.04.2015

Appellant in person and Addl: A.G for respondents present. Rejoinder submitted. The appeal is assigned to D.B for final hearing for 29.10.2015.


Chairman

29.10.2015

Appellant with counsel and Mr. Mir Faraz Khan, Inspector (Legal) alongwith Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to paucity of time, therefore the case is adjourned to 7-4-16 for arguments.


Member

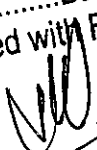

Member

Appeal No. 597/2014
Mr. Shadman Hissainet

3. 13.06.2014

Appellant with counsel present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 28.02.2014, he filed departmental appeal, which has been rejected on 10.04.2014, hence the present appeal on 28.04.2014. Counsel for the appellant contended that neither charge sheet, statement of allegation has been issued to the appellant nor any regular enquiry has been conducted against the appellant. He further relying on the judgment of the Supreme Court of Pakistan PLJ 2006 SC 921. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 11.09.2014.

Appellant Deposited
Security & Process Fee
Rs. 180/- Bank
Receipt is Attached with File.



4. 13.06.2014

This case be put before the Final Bench T for further proceedings.

Member

Chairman

11.09.2014

Counsel for the appellant and Mr. Mir Faraz Khan, Inspector (legal) with Mr. Kabirullah Khattak, AAG for the respondents present. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments, positively, on 11.01.2015

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 597 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28/04/2014	<p>The appeal of Mr. Shadman Hikmat presented today by Mr. Shahzada Irfan Zia Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	5-5-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-6-2014</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 597 / of 2014

Shadman Hikmat Ex-Constable No. 724 Appellant

VERSUS

Province of KPK through IGP & Others Respondents

I N D E X

Ser	Description of documents	Annexures	Pages
1.	Body of Appeal		1 - 5
2.	FIR No. 60	'A'	6
3.	FIR No.61	'B'	7
4.	Compromise in FIR No. 60	'C'	8
5.	Bail Order	'D'	9
6.	Compromise in FIR No. 61	'E'	10
7.	Bail Order	'F'	11
8.	Show Cause Notice	'G'	12
9.	Reply to Show Cause Notice	'H'	13-15
10.	Impugned order dated 28.2.2014	'I'	16
11.	Departmental Appeal	'J'	17
12.	Final Order dated 10.4.2014	'K'	18
13.	Vakalat Nama		19

شادمان حیات

Appellant

Through:

Shahzada Irfan Zia

(Shahzada Irfan Zia)

Advocate

13-C, Haroon Mansion

Khyber Bazar, Peshawar

Cell # 0300-9345297

Dated: 28.04.2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.

597 / of 2014

628
28/4/2014

Shadman Hikmat Ex-Constable No. 724
Son of Hikmat Ali Khan, resident of
Shahbaz Azmat Khel Tehsil & District Bannu...

Appellant

VERSUS

1. Province of Khyber Pakhtunkhwa
through Inspector General of Police/
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
 2. Regional Police Officer, Bannu Region, Bannu.
 3. District Police Officer, Bannu...
- Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 28.2.2014
WHEREBY THE APPELLANT HAS BEEN DISMISSED
FROM SERVICE BY RESPONDENT NO.3 AND HIS
DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED ORDER DATED 28.2.2014 WAS
REJECTED BY RESPONDENT NO.2 VIDE ORDER
DATED 10.4.2014.

Respectfully Sheweth:

FACTS OF THE CASE.

1. Succinctly the facts which formed the back ground of this case are that
the appellant while serving as Constable, two FIRs No. 60 and 61 were

registered against him, under Section 382 PPC at Police Station City Bannu. (Annex: A&B).

2. That the appellant was arrested by the local Police and sent to the jail. Subsequently compromise was effected between the appellant/accused and both the complainants and resultantly on the basis of said compromise the appellant was released on bail in both the Criminal cases by learned Magistrate. (Annex: C, D, E&F).
3. That on 21.2.2014 a Show Cause Notice was served upon the appellant while he was behind the jail, which he properly replied but respondent No.3 refused to entertain reply of the appellant and hurriedly passed the impugned order dated 28.2.2014, whereby he dismissed the appellant from service on the charge of registration of criminal cases against the appellant. (Annex: G, H&I).
4. That feeling aggrieved the appellant filed his departmental appeal before respondent NO.2 and vindicated his plea and position but to his utter dismay that his departmental appeal was rejected by respondent No.2 vide order dated 10.4.2014. (Annex: J&K), hence the present appeal is being filed inter alia on the following grounds:-

GROUND:

- a. That in both the FIRs the appellant has falsely been implicated and, therefore, the complainants effected compromises with the appellant and in the compromise deeds the complainants clearly stated that they charged the appellant/accused merely on suspicion. On the basis of these compromises the appellant has already been released on bail by the Criminal Courts. In this scenario the impugned order dated 28.2.2014 seems to be

unjustified, even pre-mature, passed without any plausible reason.

- b. That there is no cavil to the proposition that mere allegation of commission of an offence against a person and registration of FIR in respect of certain offence against him, would not ipso facto make him guilty of commission of such offence. The department is under legal obligation to wait for verdict of criminal Court in the criminal case against the Government Servant, before dismissing him from service.
- c. That the Honourable Supreme Court of Pakistan held time and again that unless criminal case is decided finally, the presumption is, that accused facing the charge of criminal nature is an innocent person. Reliance is placed on the judgment reported as NLR 2004 Supreme Court Page 19.
- d. That the impugned order was passed on 28.2.2014, but it has been given retrospective effect, i.e. 18.2.2014 which is illegal and against the judgments of the superior Courts wherein it is categorically held that no penalty could be imposed with retrospective effect, thus the impugned order is void abinitio even against the Constitution of Islamic Republic of Pakistan, 1973.
- e. That it is settled law that in cases where factual controversy is involved, in such like cases regular inquiry is required to be conducted. Dispensation of regular inquiry in such cases would

defeat the ends of justice. Case of the appellant is of regular inquiry in accordance with Rules 5&6 of the Police Rules 1975. The department altogether ignored the requirement of relevant law and passed the impugned order hurriedly in a haphazard manner in clear violation of principles of natural justice. It is worthwhile to mention here that in cases where department imposes major penalty, initiation of Regular Inquiry is mandatory.

- f. That the departmental proceedings were conducted against the appellant in absentia, while he was in custody and an ex parte decision was taken by the authorities by adopting summary procedure and no chance of personal hearing was afforded to the appellant, hence he was condemned unheard.
- g. That the impugned order dated 28.2.2014 is illegal, void and against the instruction provided in Khyber Pakhtunkhwa Estab- Code, even in violation of relevant provisions of Police Rules 1975, therefore, not sustainable under the law.
- h. That the appellant was appointed as Constable on 19.1.2013 having only one year service at his credit and he is only 22 years young boy, therefore, the penalty awarded to him is very harsh which will destroy future of the appellant.
- i. That the FIRs were lodged against the appellant on misconception and misunderstanding, which was subsequently

proved, when the complainants entered into compromise and stated on Oath that the entire action was taken on mere suspicion.

j. That the appellant was neither served with Charge Sheet nor final Show Cause Notice, therefore, he could not vindicate his plea and position effectively, hence the entire proceedings are smoke screen and appears to be pre-determined decision.

k. That the appellant seeks permission of this Honourable Tribunal to offer further grounds at the time ^{of} arguments.

In view of the aforesaid facts and circumstances of the case it is, therefore, humbly prayed that the impugned order dated 28.2.2014 passed by respondent No.3 and final order dated 10.4.2014 passed by respondent No.2 may graciously be set aside being illegal and void, directing the respondents to re-instate the appellant into service with all back benefits.

Any other relief though not specifically asked for to which the appellant is entitled in the circumstances of the case may also be granted to the appellant.

شاهزادان زیا

Appellant

Through:

(Shahzada Irfan Zia)
Advocate, Peshawar.

CERTIFICATE:

Certified that as per instructions of my client, no such Service Appeal on behalf of the appellant has earlier been filed in this Honorable Tribunal on the subject matter.

Advocate.

ابتدائی اطلاع رپورٹ

(فائل) ابتدائی اطلاع نسبت جرم قابل دقت اندازہ پولیس ایڈپورٹ شدہ زیر دفعہ 154- مجموعہ ضابطہ فوجداری

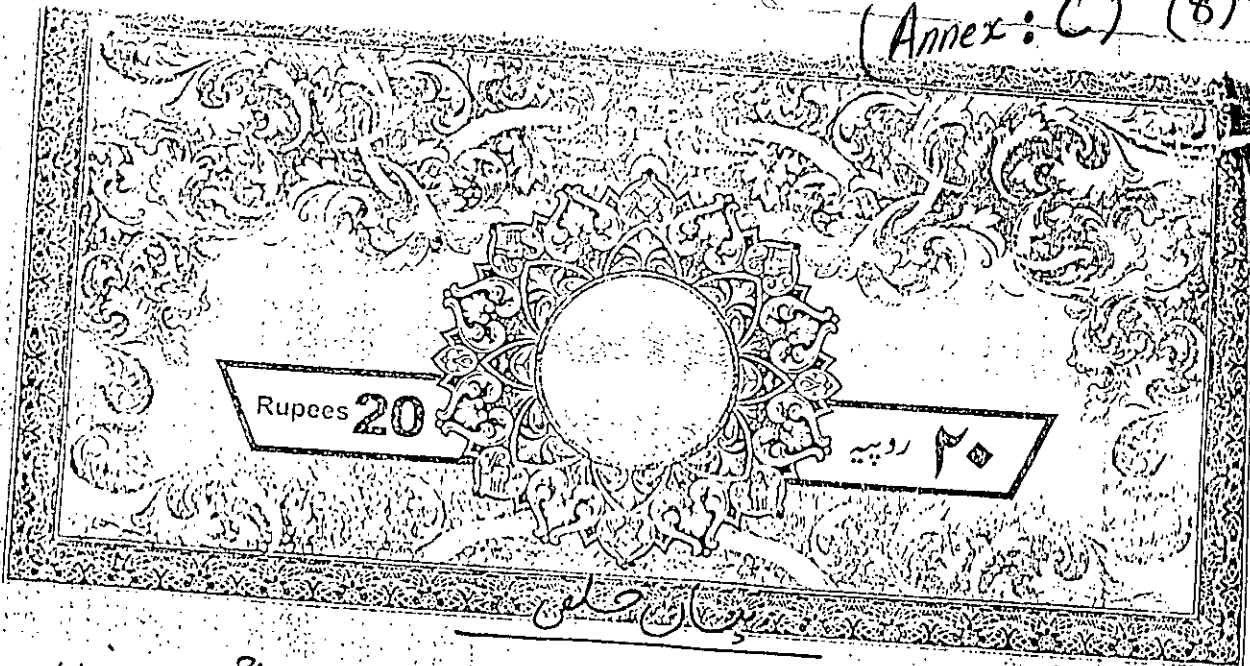
تاریخ و وقت رپورٹ	17/14	وقت	19:30
نام و سکونت اطلاع دہندہ و مستقیمیت	0343-9373385		
مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو۔	382		
جائے وقوعہ فاصلہ تھانہ سے اور سمت	بچترہ روڈ مال مالہ ضلع شوری ٹی سٹور بیرون مکی گٹھ شوری ٹی		
نام و سکونت ملزم	راہن مریضہ ماربن ولدہ ایسٹریٹ سکڑ نامہ جھانڑیہ کڈل، شوری ٹی		
کارروائی جو تفتیش سے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو وجہ بیان کرو۔	بہر اسدگی رپورٹ پر پھر دیا گیا		
تھانہ سے روانگی کی تاریخ و وقت	بہر سبیل ٹاک		

ابتدائی اطلاع شیخہ درن کرد اس وقت مستمدا اندر رہ رہا ہے 2 بجے عارضہ نشانہ آکر رپورٹ
 کریٹھالہ پیری پٹھا کو منڈری اندرون مکی گٹھ میں نامانی کی دکان ہے۔ شب گزشتہ لوٹ قریب 19:30
 میں بچترہ روڈ مالہ ضلع شوری ٹی سٹور بیرون مکی گٹھ کے سامنے کھڑا ہو کر اپنے موبائل فون
 سامنے کھلی ہوئی رکھی اور موبائل نمبر 0343-9373385 اپنے گھمے ساتھ بائٹ کرنے میں مصروف تھا یہی
 اثناء میں اٹھ کر موبائل ٹھیکر سے ٹھیکر بند کر کے 12:55 بجے در سوار تین اشیا حاصل کی جن میں سے دو اشیا حاصل
 محمد ہیر اپنے گھمے لے کر لیم کر کے محمد سے ہیرا جو موبائل فون نمبر 0306-9252218 اور مبلغ 10000 روپے لپی
 سے اٹھ کر موبائل کھائینہ 2x4 کارک سیم بند 0306-9252218 اور مبلغ 10000 روپے لپی
 زبردستی نکال کر ہیرا موبائل ٹھیکر سے ٹھیکر بند کر کے اپنے گھمے کے ساتھ ساتھ کچھ نہ کر سکا آف
 بہت میں ہڈیاں خود ان ملکہ مان کی پتہ پڑی اور کھلی کرنے میں مصروف تھا۔ آسٹریٹ مکی
 اہمیتان اور کھلی ہوئی ہے کہ ملکہ مان مندرجہ خانہ بند 5 نے جب سے اسٹریٹ فون موبائل فون
 رقم چھین کر کے گئے ہیں میں بر خلاف ملکہ مان مندرجہ خانہ بند 5 کا دعویہ پورے
 اللہ کے نام سے کارروائی خانہ لپٹا ہر اسدگی رپورٹ چھوٹ گئی ہے سب سے سزا دیا گیا جو
 رپورٹ کو درست تسلیم کر کے پتہ پڑی خود اٹھا رپورٹ اور درجہ تفتیش کی جس میں کہہ دین
 کر دیا ہوں سرورست ملکہ مان رپورٹ سے پتہ چلا کہ وہی ہاکر مقدم درجہ تفتیش
 کو فیصلہ FIR فیصلہ تفتیش حوالہ BSI ملکہ مان کے ہاتھ میں ہے پتہ پڑی کے

18/14
 SHC/uly
 18/2/14

Attested

بر خلاف
 ثلا (۱۳)
 ہسری



بعدالت جناب جوڈیشل مجسٹریٹ آف / Mod / ج صاحب بنوں

عدہ عدالت: 60، عدد خرقہ: 2014-2-18، نمبر: 382 P.P.C، تھانہ سٹی۔
نامزد ملزمان: (1) احماد یونس خان (2) شامان (3) رماض عرفان

منکہ ذبیح اللہ ولد محمد اصغر مکہ افغانستان حال اندرون گلگت بلتستان بنوں، مسنیت
عدہ عنوان بالا میں شک کی بنیاد پر مندرجہ بالا ملزمان کے خلاف
دعویداری کی تھی۔ ملزمان فریق نے بیرون عدالت من مسنیت
کر جرگے میں اپنے بے گناہی کی تسلی دی اور اب
من مسنیت نے ملزمان کی بے گناہی کو تسلیم کر دیا۔
عدالت انجناب اگر ملزمان کو ضمانت پر باکس سے بری کرے
تو من مسنیت کو کوٹی اعتراض نہ ہے۔ 22/2/2014

Attested: 03339738481
Aurangzeb Khan
Magistrate, District
Court, Baran, District
Judicial Officer, Dist. Baran

22-2-14

ذبیح اللہ ولد محمد اصغر مسنیت

ATTESTED

Copying Agency
JUDICIAL COURT BARAN

10379

گواہ/بشناخت کنندہ
کور شاہ علی خان ولد نواز خان
شناختی کارڈ نمبر: 1101-1435485-7
اور شاہی خان

Attested

Ex PA 103/ 21/2/84
 بتم سداد خان / ابرار بن حسن

Judicial Magistrate II / Mod
 Judge Banna.

بیان ازالہ ذبیح اللہ ولد محمد امجد سکنہ انغان سنان حال اندرین کی نسبت
 من متفیتہ خلفاً بیان کرتا ہوں کہ من متفیتہ نے مقدمہ عدالتہ کی مورخہ ۱۹۰۱ء
 مجرم 382pp، لگانہ ٹی بیس ملزبان (۱) ہماون (۲) شادمان لہی
 عرف عارف کو شہکار کی بنیاد پر جارج کیے تھے۔ اب ملزبان یا
 نے جارج کے شکل میں اپنی بے گناہی کی تسلی من متفیتہ
 دی۔ اب من متفیتہ نے ملزبان بالاسی بے گناہی تسلیم
 اور من متفیتہ کو کوئی اعتراض نہ ہے کہ عدالت حضور
 ملزبان بالاسی کو ضمانت پر رہا کرے اور بری کرے۔ بیان متفیتہ
 جبکہ ضمانت کنندہ متفیتہ ہے۔

ذبیح اللہ ولد محمد امجد (متفیتہ)
 من در دست تسلیم



Mod / VI

1. Registration No. 1213
 2. Date of presentation of Application 10-3-14
 3. Date of receipt of the file 10-3-14
 4. Date of presentation of Copy 10-3-14
 5. Date of Delivery of Copy 10-3-14
 6. No. of Copies / words 2
 7. Ordinary Fee 2
 8. Urgent Fee 2
 9. Total Fee 2
 10. Signature of Copyist

نشہ قدم کنندہ نور شالی ولد نور خان
 شنائی کارڈ نمبر 65-7

TESTED
 Filing Agency
 Court Bannu
 0-3-14

(Annex : D) (9)

بھارتیہ ایجنسی کے ساتھ
نمبر 36 فیروز
22-2-2014
22.02.2014
BA
عنوان: راجن کھن سنگھ

ORDER-03:
22.02.2014

SPP for the State present. Counsel for the accused/Petitioner present. Complainant present in person. Record received.

Accused/Petitioner namely Riaz alias Arif son of Afsar Ali resident of Mohallah Jehanzeb Bannu City & Shadman Khan son of Hikmat Ullah resident of Shahbaz Azmat Khel Distt: Bannu seek their post arrest bail in case FIR No. 60 dated 18.02.2014 U/Sec: 382 PPC at PS City Bannu.

Arguments heard and record perused.

Perusal of the record reveals that the occurrence took place at 19:30 hrs in nighttime 17/02/2014, while report was lodged on the next date against present accused. No doubt recovery has been affected from the accused/petitioners, however, they have been charged after considerable delay of about 20 hrs. Consultation & deliberation on part of complainant could not ruled out. Moreover, statement of complainant on stamp paper/affidavit in respect of innocence of accused/petitioners has brought the case in ambit of further inquiry.

In view of above stated facts, the petition in hand is accepted and accused/petitioners are released on bail subject to furnishing of bail bonds to the tune of Rs. 200,000/- (Two Lac Rupees) each with two local and reliable sureties each in the like amount to the satisfaction of this court. Copy of this order be placed on judicial/police file.

Requisitioned record be returned to the quarter concerned. File be consigned to RR after its compilation.

Announced
22.02.2014

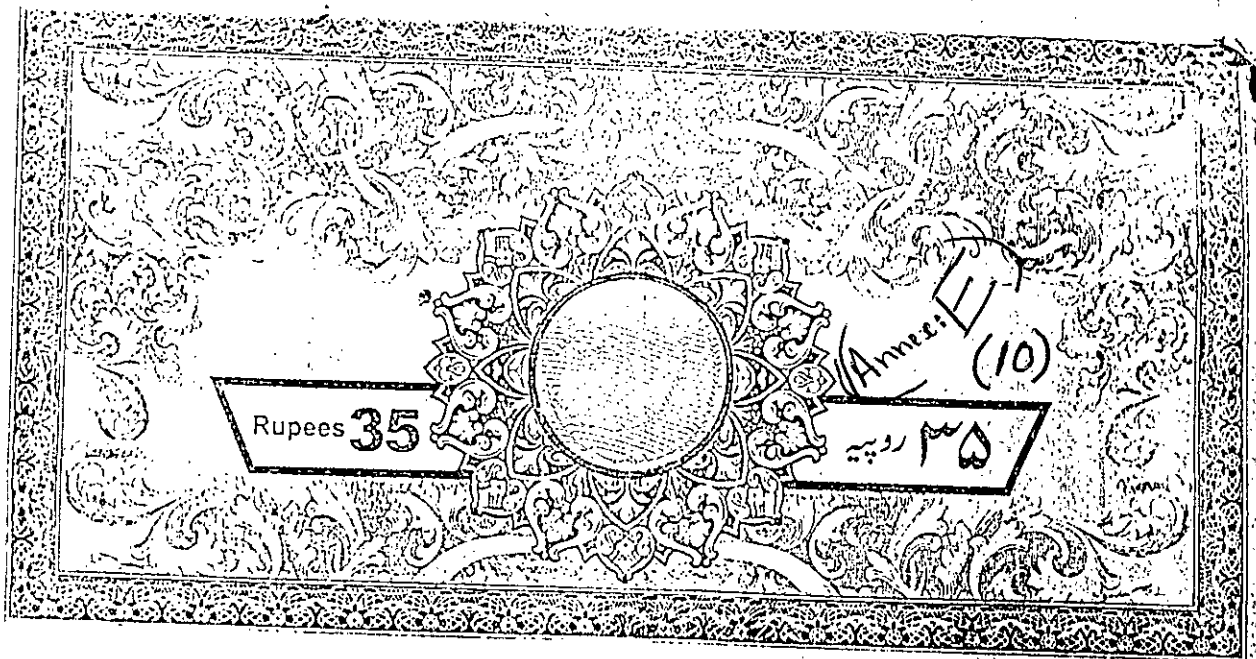
Hamid Kamal,
JM-VI/MOD, Bannu.

1. Registration No.	1213
2. Date of Presentation of Application	10-3-14
3. Date of Receipt of the file	10-3-14
4. Date of Presentation of Copy	10-3-14
5. Date of Delivery of Copy	10-3-14
6. No. of Copies / words	1
7. Ordinary Fee	
8. Urgent Fee	
9. Total Fee	
10. Signature of Copyist	

ATTESTED
Copying Agency
Lower Court Ban

10-3-14

Attested.
[Signature]



۲۷/۳/۱۴

یا حلنی

سعدت جاب جویش قسریہ صاحب بنوں

ریاض ملک وغیرہ نام سکاٹ وغیرہ

PA
 M. Yousaf Khan
 07/3/2014

قدمہ 61 خورج 2/18 جم 382 رقم نمائندگی 2014

من مدعی طلبہ دیتا ہوں کہ من مدعی نے مزین چارج شدہ FIR کے خلاف
 شک کی بناء پر دعویٰ کی تھا۔ اب من مدعی کو مزین فریق نے اپنی بگلیاں
 کی تسلی دی ہے۔ من مدعی اب لودہ اور ملتان کے خلاف مزید دعویٰ
 نہیں کرتا اگر مزین حالت پر رہا ہوگا اور لودہ ہری کے ساتھ تو من مدعی
 کو کوئی عذر نہ ہوگا

07-3-2014 - ۶۱ -

11101-1171220-5

گواہ
 مہتر امین ولد عطاء الرحمان
 عطاء الرحمان ولد امجد محمد

سکنہ مکان 430/5 طعی حیدر اہلکار
 نزد لڈیسی مارکیٹ بنوں

شہادت دار
ATTESTED
 Copying Agency
 Lower Court Bannu
 10-3-13

Attested
 07/3/2014
 Lower Court Bannu

Attested

۱۔ بی اے ایل آر ایف میں ولد عطاء الرحمن

۲۔ بی اے ایل آر ایف میں ولد امل رحیم کے ساتھ قدم رکھنے کے لئے درخواست

برصغیر

حلف نامہ دینے میں تاخیر نہ ہونے کے لئے طرف دعوہ دار
 کو خط لکھ کر بتا دیا گیا ہے اور دعوہ دار کو خط لکھی گئی ہے اب طرف
 دعوہ دار کو خط لکھی ہے۔ طرف دعوہ دار کو خط لکھی ہے اور
 اگر طرف دعوہ دار کو خط لکھی ہے اور وہ اس کو قبول کرے تو اسے
 دینے کو روک دیا جائے گا۔

دینے کو روک دیا جائے گا۔

RO & Ae - دینے کو روک دیا جائے گا۔

اس کے لئے
 اس کے لئے

۲۰۱۴ - ۳ - ۳
 ۱۱/۱۰ - ۱۴۷۱۲۲۰ - ۵

ATTESTED
 Copying Agency
 Lower Court Bannu

Application No. 1214

2. Date of Presentation of Application 10/3/14

3. Date of Receipt of the file 10/3/14

4. Date of Presentation of Copy 10/3/14

5. Date of Delivery of Copy 10/3/14

6. No. of Copies / words 2

7. Ordinary Fee 2

8. Urgent Fee -

9. Total Fee 2

10. Signature of Copyist

لعلہ کون ب آئی جی صاحبان

7-3-2014 7-3-2014 47 B.A

Annex: F
11

ORDER --02
07-03-2014

1. The instant bail application submitted through counsel. Be entered in the relevant register. Counsel for accused/petitioners, complainant in person & APP for the state in attendance.
2. Record available and arguments heard, while the complainant has effected compromise with the accused party and for this he submitted compromise deed.
3. On perusal of the record and arguments of the counsels the instant petition ON FRESH GROUND for post arrest bail of the accused/petitioners namely Riaz Khan and Shadman in case FIR No. 61 dated 18-02-2014 registered for offence U/S 382 PPC at PS City stands admitted on the following grounds:-
 - a. That today complainant appeared before the court and submitted compromise deed and to this effect his statement recorded overleaf affidavit and placed on file, therefore, its benefits extended to the accused/petitioner at this stage.
 - b. Regarding the occurrence the case of accused/petitioners is that of further inquiry.
3. As the petition is allowed and the accused/petitioner be released on bail in the instant case subject to furnishing of sureties bonds in the sum of Rs.80,000/- with two local and reliable sureties each in the like amount to the satisfaction of this court. Copy of this order be placed on file. Requisitioned record be returned to the quarter concerned. File be consigned to RR after its completion and compilation.

Announced
07-03-2014

Naeemullah Khan Jadoon
Judicial Magistrate-II, Bannu

Registration No. 1211

1. Date of Presentation of Application	10 3 14
2. Date of Receipt of the file	10 3 14
3. Date of Presentation of Copy	10 2 14
4. Date of Delivery of Copy	10 2 14
5. No. of Copies / words	1
6. Ordinary Fee	1
7. Copyist Fee	
8. Total Fee	
9. Signature of Copyist	

ATTESTED
Copying Agency
Lower Court Bannu
10 3 14

Attested.
14

(Annex: G1)

12

SHOW CAUSE NOTICE

Whereas you Constable Shadman Hikmat No.724 while posted at Police Line Bannu were found involved/charged in two cases i.e. FIR No.60 and 61 dated 18.02.2014 u/s 382PPC PS City Bannu. As per report of SP/Inv: Bannu Memo: No.391 dated 20.02.2014 the stolen articles/property in the above mentioned cases have been recovered.

You are therefore found guilty of grave misconduct and have made yourself liable to the penalties specified in Rule 04 of the Police Rules 1975.

And whereas in exercise of the powers under the Rules 5 (3) (b, c) of Police Rules 1975, I am satisfied that sufficient evidence is available against you warranting to dispense with proper departmental inquiry.

Now, therefore, the undersigned as a competent authority call upon you through this notice to explain why the major penalty of dismissal from service should not be imposed upon you.

Your reply must be received within 07 days of receipt of this Notice, failing which it will be presumed that you have no defense to offer and in that case ex-parte action shall be taken against you.

SR/SRC.
21-02-14


District Police Officer,
Bannu

Attested


3 اب مشورہ ڈسٹریکٹ سروس 52/52 جاریہ ضلع کراچی میں

14 مارچ 2014

نام اس ایجنٹ کے بارے میں حکایت 24 جولائی 1998 کو اس ایجنٹ کو

الزام - میرے خلاف الزام مٹانے کے لیے میں عدالت میں گیا۔ میری عمر 19 سال ہے۔ 3882-3883
میرے پاس بی بی بی بی میں ایک رہائش گاہ ہے۔ جس کا پتہ ہے۔
پتہ: انڈیا ٹراکٹری ٹریٹ ایب 30 از ٹراکٹری ٹریٹ ایب

2 عائد شدہ الزام کی تردید کرتے ہوئے حسب ذیل حقائق پیش کیے ہیں۔ کہ وہ تو
میں مذکورہ عدالت میں ملوث رہا ہوں۔ اور وہ یہ کہ قبضہ حرکت میں نہ کی ہے۔
وہ اس دن گرفت FIR کی حقیقت یوں ہے۔ کہ

خریدی جو بائیل : - مورخہ 17/11/11 میں اپنے گاڑی سے جب وقت 08:30 بجے بی بی بی ٹریٹ ایب پر گیا۔

اور ریاض مدیف عرف جعفر صاحبہ کے پاس گیا۔ وہاں وہ گیا۔ وہاں وہ گیا۔ وہاں وہ گیا۔
اس نے بتلایا کہ میرے پاس رقم نہیں ہے۔ تیار جانے کا ارادہ ہے۔ یہ جو بائیل سمجھنے
پر ٹریٹ ایب کی طرف جا رہا ہوں۔ میں نے اس سے جو بائیل ٹریٹ ایب لیا۔ اور کہا کہ تم سے ہر
پتہ چھوگے۔ اس نے 50 ہزار روپیہ مانگ لیا۔ پھر 18 ہزار روپیہ مانگ لیا۔ اور پھر 18 ہزار روپیہ مانگ لیا۔

میرے پاس 4 لاکھ روپیہ موجود تھا۔ اسے رقم موقع پر دیدی۔ اور میں نے اسے لے لیا۔
تقریباً 10:30 بجے میں اپنے مٹی والے بارشاد خان کی دکان اندرون ٹریٹ ایب پر گیا۔ اور اسے جو بائیل
دکھایا کہ وہ اسے خرید لے۔ یا نہیں لے گا۔ تو بارشاد خان نے کہا کہ یہ ٹریٹ ایب کی قیمت ہے خریدی
ہے۔ پھر میں اپنے چارڑھان رضوان کی دکان لگدانی گئی گیا۔ تو اس نے مجھے کہا کہ یہ ٹریٹ ایب کی قیمت ہے خریدی
ہے۔ تو اس طرح میں شلوک رہنمات میں لگا گیا۔ تقریباً 10:30 بجے وہاں سے لگا گیا۔

میرے اکل نیا ملتا ہے۔ تو اس طرح میں شلوک رہنمات میں لگا گیا۔ تقریباً 10:30 بجے وہاں سے لگا گیا۔
وہ اس آٹے پر ٹریٹ ایب کے راستہ روانہ ہوا۔ شکر دودھ کے آٹے میں بی بی بی ٹریٹ ایب
آٹے جو بائیل دکاندار کے پاس آیا۔ اور اسے جو بائیل ٹریٹ ایب دکھانے لگا۔ کہ وہاں سے لگا گیا۔

شخص (وردی) انعام بہا جرحہ اعدا۔ میرے ساتھ میں ٹریٹ ایب دیکھنے ہی ایسا ہوا کہ لکھ گیا۔ اور
ہوا۔ کہ یہ جو بائیل ٹریٹ ایب ہے۔ میں جو بائیل اپنے ٹریٹ ایب میں رکھنے پر اسے کہا کہ یہ ٹریٹ ایب
ہو کر گئے ہو۔ یہ ٹریٹ ایب کے ساتھ لکھ گیا ہے۔ اس نے فوراً کہا کہ یہ ٹریٹ ایب کے ساتھ اس سے ہے۔

جو بائیل ٹریٹ ایب کی خریدی ہوئی ہے۔ اور تمام رقم سنایا۔ میں نے اسے کہا کہ یہ جو بائیل کی آٹے
صبح آٹے آٹے سے ملے گا۔ 4 لاکھ روپیہ خرید لیا ہے۔ میرے ساتھ آٹے۔ تاکہ اس آٹے سے
بات کر لیں۔ 3 روپیہ ساتھ روانہ ہوئے۔ بارشاد خان کی دکان پر آ کر اسے لکھ گیا۔ اور
میں ریاض مدیف عرف جعفر کو لائے اسے گھر لیا۔ اس کے ساتھ ساتھ ایک صاحب دکان پر بھی لکھ گیا۔

تو دکان سے لے لیا۔ اس نے لکھ گیا ہے۔ جو دکان نے میری عدم موجودگی میں لکھ لیا جو بائیل آٹے
الذبح دی تھی۔ اور ہم دونوں جگہ اور ریاض کو مل کر کے دکان سے لکھ گیا ہے۔ اسے ریاض کو

(Text - sheet)

Attested [Signature]

(3)

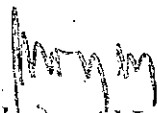
درجی نے صرف ہماروں کو بندھا یا غصا۔ جو اسے گھر سے چوری مار رہے تو اسے ہسپتال بھی لہرا رہا۔
 رکابی گرفتار ہوئی۔ - - - - - 1992 میں تمام جیل بھڑکے گئے۔ جس نے دنگلر گرفتار کے ساتھ ساتھ گرفتار
 = 2002 میں۔ تو FIR کے تحت گرفتار کیا گیا۔ - - - - - FIR کے تحت گرفتار کیا گیا۔
 ہیں۔ - - - - - SHK آپریشن کے دوران ڈاکو نے شخص کا ساتھ سے ملا۔ یہ شخص گرفتار FIR سے درج
 گیا ہے۔ - - - - - 30 سالہ سنی ظلم کیا ہے۔ دونوں گرفتار کے اصل حالات واقعات کو بدل کر ای
 حلف سے اپنے بی بی بی بی FIR درج کیے ہیں۔ - - - - - گرفتار کو انجان بنا کر اپنے ساتھ لے گیا
 کہ ڈیکو عدالت کی پوری تہمتیں مارے اپنا شہری جان بچا گیا ہے۔ - - - - - مگر من دنگلر کو اپنے ساتھ لے گیا
 ہیں۔

علاجیہ اور ہسپتال پر تہمتیں لگائی گئیں۔ - - - - - میں آج صبح کے دو بجے گرفتار کیا گیا اور
 دنگلر دوبارہ حلف اٹھانے کو تیار ہوں۔ - - - - - میں یہ تہمتیں حرکت نہیں کی ہے۔ - - - - - میں گرفتار
 ا سہا کرتی ہوں۔ - - - - - انہ سہا کرتی کی ہے۔ - - - - - اور نہ ہی اس کو بائبل کے چوری مارے ظلم کیا۔ - - - - - میں
 عدالت نہیں رہا ہوں۔ - - - - - اس طرح کو بائبل کے ساتھ ساتھ مارے جیسے دنگلر تھا۔ - - - - - وہ نہ کہی نہ خردیا
 میرا ساتھ دنگلر بائبل جہاں ہے۔ - - - - - حلف اٹھانے سے تعلق رکھتا ہوں۔ - - - - - اگر میں درحقیقت
 میں چوری یا مجرم ہوں۔ - - - - - ڈاکو انہ سہا کرتی اپنے ساتھ جانے ا موقع نہ دینا۔ - - - - - یا اگر کھانا یا کھانا
 کرتی اور حرکت کرتا۔ - - - - - لیکن انہ سہا کرتی دہشت گردی میں گرفتار دل میں اس پر تہمتیں آتی۔ - - - - -
 میں اپنے تو میں دنگلر دماغ کی ہے خمدی کے عالم میں اسے گھر سے ساتھ لیا گیا۔ - - - - - لیکن یہ
 اللہ تعالیٰ۔ - - - - - اصل حقیقت کیا تھی۔ - - - - - اور SHK آپریشن کے ساتھ ساتھ ان ظلم کیا۔ - - - - - میں ہے
 لگا ہوں۔ - - - - - میرا ساتھ ساتھ ساتھ دنگلر کے ساتھ ساتھ انہ سہا کرتی اور انہ سہا کرتی گرفتار نہ لگتی
 حلف سے۔ - - - - - تاہم عدالت کی روشنی میں انہ سہا کرتی گرفتار کیا گیا ہے۔ - - - - - اور انہ سہا کرتی
 کے تہمتیں لگے ہوں۔ - - - - - علاوہ اس میں میرا ساتھ ساتھ SHK آپریشن کے ساتھ ساتھ انہ سہا کرتی گرفتار
 تاہم زکوٰۃ کی ادائیگی کروں۔ - - - - - حالت کی پوری ہوگی۔ - - - - -

مقامی ناٹیکل سٹارٹ اپ کی حالت کے بارے میں جاننے والوں
 حال جو ڈیکو گرفتار کے ساتھ ساتھ دنگلر کے ساتھ ساتھ انہ سہا کرتی گرفتار

Attested
 [Signature]

1. Show cause notice was issued to constable Shad Man No.724 when he was caught red handed with a snatched mobile phone by owner of that mobile phone in a shop in Bannu City. Instead of justifying the possession of the stolen property, the accused constable started quarrelling with the victim and hence his involvement in a mobile snatching gang was unearthed during preliminary probe by the SHO City.
2. A criminal case was accordingly registered against the accused constable vide FIR No.60 and 61 dated 18.2.2014 u/s 382 PPC PS City Bannu. The accused constable was arrested and is now in judicial lockup.
3. Since there is no need of proper and lengthy departmental proceedings, as the misconduct of acting as a robber in Police uniform is established, therefore, summary proceedings as provided under Police Rules (amended vide NWFP gazette, 27 January 1976) is adopted. A show cause notice was served upon him on 21.2.2014 which he duly received but did not bother to reply till this day (28.2.2014).
4. I, Mohammad Iqbal, DPO Bannu, as competent authority, have come to the conclusion that retention of such robbers in police department will defame this disciplined force and major punishment of dismissal from service is therefore imposed upon the accused police officer Constable Shad Man No.724. This order will take effect from 18.2.2014, the date of his involvement in the robbery case.
5. Order announced today i.e 28.2.2014 in absentia as the constable is in judicial lockup Bannu.


(Mohammad Iqbal)
District Police Officer,
Bannu

OB No. 206dated 28.2.2014.

Copies to all concerned.

✓
C ✓
P ✓
B ✓
L ✓
Y

Attested
18/2

(17) Annex : J حضور جناب والا شان ریجنل پولیس آفیسر صاحب بنوں ریجن بنوں

اپیل: کا عدم فرمانے حکم جناب DPO صاحب بنوں جنہوں نے بحوالہ OB نمبر 206 مورخہ 28/02/2014 سائل کو یک طرفہ کارروائی کے تحت ملازمت سے جرم ثابت ہوئے بغیر دس کیا ہے جو کمترین کے ساتھ ظلم ہوا ہے۔

جناب عالی!

سائل انجناب کے حضور عاجزانہ اپیل کرتا ہے کہ۔

1- سائل کے خلاف SHO صاحب تھانہ شی بنوں نے ناجائز FIR نمبر 60 اور 61 مورخہ 18/02/2014 جرائم PPC382 تھانہ شی چاک کئے ہیں اور مقدمات میں گرفتار کر کے سنٹر جیل بنوں بھیجوا یا۔

2- بدروان سماعت عدالت بسلسلہ ضمانت پر دونوں مدعیان نے عدالت کو اسٹامپ پیپر پر تحریری بیانات دیئے۔ تو انہوں نے شک کی بنا پر کانسٹیبل شادمان پر دعویداری کی ہے جو تسلی کرنے پر کانسٹیبل مذکورہ کا مجرم نہیں ہے۔ جو سائل کی عدالت سے ہر ضمانت پر رہائی ہوئی ہے۔

3- کمترین سنٹرل جیل کے جوڈیشنل حوالات میں بند تھا کہ جناب DPO صاحب بنوں کی طرف سے سائل کے نام شلوکا کا نوٹس جاری ہو کر تقسیم ہوا جس کا سات یوم کے اندر جواب طلب ہوا۔

4- چونکہ بندے کی نزاکت و سکنات منجھد تھے۔ سائل نے انتھک کوشش کر کے شلوکا کا نوٹس کا جواب بوساطت جیل حکام مورخہ 28/02/2014 جناب DPO صاحب کے دفتر ارسال کریں۔ لیکن جناب DPO صاحب نے جواب قبول نہ کرتے ہوئے سائل کو ملازمت سے دس کیا ہے۔ کہ سائل کو وقوع چوری کا ملزم ٹھہرایا۔ حالانکہ حالات واقعات اس کے برعکس ہیں۔

5- سائل وقوع کا اصل مجرم نہیں ہے۔ میرا تفتیشیلا پیش کردہ جواب کی فوٹو کاپی اور مدعیان کے بیانات مندرجہ ذیل اسٹامپ پیپر کے احوال برائے ملاحظہ شامل ہے۔ جو سائل کی بے گناہی بارے میں وضاحت کرتے ہیں۔

6- دراصل وقوع بارے اصل ملزم 3 علاقہ تھانہ منڈان کارہاشی تھا اور ملزم ہمایون پٹی کلد نے اسکو اپنے ساتھ شریک جرم نکالا تھا۔ جو تھانہ شی لایا گیا تھا۔ FIR درج کرتے وقت تھانہ سے غائب ہوا اور SHO صاحب نے میرا نام FIR میں درج کیا اور میرے ساتھ نا انصافی کی ہے۔

7- میں وقوع پر چوری میں شریک نہیں رہا ہوں۔ بلکہ چوری شدہ موبائل میں نے ریاض عرف عارف سے مبلغ 14000 روپے پر خریدا تھا جو اس نے یہ موبائل اصل چور ہمایون پٹی کلد سے مبلغ 12000 روپے پر خریدا تھا۔

عاجب! یہ درست ہے کہ چوری شدہ موبائل میرے قبضے میں تھا۔ لیکن مجھے معلوم نہ تھا۔ کہ یہ بالمسر وقت ہے۔ ورنہ میں انغان مہاجر کے ساتھ ہمدردی نہ کرتا۔ کہ ریاض ملزم کو اس کے سنے لے آتا۔ دوسرے FIR 61 کی تمام کہانی جھوٹ پر مبنی ہے اس مقدمہ کی بالمسر وقت ہمایون پٹی کلد کے گھر سے برآمد ہوئے ہیں اور مدعی نے ہمایون کے خلاف دعویداری کی ہے دونوں مدعیان نے میری بے گناہی کے بارے میں اسٹامپ پیپر عدالت کے سامنے بیان کیا ہے۔ میں بے گناہ ہوں۔ میرے خلاف ایک طرف کارروائی بے انصافی ہے۔ عاجزانہ اپیل کرتا ہوں۔ کہ میں

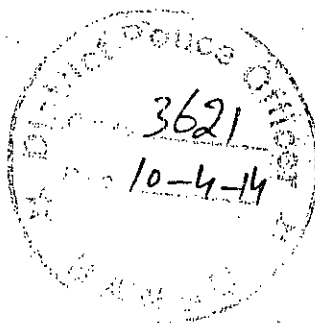
کانسٹیبل کو اپنی ملازمت پر بحال فرمایا جائے اور حکم DPO صاحب کو کا عدم فرمانا جائے۔

اپیل کنندہ Ex- کانسٹیبل شادمان حکمت 724 سکند شہباز عظمت خیل

موبائل نمبر 0332-9767531

Attested
18/2

POLICE DEPARTMENT.



(Annex: K) (18)

BANNU REGION.

ORDER

This order of the undersigned will dispose of departmental appeal submitted by Ex: constable Shadman No. 724 for set asiding the order passed by DPO/Bannu vide OB No. 206 dated 28-02-2014.

The said appeal was referred to DPO/Bannu for comments. DPO/Bannu submitted his comments vide his office memo No. 4940 dated 03-04-2014.

On receipt of his plea, comments of DPO/ Bannu and his service record, the undersigned scrutinized the whole enquiry file leading to his dismissal and it was found that allegations have been proved beyond an iota of doubt by caught red handedly. Being a stigma on the face of the force, he does not deserve to find his way back to the organization whose history is reflect with tremendous sacrifices

Keeping in view the above, , I SAJID ALI KHAN, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules 1975 hereby file the instant appeal with immediate effect.

Order announced.

(Sajid Ali Khan)PSP
Regional Police Officer,
Bannu Region, Bannu.

No. 1020 /EC, dated Bannu the 10 / 4 /2014.

Copy to:-

1. The District Police Officer, Bannu along with service record containing departmental proceeding file for information. and necessary action w/r to his office memo: No. 4940 dated 03-04-2014

OAS/ERC

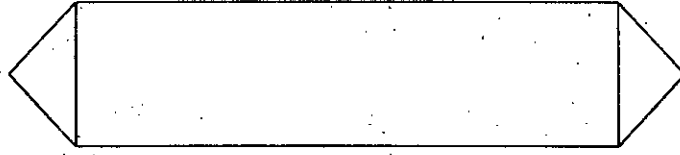
(Sajid Ali Khan)PSP
Regional Police Officer,
Bannu Region, Bannu

For information & further N/ action

[Signature]
15/4/2014

Attested
[Signature]

Before the K.P.K Service **بجھڑا** Tribunal, Pesh



Shadman Hikmat

2، پنجاب

28-4-2014

مورخہ

I.G.P etc

بنام

Shadman Hikmat

مقدمہ

Service Appeal

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام **Shahzada Lofan Zia** کیلئے **Peshawar**

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے

سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Accepted by
Lofan Zia

2014

APR 28

ماہ

28th

المرقوم

العہد واہ العہد

کے لئے منظور ہے۔

Peshawar

مقام

in existence-Respondent's service thus, could not have been terminated without issuing show-cause notice calling upon his explanation and holding of requisite inquiry. [P. 926] C

(ii) Service Tribunal Act, 1973 (LXX of 1973)--

S. 2-A--Constitution of Pakistan (1973), Art. 212--Petitioner's contention that when impugned judgment was announced, Service Tribunal had ceased to have jurisdiction in as much as by that date petitioner bank after completion of privatization process had been handed over to new owner--Contention now being raised was not available to petitioner at the time when appeal was argued before Service Tribunal, therefore, Tribunal could not have considered and dilated upon the same which has been raised before Supreme Court for the first time--Petitioner did not raise such contention in its petition for leave to appeal--Such plea even otherwise would be of no help to petitioner in as much as, mere fact of privatization of Nationalized Institutions by way of transfer/sale of its controlling shares by Federal Government to private party would not be sufficient to oust jurisdiction of Service Tribunal to proceed with case of employees of such institution, as at the time of filing appeal before Service Tribunal he was civil servant as per terms of S.2-A of Service Tribunal Act, 1973--Subsequent development would not deprive or strip such civil servant of his status and the same would have no adverse effect on his pending appeal. [P. 925] A

(iii) Service Tribunal Act, 1973 (LXX of 1973)--

S. 2-A--Civil Servant--Termination of respondents service on the ground that criminal case was registered against him and he was arrested in charge of criminal offence--Legality--Mere allegation of commission of an offence against a person and registration of F.I.R. in respect of certain offence against him would not *ipso facto* make him guilty of commission of such offence--Such person would continue to enjoy presumption of innocence until convicted by a Court of competent jurisdiction after a proper trial with opportunity to defend himself of allegations levelled against him--Removal of respondent on the ground that respondent had lost faith, confidence and trust of competent Authority being illegal order was not be sustainable in law. [P. 925] B

(iv) Service Tribunal Act, 1973 (LXX of 1973)--

S. 2-A--Constitution of Pakistan (1973), Art. 212 (3)--Limitation Act (IX of 1908), Ss. 5 & 14--Appeal against termination of service--Limitation--Condonation of delay, assailed--Delay was condoned by Service Tribunal after minute and detailed examination of facts and circumstances of case, grounds advanced by respondent for delay and pronouncement made by Supreme Court in a large number of cases laying down principles for condonation of delay in filing appeals and applications etc--Service

Tribunal having exercised its discretion judiciously and properly, interference in such exercise of discretion was not warranted. [Pp. 927 & 928] D, E

2004 PLC (CS) 809; 2004 PLC (CS) 802; PLD 2001 SC 176; 2004 SCMR 145; 1994 SCMR 2232; 2003 PLC (CS) 796 and 2004 SCMR 145, ref.

Mr. Shahid Anwar Bajwa, ASC & Mr. Ahmad Ullah Faruqi, AOR for Petitioner.

Mr. Suleman Habib-ullah, AOR for Respondent.

Date of hearing : 10.10.2005.

ORDER

Saiyed Saeed Ashhad, J.--This petition for leave to appeal has been filed by petitioner Bank assailing the judgment dated 12.3.2004 of the Federal Service Tribunal, (hereinafter referred to as the "Tribunal") in Appeal No. 1472(K)/1998 whereby the Tribunal has set aside the order of termination of the respondent and reinstated him in service with full monetary and other consequential benefits.

2. Facts requisite for disposal of this petition are that respondent was employed as Senior Executive Vice President in Habib Bank Limited. He was involved in some criminal charges for which an FIR was registered and he was arrested therein. As a result of his arrest which prolonged on account of dismissal of his bail applications he could not perform his duties on the post held by him. The petitioner Bank after observing that the post could not be kept vacant for an indefinite period is it was not known when he would be enlarged on bail or released from the charges leveled against him and further that on account of his involvement in criminal acts they had lost faith and confidence in him, thus constraints on the part of the management from allowing to occupy a very senior and confidential position terminated his services with immediate effect in pursuance of Clause 15 of the Habib Bank Limited (Staff) Service Rules, 1951 on three months pay in lieu of notice.

3. The respondent submitted his representations legal notices etc but the petitioner Bank did not redress the grievance of the respondent on the ground that his termination was simpliciter and further that his service with the bank was governed by the principle of master and servant which gave ample power to the petitioner Bank to remove/terminate an employee after serving of notice or pay in lieu thereof and there was no requirement of providing opportunity of personal hearing.

4. As the petitioner Bank failed to redress has grievance the respondent approached High Court of Sindh by filing Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan. This petition was dismissed after incorporation of Section 2-A in the Service Tribunals Act, 1973 (hereinafter referred as the "Act"). It will be

advantageous to reproduce the observations of the High Court regarding condonation of delay in filing appeal before the Tribunal as under:

"The petitioner, apart from the available pleas, would be free to apply for condonation of delay under Section 5 of the Limitation Act for the reason that the petitioner has been pursuing his petition diligently and in good faith."

5. The order of the High Court was challenged by respondent before this Court by way of CPLA No. 52 of 1998. The CPLA was dismissed *vide* order dated 4.6.1998 upholding the order of the High Court to the effect that the Tribunal would have the sole jurisdiction to proceed with the case of the respondent after incorporation of Section 2-A in the Act. Consequently respondent filed appeal under Section 6 of the Act on 4.4.1998.

6. The petitioner objected to the maintainability of appeal before the Tribunal on the ground of limitation. The Tribunal after minute and thorough examination of the provisions of Section 5 of the Limitation Act and taking into consideration the facts and circumstances of the case condoned the delay by placing reliance on the pronouncements of this Court laying down the principles for condonation of delay.

7. Feeling aggrieved and dis-satisfied with the impugned judgment the petitioner Bank filed this petition for leave to appeal.

8. We have heard the arguments of Mr. Shahid Anwar Bajwa learned ASC on behalf of petitioner and Mr. Suleman Habibullah learned AOR for respondent.

9. Mr. Shahid Anwar Bajwa in support of the petition raised the following three contentions,--

(i) that on 12.3.2004 when the judgment was announced, the Tribunal had ceased to have jurisdiction to proceed with the case of the respondent inasmuch as by that date the petitioner Bank after completion of privatization process had been handed over to Agha Khan Foundation as they had acquired 51% interest in the petitioner Bank whereafter it could not be said that the Bank was being run controlled and managed by the Federal Government thus depriving the respondent of the status of civil servants as per Section 2-A of the Act.

(ii) that the petitioner on account of his involvement in criminal acts and offences of serious nature for which FIR No. 98 of 1994 dated 26.12.1994 was registered by FIA under Sections 161/162 PPC read with Section 5(2) of Prevention of Corruption Act (II of 1947) was found to be dishonest unreliable, unscrupulous and tricky person becoming unfit for employment in an

institution like a Bank were utmost trust respect credibility and honesty is required leaving no option with the Bank but to terminate his services; and

(iii) that the Tribunal had erred in condoning the delay in filing the appeal by the respondent as no cogent plausible and satisfactory ground had been advanced by the respondent for the delay in filing the appeal and the Tribunal had acted in an arbitrary and fanciful manner in condoning the delay.

10. Mr. Suleman Habibullah, learned AOR appearing on behalf of respondent on the other hand supported the judgment of the Tribunal and submitted that the Tribunal had considered each and every aspect of the case in condoning the delay and minutely examined all the contentions of the counsel for the parties, as well as relevant provisions of the law applicable to the facts and circumstances of the case relating to the rights liabilities and obligations of the parties.

11. Relative to the first contention raised by Mr. Shahid Anwar Bajwa it is to be observed, that this contention was not available to the petitioner at the time when the appeal was argued before the Tribunal therefore, the Tribunal could not have considered and dilated upon the contention which has been raised for the first time today. The petitioner did not even raise this ground in their petition for leave to appeal filed by them in this Court. Even otherwise raising of this plea or ground before us would be of no help to the petitioner in view of the judgment of a larger Bench of this Court in Civil Petitions Nos. 204 to 240, 247, 248-K/2004 and 199-K/05 (*Manzoor Ali and others vs. United Bank Ltd. and another*) holding that mere fact of privatization of Nationalized Institution by way of transfer/sale of its controlling share by the Federal Government to a private party would not be sufficient to oust the jurisdiction of the Service Tribunal to proceed with the case of an employee of such institution as at the time of filing of the appeal before the Tribunal he was civil servant as provided by Section 2-A of the Act and a subsequent development would not deprive or strip such civil servant of his status as civil servant would have no adverse effect on the pending appeal. This contention is therefore decided against the petitioner.

12. Taking into consideration the second contention advanced by Mr. Shahid Bajwa it may be observed that it is a settled principle of law that mere allegation of commission of an offence against a person and registration of FIR in respect of a certain offence or more than one offence against such person would not *ipso facto* make him guilty of commission of such offence and he would continue to enjoy the presumption of innocence until convicted by a Court of competent jurisdiction after a proper trial with opportunity to defend himself on the allegations levelled against him. In the present case the petitioner had acted with utmost hurry and hot haste for which no plausible explanation was provided by them either before the Tribunal or by

Mr. Shahid Bajwa while arguing this petition in this Court What was stated in support of removal/termination was that the post occupied by the respondent was of Senior Executive Vice President, which could not be kept vacant for a long period and that on account of the criminal act/offence committed by him he had lost faith confidence and trust of the competent authority for holding such a senior appointment. Both the grounds advanced by Mr. Shahid Bajwa do not appear to carry weight. As regards the contention that the post could not be kept vacant for long period. It may be observed that it could have been filled in by posting another officer or additional charge of the post could have been given to another officer, till such time the respondent's case had been decided by a competent Court. However, in case of conviction he would have lost his job. The petitioner could have instituted departmental proceedings against the respondent for his alleged criminal acts under their service rules known as Habib Bank Limited (Staff) Service Rules, 1981 (hereafter referred to the "Rules"). Removal of the respondent under clause 15 of the Rules on the ground that respondent had lost faith, confidence and trust of the competent authority was an illegal order which in the garb of termination simpliciter was in effect by way of punishment for the alleged criminal acts of respondent which were sub-judice before a competent Court and which subsequent were found to be baseless and false. Before the quashment of the FIR and pendency of the criminal case the petitioner could have initiated departmental proceedings as the criminal case and the departmental proceedings are entirely different not being co-extensive nor inter-connected. Even after acquittal of respondent in criminal trial, departmental proceedings could have been instituted as the departmental proceedings are concerned with the service discipline, good conduct, integrity and efficiency of the employees. For the above reliance is placed on the case of *Syed Muhammad Iqbal Jafri vs. Registrar, Lahore High Court*, (2004 PLC (C.S.) 809).

13. Admittedly at the time when action of termination was taken against the respondent the petitioner bank was being managed, run and controlled by the Federal Government and though at that time the exact status of the employees of the Nationalized Banks could not be determined but the fact is that the law of Master and Servant had ceased to be applicable as the petitioner bank was no longer a privately managed bank and further that the employees of the petitioner bank had been given certain guarantees and sanction under the Banks (Nationalization) Act, 1974. It is also an admitted fact that Service Rules for the petitioner employees had been framed and were in existence. The competent authority of the respondent bank thus had no power to terminate the services of the respondent without issuing show-cause notice to the respondent, calling upon his explanation and holding an inquiry, if so required, into the allegations. The competent authority thus acted not only in contravention of the provisions of law

relating to the removal dismissal and termination of the employees of a nationalized bank but also violated the provisions of natural justice according to which no one can be condemned without providing him an opportunity of defending himself. Such order could not be said to be a legal valid and proper order. The fact that the Service Rules in existence in the Petitioner's Bank did not have statutory backing would not give unlimited unfettered and absolute power to the Petitioner to ignore the same and to deprive the respondent of his right of access to natural justice. If any authority is required in support of the above proportion the same are available from the judgments in the cases of (i) *Arshad Jamal vs. N.W.F.P. Forest Development Corporation and others* (2004 PLC (C.S.) 802), (ii) *The Managing Director, Sui Southern Gas Co. Ltd. Versus Saleem Mustafa Shaikh and others* (PLD 2001 SC 176) (iii) *Managing Director, Sui Southern Gas Company Limited, Karachi vs. Ghulam Abbas and others* (2003 PLC (CS) 796); (iv) *Nazakat Ali vs. WAPDA through Manager and others* (2004 SCMR 145) and (v) *Anisa Rehman vs. P.I.A.C.* (1994 SCMR 2232).

14. With regard to the contention that the Tribunal had erred in condoning the delay on the ground that no plausible satisfactory and sufficient ground was advanced by respondent for condonation of delay in filing the appeal. It may be stated that delay was condoned by the Tribunal after a minute and detailed examination of the facts and circumstances of the case the grounds advanced by the respondent for the delay and the pronouncements made by this Court in a large number of cases laying down the principles for condonation or otherwise of the delay in filing appeals and applications etc. The Tribunal while condoning the delay did not commit any illegality or material irregularity or acted arbitrarily or against the settled principles governing condonation of delay which would compel this Court to interfere with the exercise of discretion. In a large number of the cases this Court has pronounced that when discretion of condoning the delay in filing an appeal has been legally judiciously and properly exercised then same is not required to be interfered with. Reference may be made to the case of *Managing Director, Sui Southern Gas Company Limited, Karachi vs. Ghulam Abbas and others* (2003 PLC (CS) 796) wherein this Court while discussing the ambit of the discretionary power of the Tribunal relative to condonation of delay observed as under:

Besides above reference, decision of the cases, on merits have always been encouraged instead of non-suiting this litigants for technical reasons including on limitation. In this behalf good number of precedents can be cited where question of limitation was considered sympathetically after taking into consideration the

relevant facts. Reliance is placed on the cases of *Muhammad Yaqub v. Pakistan Petroleum Limited and another* (2000 SCMR 830), *Messrs Pakistan State Oil Company Limited v. Muhammad Tahir Khan and others* (PLD 2001 SC 980), *Teekam Das M. Haseja Executive Engineer, WAPDA vs. Chairman, WAPDA* (2002 SCMR 142). There are application from the appellant but no interference was made by this Court on the premises that Service Tribunal had passed order in exercise of its discretionary powers. In this behalf reference may be made to the case of *WAPDA v. Muhammad Khalid* (1991 SCMR 1765). Relevant para therefrom reads as under thus:

".....As regards the question that no application for condonation of delay had been filed by the respondent, the matter being one of the discretion the finding of the Tribunal cannot be set aside on a technicality alone...."

In the case of *Nazakat Ali vs. WAPDA through Manager and others* (2004 SCMR 145) this Court made the following observations:-

"....It hardly needs any elucidation that sufficiency of cause of condonation of delay being question of fact is within the exclusive jurisdiction of learned Federal Service Tribunal and once the discretion concerning condonation of delay was exercised judiciously by the Service Tribunal it cannot be disturbed by this Court without any justification which is lacking in this case. In this regard we are fortified by the dictum laid down in *Syed Ali Hasan Rizvi v. Islamic Republic of Pakistan* (1986 SCMR 1086), *Muhammad Azhar Khan v. Service Tribunal Islamabad* (1975 SCMR 262), *Water and Power Development Authority v. Abdur Rashid Dar* (1990 SCMR 1513) and *Sher Bahadur v. Government N.W.F.P.* (1990 SCMR 1519).

The conclusion arrived at by the learned Federal Service Tribunal being strictly in consonance of law and being well-based does not warrant any interference. The petition being meritless is dismissed and leave refused.

Perusal of the relevant portion of the judgment of the Tribunal dealing with this issue leaves no doubt that it had decided this issue after a thorough and very minute examination of the facts circumstances and the relevant case. This the exercise of discretion does not require to be interfered with.

16. For the foregoing facts, discussion and reasons this petition for leave to appeal is found to be without any substance. Accordingly it is dismissed and leave to appeal is refused.

(Aziz Ahmad Tarar)

Petition dismissed.

Present: IFTIKHAR MUHAMMAD CHAUDHRY, CJ. MAIN SHAKIRULLAH JAN & SYED JAMSHED ALI, JJ.

SUO MOTU CASE

(CUTTING DOWN OF TREES IN JEHANGIR PARK, SADDAR, KARACHI)

Suo Motu Case No. 3 of 2006. decided on 5.4.2006.

Suo Motu Notice:-

Construction of Multi-Storied Car Parking Plaza--Explanation by representative of City District Government--Jurisdiction of District Government--In view of the order of Supreme Court and objections raised by non-governmental organizations, the City District Government decided to drop the project for construction of car parking plaza--Representative stated that the park was being utilized specified year as a public place, therefore, City District Government had no lawful authority to convert same for commercial purpose--Held: Although project has been abandoned for the reasons mentioned in statement but City District Government is restrained to convert same in future to any other use save in accordance with law--City District Government was directed to restore the status of public park and develop accordingly. [Pp. 930, & 931] A & B

Mr. Naeem-ur-Rehman, ASC for Applicant.

Mrs. Naheeda Mehboob Elahi, Dy. A.G. Mr. Manzoor Ahmed, EDO (Law), City Government, Karachi on Court's Notice.

Date of hearing : 5.4.2006.

ORDER

In pursuance of notice dated 27.3.2006, Manzoor Ahmed, EDO (Law) City Government, Karachi appeared and filed following statement on behalf of City District Government, Karachi.

"The City District Government has already written Letter to the Chief Secretary, Government of Sindh. Copy of the same produced herewith annexure "A". However, CDGK has dropped the project for construction of Parking facility on a portion of Jehangir Park due to serious reservations from the NGOs."

2. The above statement is accompanied by another letter (copy of which has been endorsed to the Chief Secretary Sindh by the City District Government, Karachi). Contents thereof are also reproduced hereinbelow:-

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN KHWA PESHAWAR

Appeal No. 594/2014.

Shadman Hikmat Ex-Constable No.724,
Son of Hikmat Ali Khan resident of
Shahbaz Azmat Khel Tehsil & District Bannu.

(Appellant)

VERSUS

(1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

(2) Regional Police Officer Bannu Region, Bannu.

(3) District Police Officer Bannu.

(Respondents)

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS No.1, 2 & 3.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

- 1) That the appellant has approached the Honourable Tribunal with unclean hands
- 2) That the appellant is estopped to file the appeal due to his own conduct.
- 3) That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
- 4) That the appellant has concealed the material facts from the Honourable Tribunal.
- 5) That the appeal of appellant is not maintainable in its present form.
- 6) That the appellant has no cause of action.

OBJECTIONS ON FACTS

- (1) Pertains to record. The accused is directly charged in the said FIR and the stolen/snatched articles were recovered from his possession.
- (2) Preliminary inquiry through SHO City was conducted wherein it was established that the appellant was the active member of mobile snatching gang. The investigating officer has also held responsible the accused for the offence in the report under 173 CrPC. Police is a disciplined force and keeping such person in police force would get bad name for police and police will lose public trust as police is the force which protect public property and lives.
- (3) Incorrect. Keeping in view serious allegations of theft summary proceeding under Police Rules 1975 was initiated and show-cause notice upon the appellant was served on 21.02.2014 but he failed to submit reply till 28.02.2014. Thereafter a legal and valid order was passed against the appellant.
- (4) Pertains to record the departmental appeal of the appellant was found unsatisfactory, baseless and rightly rejected on merit.

OBJECTIONS ON GROUNDS.

- A. Incorrect. In both the FIRs the appellant was directly charged and he was caught red handed with a snatched mobile phone. Being a servant of discipline force he was the active member of mobile snatching gang as evident from the preliminary inquiry SHO City and charge-sheet under section 173 CrPC. In the departmental probe the charges have been fully established. Further proceedings in criminal court and departmental proceedings both are different and can run side by side.

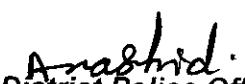
- B.** Incorrect. Criminal proceeding and departmental probe can not be preceded jointly as per the verdict of Superior Courts. The offence is of moral turpitude which is absolutely established during preliminary probe and investigation. The inquiry report enclosed as annexure "A".
- C.** Incorrect. As explained in preceding para.
- D.** Incorrect. The order is legal and in accordance with law and based on facts.
- E.** Incorrect. The appellant was dealt under Police Rules 1975. keeping in view the solid documentary proof, the appellant was proceeded under summary proceeding by issuing show-cause notice etc.
- F.** Incorrect. All the codal formalities were observed during summary proceeding.
- G.** Incorrect. The orders of respondents are legal, based on facts, justice and in accordance with law.
- H.** Incorrect. The appellant was appointed as Constable on 19.02.2013 and during probation period, he has committed serious offence of moral turpitude.
- I.** Incorrect. FIRs were lodged against the appellant by the private complainants under section 154 CrPC duly signed by them under the law and the appellant was caught red handed with a stolen article which is an ample proof for departmental action.
- J.** Incorrect. As stated above, after preliminary inquiry, summary proceeding under Police Rules 1975 followed by a show-cause was initiated against the appellant but he willfully did not bother to reply.
- K.** That the respondents may be allowed to add or advance any other grounds during the hearing of appeal.

Prayer:

In view of the above facts and stated reasons, the appeal of appellant is devoid of legal force, may kindly be dismissed with costs.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No.2)


District Police Officer,
Bannu.
(Respondent No.3)

Annexure 'A 3

(8)

R/Sir

It is submitted that constable Shadman no 724 posted at Police Line Bannu, was absented from his legal duty on 17-2-2014.

At 18:15 hours vide D.D no 44 D/~~17-2-2014~~ ^{Police line:}

On 18-2-2014 The above mentioned accused constable alongwith his other co-accused were directly charged in ^{case} FIR no 60, D/18-2-2014 u/s 382 ppc. They ~~were~~ ^{and} also charged in another ^{case} FIR no 61 D/18-2-2014 u/s 382 ppc P's city.

On 19-2-2014 The said accused constable alongwith other co-accused were arrested by the local Police of P's city. From their possession the stolen property i.e. Mobiles cash and M/cycle were recovered.

Other progress if any achieved will be communicated as early as possible.

Report is submitted for information and n/legal action please.

A. J.
Ri/Line
19/2/2014

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN KHWA PESHAWAR

Appeal No. 594/2014.

Shadman Hikmat Ex-Constable No.724,
Son of Hikmat Ali Khan resident of
Shahbaz Azmat Khel Tehsil & District Bannu.

(Appellant)

VERSUS

- 1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2) Regional Police Officer Bannu Region, Bannu
- 3) District Police Officer Bannu

(Respondents)

COUNTER AFFIDAVIT

We, do hereby solemnly affirm and declare that the contents of the attached comments are true and correct to the best of our knowledge and belief and nothing has been withheld or concealed from this Honorable Tribunal.



(Deponent)

**Provincial Police Officer
Khyber, Pakhtunkhwa, Peshawar**

(Respondent No.1)

Deponent

**Regional police Officer
Bannu Region, Bannu**

(Respondent No.2)



(Deponent)

**District Police Officer,
Bannu**

(Respondent No.3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN KHWA PESHAWAR
Appeal No. 594/2014.

Shadman Hikmat Ex-Constable No.724,
Son of Hikmat Ali Khan resident of
Shahbaz Azmat Khel Tehsil & District Bannu.

(Appellant)

VERSUS

- 1) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2) Regional Police Officer Bannu Region, Bannu
- 3) District Police Officer Bannu

(Respondents)


AUTHORITY LETTER.

Mr. Mir Faraz Khan Inspector Legal Bannu is hereby authorized to appear before
The Service Tribunal Khyber Pakhtunkhwa Peshawar on behalf of the undersigned in the
above cited case.

He is authorized to submit and sign all documents pertaining to the present appeal.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No.2)


District Police Officer,
Bannu.
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE: Service Appeal No. 594 / of 2014

Shadman Hikmat ...VERSUS... Provincial Police Officer etc

REJOINDER OF THE APPELLANT.

Respectfully Sheweth:

REPLY OF OBJECTIONS:

- 1-2. That the appellant approached the Tribunal with clean hands and with a bonafide claim, hence objections are untenable.
3. All the necessary and proper parties have been impleaded in the appeal, therefore, the objection is untenable.
4. Incorrect. No material fact has been concealed by the appellant, hence the objection is untenable.
- 5-6. That the appeal of the appellant is maintainable and he has a legal cause of action and valid locus-standi.

ON FACTS:

Para-1. Incorrect and misleading. Nothing was recovered from the possession of the appellant and criminal/trial Court already discharged/acquitted the appellant in the alleged FIRs. The statement of respondents is false and based on malafide.

Para-2. Incorrect. An exparte so called inquiry is conducted, which has no value in the eye of law. Nothing was proved against the appellant and the complainant charged the appellant mere on suspicion, therefore, he effected Compromise with the appellant and the appellant was released on bail from the Criminal Court. It is essential to mention that the trial Court has already

discharged the appellant in both the cases. (Annexure R/1 & R/2).

Para-3. Incorrect. The reply of Show Cause Notice was not entertained by the authority and hurriedly passed the impugned orders. The action of competent authority is not legal and a defeat of truth and justice.

Para-4. Incorrect. The departmental appeal of the appellant was well founded and reasonable but went unheeded.

ON GROUNDS:

A to K.

Incorrect. All the grounds taken in the appeal are legal and the reply of the respondents is irrelevant and it seems that they are quite alien to relevant law and rules. The complainant already effected Compromise with the appellant and the Trial Court already discharged the appellant in both the FIRs/cases.

It is settled principle of law that where charges in criminal and departmental proceedings are the same, acquittal in criminal case of the accused entitled him for reinstatement into service. In the light of above principle the appellant is entitled for reinstatement into service.

It is, therefore, humbly prayed that the relief may kindly be granted as prayed for in the appeal.

Shadman

Appellant

Through:

(Signature)

(Shahzada Irfan Zia)
Advocate, Peshawar.

Dated: 30.04.2015

AFFIDAVIT

I Shadman Hikmat appellant do hereby declare on oath that the Contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from the Court.

Shadman
Deponent

Attested
(Signature)
30.04.2015

(W)

darkness" which means that the accused were charged only on the basis of suspicion as no definite source for their involvement was ever disclosed. He also stated that "I have got no objection if all the accused are acquitted in the instant case and also not interested in further prosecution of the accused.

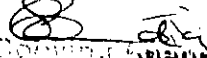
Therefore, keeping in view the above referred circumstances there is no prospect of conviction of accused in the instant case. Hence, the accused facing trial are hereby discharged from the charges leveled against them. Accused are on bail. Their sureties stand cancelled and discharged from liabilities of bail bonds.

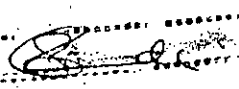
Case property (if any) be disposed off as per law after expiry of appeal/revision. Case file be consigned to RR after completion.

Announced
24-10-2014

Naeemullah Khan Jadoon
Judicial Magistrate-II, Bannu

ATTESTED


Court Secretary
Lower District Court Bannu
12-11-14

Registration No. 3428
Date of Presentation of applicant 12-11-14
Date of the Receive of the File 12-11-14
Date of the Presentation of the Cd. 12-11-14
Date of Delivery of Copy 12-11-14
No of Copies / Words 2
Court Fee Rs. 2
Stamp Rs. 2
Signature of Court Secretary 

لہذا یہ ہے کہ ان کے خلاف جرم ثابت نہیں ہو سکا۔
 24-10-14 بمطابق 2-4-14ء 301/125/14
 سر ایچ ایم سی بی

Order-09
 24-10-2014

پی ایچ جی

APP for the state present. Accused on bail alongwith their counsel. Complainant in person present.

Accused Hamayun Khan, Shadman and Riaz alias Arif have been booked in case FIR No.60 dated 18-02-2014 U/S 382 PPC PS City.

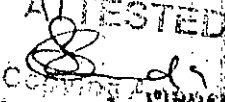
On availability of complainant his statement recorded as PW-1.

Thereafter, counsel for accused advanced arguments for discharge of accused.

Arguments heard and record perused.

Perusal of record reveals that complainant/PW-1 stated in his cross examination that "That he could not identify the accused due to pitch

Nasirullah Khan
 Judicial Magistrate
 Fardes

ATTESTED

 Attesting Agency
 Lower Court Bahau
 12-11-14

عدالت جناب II جج صاحب ہون

سرکار، نام، بمالوں وغیرہ

تقدیم 60 حروف 18 2/14 - رقم 382 - تھانہ سٹی

استدعا:- درخواست دربار کبریٰ ملزانی زیر دفعہ 249A ع 249A
24/10/14

جان عالی!

۱- یہ سائون املزانی کا مقدمہ نزد عدالت حضور میں زیر سماعت ہے جس میں آجکل تاریخ پیشی پر شہادت مقرر ہو کر مدعی کی شہادت بطور ۱-۳۳ قلمبند ہوا۔

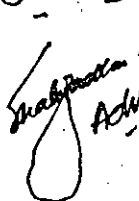
۲- یہ مدعی کی شہادت کی روشنی میں سائون املزانی کیخلاف کوئی کیس نہیں بنتا۔


۳- یہ مقدمہ بڑا اگر مزید جاری رکھا جائے تو صرف اور صرف عدالت کا قیمتی وقت ضائع ہوگا۔

لہذا استدعا ہے کہ سائون املزانی کو زیر دفعہ 249A ع 249A پر کیس چھوڑ دیا جائے۔

حرف - 24-10-2014

سائون املزانی ۱، بمالوں ۲، شادمان ۳، ریاض عرف غلاف

بذرا جو کس
Adv: 

ATTESTED

Copying Agency
Lower Court Bannu
12-11-79

بیان آذان ذبیح اللہ ولد تہر اصفیٰ مکہ افعال ماں غزل
P.W.1 24/10/15
حال اندرون ملک گیت ہوں لگا

حلفاً بیان کیا کہ میری تمام سبھی اندرون ملک گیت میں

نائبی کی دوران ہے 2014-2017 دوران کا وقت میں

دکنہ روڈ بیرون ملک گیت کا سامنے گھوڑا تھا اور اسے گھوڑے

کے ساتھ موٹائل پر بات کرنا میں مصروف تھا کہ اس دوران

بوقت 9:30 بجے ایک موٹر سائیکل پر دو اشخاص گھار گئے

گئے اور مجھ سے میرا موٹائل چھین کر لے گئے اور ساتھ ہی

میں گھار روپہ بھی زبردستی نکال کر لے گئے۔ میں نے موٹائل

اور رقم لے کر گاہک طرف منظر میں تمام سڑک میں لپورت

درجہ کی میرا لپورت Ex. P.W.1 ہے جس پر میرا دستخط درج ہے

لپورت شدہ ہے۔ میں نے تفتیش افسر کو نقشہ موقع کے ساتھ منظر کی لپورت

XX: اب میں منظر منظر کا خلاف کاروائی کا خواہاں نہیں ہوں۔

وقوعہ رات کے تاریکی کا ہے۔ میں نے منظر منظر کی شناخت نہیں کی ہے

ATTESTED

Copied Agency
Lower Court Bannu
12-11-15

P.F. 5

ES
11
11

(۱۲)

مذکورہ بالا گواہوں کے ناموں کو کوئی مذکور نہیں ہوگا

مذکورہ بالا گواہوں کے ذریعہ عدالت کو رپورٹ میں، جیسا کہ

پیش کیا ہے

من وکرم علیہ

Jm. Bannu

24/10/14

ATTESTED
Copying Agency
Lower Court Bannu
12-11-14

3428

..... 12-11-14

..... 12-11-14

..... 12-11-14

..... 12-11-14

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..... 2

Signature of Clerk.....

لہذا 2 مئی 2014ء کو 2-4-14 (8-1) 124
24-10-14
میں

Order-09
24-10-2014

31

APP for the state present. Accused on bail alongwith their counsel. Complainant in person present.

Accused Hamayun Khan, Shadman and Riaz alias Arif have been booked in case FIR No.61 dated 18-02-2014 U/S 382 PPC PS City.

On availability of complainant his statement recorded as PW-1. thereafter, counsel for accused moved section 249-A Cr:PC application.

Arguments heard and record perused.

Perusal of record reveals that complainant/PW-1 stated in his cross examination that "That he could not identify the accused due to pitch darkness" which means that the accused were charged only on the basis of suspicion as no definite source for their involvement was ever disclosed. He also stated that "I have got no objection if all the accused are acquitted in the instant case and also not interested in further prosecution of the accused.

Therefore, keeping in view the above referred circumstances there is no prospect of conviction of accused in the instant case. Hence, the accused facing trial are hereby discharged from the charges leveled against them. Accused are on bail. Their sureties stand cancelled and discharged from liabilities of bail bonds.

Case property (if any) be disposed off as per law after expiry of appeal/revision. Case file be consigned to RR after completion.

Announced
24-10-2014

Naomal Khan Jadoon
Naomal Khan Jadoon
Judicial Magistrate-II, Bannu

Registration No. 3427
Date of Presentation of applicant. 12-11-14
Date of the Receive of the File. 12-11-14
Date of the presentation of the Copy. 12-11-14
Date of delivery of Copy. 12-11-14
No of Copies. 1
Urgent No. No.
Total Rs. 1
Signature of Copies. [Signature]

ATTESTED
[Signature]
Comptroller Agency
Lower Court Bannu
12-11-14

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بیان آذان مدثر آمین ولد عطاء الرحمن گھوٹنگی
PW 1
24/10/14

پوشیدہ حال حیدرآباد بنگ

حلقہ بیان کیا کہ مورخہ 14-2-17 میں لاکھ وقت

گھر خود سے نکل کر برفض ادر گیل خان بوقت 9:00 بجے

جب مسجد فقیر ہاشم دہلی تو ساتھ میں سائیکل پر

دو اشخاص میرے نزدیک آکر موٹر سائیکل سے اتر کر

مجھ سے میرا موبائل لو گیا اور تیس چھین کر موٹر سائیکل

پر سوار ہو کر چلے گئے۔ پورے میں نے تھانہ بسی جائے پورٹ

در 9 بجے میرا رپورٹ EX-PW 1 ہے۔ میں نے پولیس کو

اسی رات شکریہ موقع بھی بتایا۔

14
Muzaffar Khan Jahan
Judicial Magistrate
24/10/14

XX : میں نے ملزمان کی شناخت نہیں کی ہے۔ بوقت حسین وقت

تاریکی تھی کسی قسم کی روشنی نہیں تھی۔ میں نے ملزمان کو

خود حال پولیس کو رپورٹ میں نہیں بتائے تھے۔ ملزمان کا خلاف

کوئی دعوہ درج نہیں آیا۔ اگر ملزمان میری کیا جا تو میں مدعی کو

من کردہ دست لکھی

ATTESTED
Copying Agency
Lower Court Barani
12-11-14

کوئی ملزم نہ ہوگا

Jm. II. Barani
24-10-14

عدالت خان II جج صاحب ہون

سرکار بنام بہاولون وغیرہ

تقدیم کا حورہ 2/14 18 جم 382 ع تہا سہی

استدعا:- درخواست دربارہ بریت ملزبان زیر دفعہ 249A ع

ضامی!

۱- یہ سائنس اہلکار کا مقدمہ بلکہ عدالت حضور میں زیر سماعت ہے
لہذا آجکل تاریخ میں اس شہادت مقرر ہو کر مدعی کی شہادت
بلاور 1-100 قلمبند ہوا۔

۲- یہ مدعی کی شہادت کی روشنی میں سائنس اہلکار کی شہادت کو
کیس نہیں بننا۔

۳- یہ مقدمہ اگر مزید جاری رکھا جائے گا تو صرف عدالت حضور
کا قیمتی وقت ضائع ہوگا۔

لہذا استدعا ہے سائنس اہلکار کو زیر دفعہ 249A ع
بری کیے جائے۔

حورہ - 2014-10-24

Nazimuddin Khan, Judge
Judicial Magistrate II,
Banna 29/10/14

سائنس اہلکاران :- ۱ بہاولون ۲ شادمان ۳ راجن عرف

Mahjabeen
Adv. نذر گوگل

ATTESTED
C. S. Khan
12-11-14

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2043 /ST

Dated 6 / 12 / 2016

To

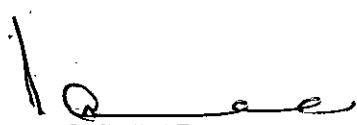
The D.P.O Bannu,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 30.11.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.