

19.07.2022


Proper Bench is not available, therefore, case is adjourned to 20.10.2022 for the same as before.



Reader

20th Oct, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. To come up for arguments on 20.12.2022 before D.B.



(Fareeha Paul)
Member(Executive)



(Kalim Arshad Khan)
Chairman

20.12.2022

Appellant present through counsel. Muhammad Riaz Khan Paindakhel learned Assistant Advocate General for official respondents present.

Written reply on behalf of respondent No. 5 has already been submitted, while respondents No. 1 to 4 were given last chance to submit written reply vide order sheet dated 28.04.2022. Despite directions written reply was not submitted, therefore, right of submission of written reply of respondents No. 1 to 4 stands struck off. To come up for arguments on 06.03.2023 before D.B.


(Fareeha Paul)
Member (J)


(Rozina Rehman)
Member (J)

SCANNED
KPST
Peshawar

11.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for respondents present.

Reply/comments on behalf of respondent are still awaited. Learned Additional Advocate General sought time for submission of reply/comments. Last opportunity is granted to respondent to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 28.04.2022.

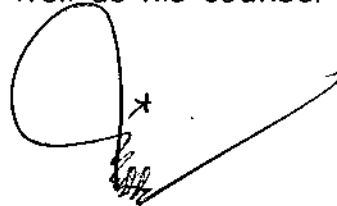


(Atiq-Ur-Rehman Wazir)
Member (E)

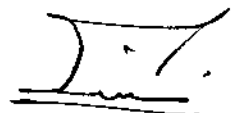
28.04.2022

Nemo for the appellant. Mr. Imtiaz Ali Shah, Assistant Commission as representative on behalf of respondent No. 5 alongwith Mr. Kabirullah Khattak, Additional Advocate General present and submitted comments, which are placed on file. Learned Additional Advocate General requested that time may be granted to him for submission of reply/comments on behalf of respondents No. 1 to 4. Respondents No. 1 to 4 are directed to submit written reply/comments on the next date positively, failing which their right for submission of reply/comments shall be deemed as struck off. Adjourned. To come up for submission of written reply/comments on behalf of respondents No. 1 to 4 as well as arguments on 19.07.2022 before the D.B.

Notice for prosecution of the appeal be issued to the appellant as well as his counsel through registered post for the date fixed.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

Imran Khan, 7262/2021

24.09.2021

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant while opening his arguments briefed the court about service back ground of the appellant who was initially appointed as Levy Sepoy in the office of respondent No.5 on 16.06.2010. He was nominated in FIR No. 562 dated 05.06.2017 under Section-154 Cr.PC, Police Station City District Hangu. He was convicted by the court of competent jurisdiction for one year rigorous imprisonment on 07.06.2018 against which the appellant approached Peshawar High Court, Peshawar. The Peshawar High Court, Peshawar vide its judgement dated 25.03.2019 set aside order of the Trial Court and remanded back the case to the trial court for re-writing the judgement. On the basis of retrial by the Trial Court, the appellant was acquitted on 11.06.2019. The appellant has assailed and challenged the impugned order dated 01.08.2018 whereby he was "terminated", by respondent No.5 against which a departmental appeal was preferred on 26.06.2019 and after waiting for statutory period no decision was made thereon by the respondents, hence the instant service appeal instituted in Service Tribunal on 12.08.2021. It was further contended that on conviction of the appellant by the court on 07.06.2018 the appellant was terminated vide impugned order dated 01.08.2018. The appellant on his acquittal vide judgement of trial court in the remanded case, dated 11.06.2019, submitted his departmental appeal on 26.06.2019. However, in the wake of 25th Constitutional amendment (merger of ex-FATA) the case could not be decided on the question of jurisdiction of the authority till 29.03.2021 and that too on the direction of Peshawar High Court in writ petition No. 1818/2020 and COC No:24-P/2021.

Points raised need consideration. The appeal is provisionally admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time or extension of time is not sought, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11.01.2022 before the D.B.

Appellant Deposited
Security & Process Fee

24-9-21



(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7262 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/08/2021	<p>The appeal of Mr. Imran Khang presented today by Mr. Muhammad Ilyas Orakzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

Prayer in appeal:

On acceptance of this appeal, both the impugned termination orders dated 01/08/2018 & 29/03/2021 of respondent No 5 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits with such other relief as may deemed fit in the circumstance of the case, may also be granted in favour of the appellant.

Respectfully Sheweth:-

1. *That the appellant alongwith others were appointed through Order No 1606/PA/LK dated 16/06/2010 as Levy Sepoy by respondent No 5. (Copy of appointment order is attached as annexure "A").*
2. *That the appellant performed his duties with great zeal and devotion without any complaint whatsoever regarding his performance.*
3. *That the appellant was enroped in a fake, bogus criminal case FIR No 562 dated 06/06/2017 u/s 377 PPC Police Station City Hangu. (Copy of FIR is attached as annexure "B").*
4. *That since his arrest, the appellant was behind the bars and face the criminal trial of the above case, after concluding of*

trial, the appellant was convicted and sentenced for One Year RI on 07/06/2018 by the learned Additional Sessions Judge Hangu.

5. That after conviction, the appellant was terminated from his service by respondent No 5 through impugned Order No 1291/PA/LK dated 01/08/2018 with effect from 07/06/2018 retrospectively. (Copy of termination order dated 01/08/2018 is attached as annexure "C").
6. That against his conviction the appellant filed a Criminal Appeal No 698-P/2018 before the Honourable Peshawar High Court, Peshawar, the Honourable Peshawar High Court, Peshawar set aside the impugned order of learned Additional Sessions Judge-I, Hangu and case was remanded to the learned trial court for re-writing judgment, with the above terms the appeal of the appellant was disposed off by the Honourable Peshawar High Court, Peshawar vide order dated 25/03/2019. (Copy of the order dated 25/03/2019 is attached as annexure "D").
7. That after remanding the case to the learned trial court for re-writing judgment, the learned trial court after providing

an opportunity of hearing to the parties, the learned trial court acquitted the appellant on 11/06/2019 from the charges leveled against him. (Copy of the judgment dated 11/06/2019 is attached as annexure "E").

8. That the appellant after his acquittal, submitted an appeal to respondent No 5 on 26/06/2019, the respondent No 5 sent the said appeal to District Police Officer (DPO)/respondent No 4 and DPO/respondent No 4 sent the same to RPO Kohat Region Kohat/respondent No 3 through letter No 406/EC dated 10/07/2019. (Copies of appeal and letter dated 10/07/2019 are attached as annexure "F").
9. That the Regional Police Officer/respondent No 3 vide his letter dated 16/01/2020 refused to accept the appeal of the appellant and sent it back to the respondent No 4 with observation that the matter is beyond the jurisdiction of this office as police appellate forum. (Copy of letter dated 16/01/2020 is attached as annexure "G").
10. That due to the above hierocracy between the respondents, the appellant having no alternate remedy filed a Writ Petition No 1818-P/2020 titled "Imran Khan...Versus..."

Provincial Police Officer KP & others” before the Honourable Peshawar High Court, Peshawar, which was disposed off on 18/03/2020 with the direction that the Worthy Deputy Commissioner Orakzai consider the case of appellant in accordance with law, however, in case of rejection of appeal of appellant, the Worthy Deputy Commissioner shall give reason thereof. (Copy of writ petition and order dated 18/03/2020 are attached as annexure “H”).

11. *That despite the directions of the Honourable Peshawar High Court, Peshawar the respondent No 5 did not bother to decide the appeal of the appellant, for compliance of the above order the appellant filed a Contempt of Court Petition No 24-P/2021 during the contempt of court proceeding the respondent No 5 produce before the court alongwith the impugned order No 687/DC/R/C-21 dated 29/03/2021 and stated that the order of this Honourable Court has been complied, so in above terms the contempt of court proceedings was disposed off vide order dated 12/04/2021. (Copy of Contempt of court petition and order dated 12/04/2021 are attached as annexure “I”).*

12. That the appellant was aggrieved from the impugned Order No 687/DC/R/C-21 dated 29/03/2021 of respondent No 5, submitted an appeal before respondent No 4 through Diary No 35 PA dated 22/04/2021 for re-instatement on his service, but till now no order has been passed by the respondent No 4. (Copy of appeal is attached as annexure "J").

13. That the appellant once again highly aggrieved from the impugned orders, acts & actions of the respondent No 5, filed the instant Service Appeal on the following ground inter alia:-

Grounds:-

- A. That the both the impugned termination orders dated 01/08/2018 & 29/03/2021 of respondent No 5 are illegal, void, unlawful, without lawful authority and ineffective upon the rights of appellant, hence needs to be set aside.
- B. That the both the impugned termination orders dated 01/08/2018 & 29/03/2021 of respondent No 5 are illegal, non speaking orders, ambiguous as the appellant was not served with any Show Cause Notice nor proper/regular

inquiry was conducted, so the appellant was condemned unheard.

- C. *That the impugned order dated 01/08/2018 of respondent No 5 is illegal, against the law, void ab-initio, as the executive authority has no power to pass the order with retrospective effect on this score alone, the impugned order dated 01/08/2018 is liable to be set aside.*
- D. *That after acquittal of the appellant, the charges of the alleged crime has not proved, as per settled law, every acquittal is honorable acquittal, but the respondents instead of giving benefit of acquittal, dismissed the appellant's representation on technical ground of jurisdiction, which is not allowed as per law.*
- E. *That the appellant has served the department for more than 7 years, while the appellant is deprived from his bread and butter alongwith his family on the basis of criminal case, the competent court of law, after conclusion of trial acquitted the appellant from charges, but for unknown reasons have refused to give benefit of acquittal to the appellant on technical ground.*

- F. *That all the proceedings initiated against the appellant, based on malafide and malicious and purportedly were initiated in order to displace the appellant from his post and appoint any other blue-eyed.*
- G. *That prior to the issuance of both impugned orders of respondent No 5, no meaning full/ purpose full chance of personal hearing was provided to the appellant, the impugned orders are against the principle of natural justice.*
- H. *That both the impugned termination orders dated 01/08/2018 & 29/03/2021 of respondent No 5 are in violation of Section 24-A of General Clauses Act, as the competent authority has failed to site any reason or justification in the said orders.*
- I. *That it is well settled principle of natural justice enshrined in the precedents of superior courts as well that where the competent authority is going to impose any penalty etc the regular inquiry to that effect is necessary.*
- J. *That the appellant was not willfully absence from his duties, but his absence was due to fake criminal case and that very reason, he was behind the bars.*

OFFICE OF THE POLITICAL AGENCY ORAKZAI AGENCY

13

ORDER:

The following persons are hereby appointed as Levy Sepoys against the newly created posts in scale No.1 plus usual allowances as admissible under the

9

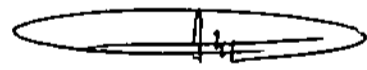

- K. That the instant appeal is within time and this Honourable Tribunal has the jurisdiction to entertain the instant appeal.
- L. That the appellant reserves the right to agitate any other ground at the time of arguments.

It is, therefore, respectfully prayed that on acceptance of this appeal, both the impugned termination orders dated 01/08/2018 & 29/03/2021 of respondent No 5 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits with such other relief as may deemed fit in the circumstance of the case, may also be granted in favour of the appellant.

Dated:- 11/08/2021

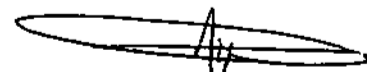

Appellant

Through:-


Muhammad Ilyas Orakzai
Advocate High Court
&

Muhammad Shabir Khalil
Advocate High Court

Certificate:-

It is certify that no such like Service Appeal has earlier been filed by the Appellant in this Honourable Tribunal.


Advocate.

30	Zahid Rehman son of Zarman Shah	-do-
31	Sadiqullah son of Zaliman Shah	-do-
32	Muhammad Farooq son of Hukman Badshah	-do-
33	Muhammad Zahid son of Muhammad Ali Shah	-do-
34	Rashidullah son of Khawaja Muhammad	Dradar Mamazi
35	Muhammad Taib son of Rafiullah	-do-
36	S.Zeshan son of Burhanudin	A'Khel
37	Muhammad Tariq son of Lalmin Khan	-do-
38	Muhammad Rashid son of Laimin Khan	-do-
39	Abdul Samad son of Said Umar	-do-
40	Razim Khan son of Umar Gul	-do-
41	Arifullah son of Rafiullah	Biland khel
42	Hazratullah son of Muhammad-Kabir Khan	-do-
43	Reyal Khan son of Pehlawan Khan	Mishti
44	Amin Rehman son of Mir Baz Khan	-do-
45	Muhammad Asif son of Sawab Gul	-do-
46	Muhammad Zaman son of Muhammad Rafiq	-do-
47	Jamil Khan son of Jan Muhammad	-do-
48	Asad Khan son of Aqal Khan	-do-
49	Wahidullah son of Nadar Khan	-do-
50	Noor Khan son of Janat Khan	-do-
51	Muhammad Shuaib son of Taj Muhammad	-do-
52	Muhammad Irshad son of Tar Khan	-do-
53	Hazratullah son of Ajab Khan	-do-
54	Dost Muhammad son of Khan Akbar	-do-
55	Shah Mehmood Khan son of Toor Khan	-do-
56	Muhammad Tahir son of Said Nazir	-do-
57	Azizullah son of Kamal Khan	-do-
58	Wasim Khan son of Hakim Khan	-do-
59	Muhammad Daud Shah S/O Ramazan shah	-do-
60	Shakil Khan son of Sobat khan	-do-
61	Muhammad Riaz son of Zaran Shah	Sheikhan
62	Tauseef Rehman son of Muhammad Ajmal	-do-
63	Khial Muhammad son of Said Nazir	-do-
64	Saqibullah son of Khan Akbar	-do-
65	Masror Hassan son of Ajmal Khan	-do-
66	Muhammad Shafiq son of Ateen Badshah	-do-

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30.	Zahid Rehman Son of Zarman shah	-do-
31.	Sadiqullah Son of Zaliman Shah	-do-
32.	Muhammad Farooq Son of Hukam Badshah	-do-
33.	Muhammad Zahid Son of Muhammad Ali Shah	-do-
34.	Rashidullah Son of Khawaja Muhammad	Dradar Mamazi
35.	Muhammad Taib Son of Rafiullah	-do-
36.	S Zeshan Son of Burhanddin	A khel
37.	Muhammad Tarqi Son of Lalmin Khan	-do-
38.	Muhammad Rashid Son of Lalmin Khan	-do-
39.	Abdul Samand Son of Said Umar	-do-
40.	Razim Khan Son of Umar GUI	-do-
41.	Arifullah Son of Rafiullah	Biland Khel
42.	Hazratullah Son of Muhammad Kabir Khan	-do-
43.	Reyat khan Son of Pehlwan Khan	Mishti
44.	Amin Rehman Son of Mir Baz Khan	-do-
45.	Muhammad Asif Son of Sawab Gul	-do-
46.	Muhammad Zaman Son of Muhammad Rafiq	-do-
47.	Jamil khan Son of Jan Muhammad	-do-
48.	Asad Khan Son of Aqal Khan	-do-
49.	Wahidulah Son of Nadar Khan	-do-
50.	Noor Khan Son of Jannat Khan	-do-
51.	Muhammad Shuaib Son of Taj Muhammad	-do-
52.	Muhammad Irshad Son of Tar Khan	-do-
53.	Hazratullah Son of Ajab khan	-do-
54.	Dost Muhammad Son of Khan Akbar	-do-
55.	Shah Mehmood khan Son of Toor Khan	-do-
56.	Muhammad Tahir Son of Said Nazir	-do-
57.	Azizullah Son of Kamal Khan	-do-
58.	Wasim Khan Son of Hakim Khan	-do-
59.	Muhammad Daud Shah S/o Ramazan Shah	-do-
60.	Shakir Khan Son of Sobat Khan	-do-
61.	Muhammad Riaz Son of Zaran Shah	Sheikhan
62.	Tauseef Rehman Son of Muhammad Ajmal	-do-
63.	Khial Muhammad Son of Said Nazir	-do-
64.	Saqibullah Son of Khan Akbar	-do-
65.	Masror Hassan Son of Ajmal Khan	-do-
66.	Muhammad Shafiq OSn of Aleen Badshah	-do-

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A. W.

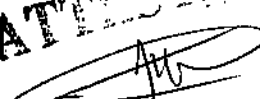
67	Muhammad Sadiq son of Sharif Khan	-do-
68	Siraju din son of Muhammad Kamal	-do-
69	Baitullah son of Muhammad Yousaf	-do-
70	Adnan son of Ashraf Khan	Isa Khel
71	Alamzib son of Nazirbal Khan	-do-
72	Said Ali Muhammad son of Said Gul Hussain	Bar Muhammad Khel
73	Safeen Ali son of Nadir Ali	-do-
74	Ishtiaq Ali son of Akbar Ali	-do-
75	Noor Wali son of Sadar Ali	-do-
76	Mehdi Hassan son of Khial Mehdi	-do-
77	Ihsan Ali son of Roshan Ali	-do-
78	Shafiq Ali son of Abdul Nabi	-do-
79	Sharif Khan Khan son of Abdul Aziz Khan	-do-
80	Shahid Ali son of Izat Khan	-do-
81	Raza Ali son of Farez Ali	-do-
82	Hashmat Ali son of Irshad Hussain	Baramzai
83	Kamran Syed son of Syed Amin Qasim	Kalaya Syedan
84	Iltaf Hussain son of Lal Haider	Mani Khel
85	Shahid Ali son of Shabir Khan	-do-
86	Inlihab Ali son of Ashiq Ali	-do-
87	Mehnaz Hussain son of Jamal Hussain	-do-
88	Muqadar Khan son of Arif Hussain	-do-
89	Shahid Raza son of Mir Hamza	Sepoya
90	Khial Hussain son of Amal Hussain	-do-
91	Tajamul Hussain son of Shammul Hussain	-do-
92	Mubashir Ali son of Shighbaz Khan	Shia Stori Khel
93	Amar Yasir son of Wahid Ali	-do-
94	Tahirullah son of Khapeer Gul	Sunni Stori Khel
95	Haji Rehman son of Qismat Khan	-do-
96	Sheh Bahadur son of Jan Akbar	Feroz Khel
97	Muzaf Khan son of Khial Muzaf Khan	-do-
98	Shahid Gul son of Gulah Gul	-do-
99	Wakil Khan son of Wakeel Khan	-do-
100	Shahidullah son of Gul Khan	-do-
101	Muhammad Riaz son of Mashaf Khan	Utman Khel
102	Muhammad Tariq son of Sabir Khan	Bezoti

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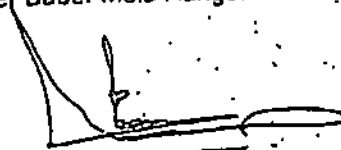
67.	Muhammad Sadiq Son of Shaib Khan	-do-
68.	Siraju din Son of Muhammad Kamal	-do-
69.	Baitullah Son of Muhammad Yousaf	-do-
70.	Adnan Son of Ashraf Khan	Isa Khel
71.	Alamzib Son of Nazirbat Khan	-do-
72.	Said Ali Muhammad Son of Said Gul Hussain	Bar Muhammad Khel
73.	Safeen Ali Son of Nadir Ali	-do-
74.	Ishtiaq Ali Son of Akbar Ali	-do-
75.	Noor Wali Son of Sadar Ali	-do-
76.	Mehdi Hassan Son of Khial Mehdi	-do-
77.	Ihsan Ali Son of Roshan Ali	-do-
78.	Shafiq Ali Son of Abdul Nabi	-do-
79.	Sharif Khan Khan Son of Abdul Aziz Khan	-do-
80.	Shahid Ali Son of Izat Khan	-do-
81.	Raza Ali Son of Farez Ali	-do-
82.	Hashmat Ali Son of Irshad Husain	Baramzai
83.	Kamran Syed OSn of Syed Amin Qasim	Kalaya Syedan
84.	Iltaf Hussain Son of Lal Haider	Mani Khel
85.	Shahid Ali Son of Shabir Khan	-do-
86.	Intihab Ali Son of Ashiq Ali	-do-
87.	Mehnaz Hussain Son of Jamal Hussain	-do-
88.	Muqadar Khan Son of Aqia Hussain	-do-
89.	Shahid Raza Son of Mir Hamza	Sepoya
90.	Khial Hussain Son of Amal Hussain	-do-
91.	Tajamul Hussain Son of Shamim Hussain	-do-
92.	Mobasir Ali Son of Shehbaz Khan	Shia Stori Khel
93.	Amar Yasir Son of Wahid Ali	-do-
94.	Tahimullah Son of Khapeer Gul	Sunni Stori Khel
95.	Hadi Rehman Son of Qismat Khan	-do-
96.	Sher Bahadur Son of Jan Akbar	Feroz khel
97.	Nazeed Khan Son of Khial Meen Khan	-do-
98.	Shahid Gul Son of Gulab Gul	-do-
99.	Wasil Khan Son of Wakeel Khan	-do-
100.	Sajidullah Son of GUI Shani	-do-
101.	Muhammad Riaz Son of Mashal Khan	Utman Khel
102.	Muhammad Tarqi Son of Sabil khan	Bezoti


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- 103 Tahir Khan son of Sharbat Khan -do-
- 104 Muhammad Yousaf son of Yaqoob Khan As sweeper

Their appointments are purely on temporary basis subject to satisfactory performance of duty and production of health/age certificates from the Agency Surgeon Orakzai Agency. Their services can be terminated without any reason being assigned at any time and will be governed by the order relating to levy/khassadars. They should also undergo basic recruitment training at Agency Headquarter Baber Mela Hangu.


 POLITICAL AGENT,
 ORAKZAI AGENCY

No. 1666 /PA/LK Dated 16/16 /2010
 Copy to the Accountant P.A's Office for necessary action


 POLITICAL AGENT,
 ORAKZAI AGENCY

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ابتدائی اطلاع رپورٹ

۱۱ ستمبر ۲۰۱۵ء

کوئی

مقامی عدالت سب سے قریب قابل دستاویزی پولیس ایجنسی پر رپورٹ شدہ زیر مقدمہ ۱۵۲ ایچ او نمبر منابھ لوبجاری

منبع رپورٹ

نمبر سٹاک

تاریخ وقت وقوع ۰۵/۰۶/۱۵ وقت، شام ۱۰:۱۵ بجے تقریباً

تاریخ وقت وقوع ۰۵/۰۶/۱۵ وقت ۰۸:۱۵ بجے جائیدگی پر ۰۶/۰۶/۱۵ وقت ۱۵:۰۹ بجے	نام و سکونت محل
۱۹۱۵۱-۶۱۷۵۳۲۷-۵	۱۹۱۵۱-۰۹۹۱۱۴۴۵-۱
محمد رفیق ولد سیال خان بصرہ ۲۳/۲۳ سال سکنہ بابو تنگ سنگ	۶۹۵۰-۰۳۳۳-۹۶۷۳۴۲۱
ppc377	گورنمنٹ پولیس ٹریننگ کالج کے متعلقہ کئی اگر اطلاع درج کر کے جس وقت ہو تو وجہ بیان کرو۔
بیشکے وریس واقع بابو تنگ ۱/۲ کلو میٹر چائے شمال غرب ارتقاہ	خانہ سے روانگی کی تاریخ و وقت
محمد رفیق ولد سیال خان بصرہ ۲۳/۲۳ سال سکنہ بابو تنگ سنگ	۲۳ سبیل ڈاک
برسیدگی مراسلہ پر چہ دیا جاتا ہے	

ابتدائی اطلاع نیچے درج کوو اس وقت ایک تحریری مراسلہ منجانب محمد رفیق ۸۵۱۱۵۰-۰۹۹۱۱۴۴۵-۱ سٹی پوسٹ کنسٹبل اورنگزیب ۹۵ رسول پور درج ذیل ہے۔ عمر قاتلہ سٹی بورڈ گشت بازار سٹی میں محمد ظہیر ولد سیال خان بصرہ ۲۳/۲۳ سال سکنہ بابو تنگ شناختی نمبر ۱۹۱۵۱-۶۱۷۵۳۲۷-۵ اور پاپولر نیل NIL برادر لعل محمد ثقلین بصرہ ۹/۱۵ سال ملاقی ہو کر بھرتی برادر محمد ظہیر یوں رپورٹ کرتا ہے کہ کل روزہ ۵/۶/۱۵ بعد از شام (ظہاری برائے نماز مغرب ادا کی گئی) سچا ہوا تھا اور دیگر افراد بھی نماز ادا کیے۔ سچا ہوا تھا جسے بعد از نماز ادا کی گئی ۱۹:۱۵ بجے واپس پہنچے اور برادر محمد ثقلین ملاقی ہو کر بتلایا کہ آپ وقت جب نماز آتے چلے گئے تھے پہنچے ہیں چھاپا زاد ام محمد خان ولد جان محمد سکنہ دیہہ آم ہالی شناواری نے مجھے پکڑ کر میرے ساتھ برمنگھم لے گیا ہے۔ محمد کو میں نے تلاش کیا مگر وہ جاگ نکلے ہیں کا خیال ہوا تھا۔ بوجہ اندھیری رات بروقت رپورٹ کیے نہیں آ سکا اسے برائے رپورٹ آیا ہوں۔ رپورٹ کی گئی جا کر فوراً پورے دستخط نشان لگو تھا ۱۹۱۵۱-۶۱۷۵۳۲۷-۵

سماوات پولیس حسب گفتہ سائل رپورٹ درج بالا پورے پڑھ کر درست تسلیم کرنے کے بعد رپورٹ خود دستاویز لکھوا ثبت کیا۔ جسکی میں تصدیق کرتا ہوں۔ متاثرہ محمد ثقلین کو ہونے لقمہ فرار پر اسے بعد القادر سے لفظ ملا جملہ ورائے لاکر اسول ہسپتال سینگو لکھوا گیا جاتا ہے۔ مراسلہ لفظ چاکر می پر چہ بدست کنسٹبل اورنگزیب ۹۵ ارسال قاتلہ ہے۔ بعد از درج مقدمہ لفظ نسبتیں حوالہ ۱۸۱۱۵۰-۰۹۹۱۱۴۴۵-۱ سٹاف پورے دستخط اورنگزیب محمد رفیق ۸۵۱۱۵۰-۰۹۹۱۱۴۴۵-۱ قاتلہ سٹیٹس روزہ ۰۶/۰۶/۱۵ کارروائی قاتلہ آمدہ فریڈ ہف بصرہ درج بالا پورے پر چہ عزم والا ملاقی لکھا گیا۔ نقل پر چہ مراسلہ لفظ نسبتیں حوالہ ۱۸۱۱۵۰-۰۹۹۱۱۴۴۵-۱ سٹاف پورے دستخط اورنگزیب محمد رفیق ۸۵۱۱۵۰-۰۹۹۱۱۴۴۵-۱ قاتلہ سٹیٹس لکھا گیا جاتا ہے۔ پر چہ بصرہ لکھوا گیا ہے۔

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ایکٹر جنرل پولیس سوپر عدالت نمبر ۷۳ گورنمنٹ پولیس سٹیشن جاب نمبر 19/540/19 نام سٹور۔ تعداد دو ہزار چھترہ۔ مورخہ 23 مارچ 2006ء رپورٹ فور (نام سٹور جابز) گنی فارم (پولیس)

فارم نمبر ۲۳-۵ (۱)

ابتدائی اطلاعی رپورٹ

کاؤنٹر فائل

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ 154 مجموعہ ضابطہ فوجداری

ضلع: ہنگو

تھانہ: سٹی

تاریخ وقت وقوع: 05/06/017 دوت شام ویلہ 19:45 بجے تقریباً

علت نمبر: 562

1	تاریخ وقت رپورٹ: 06/06/017 وقت 08:40 بجے	چاکیدگی پرچہ 06/06/17 وقت 09:15 بجے
2	نام و سکونت اطلاع دہندہ مستغیث	محمد ظہور ولد سیال خان عمر 23/22 سال سکنہ بابونگ ہنگو
3	مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو۔	PPC 377
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت:-	بیٹھک مدعی واقع بابونگ 2-1/2 کلومیٹر جانب شمال غرب از تھانہ
5	نام و سکونت ملزم	عمران ولد جان محمد سکنہ بابونگ حال شناوڑی ہنگو
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برسیدگی مراسلہ پر چہ دیا جاتا ہے۔
7	تھانہ سے رواگئی کی تاریخ وقت	بہ سبیل ڈاک

ابتدائی اطلاع نیچے درج کرو۔

اس وقت ایک تحریری مراسلہ منجانب محمد رحیم ASHO تھانہ سٹی بدست کنسٹیبل اورنگزیب 95 موصول ہو کر درج ذیل ہے محرر تھانہ سٹی دوران گشت بازار سٹی میں محمد ظہور ولد سیال خان عمر 23 / 22 سال سکنہ بابونگ شناختی کارڈ نمبر 5-6175327-14101-6175327-5 موبائل نمبر NIL ہمراہ برادر طفل محمد ثقلین عمر 9/10 سال ملائی ہو کر بحق برادر محمد ظہور یوں رپورٹ کرتا ہے کہ کل مورخہ 5/6/17 بعد از شام افطاری برائے نماز مغرب ادا کی مسجد گیا ہوا تھا اور دیگر افراد بھی نماز کیلئے مسجد گئے ہوئے تھے بعد از نماز ادا کی 19:45 بجے واپس بیٹھک آکر برادر محمد ثقلین ملائی ہو کر بتلایا کہ آپ لوگ جب نماز کیلئے چلے گئے تھے بیٹھک میں چچا زاد ام عمران ولد جان محمد سکنہ دیہہ ام حال شناوڑی نے مجھے پکڑ کر میرے ساتھ بد فعلی کی ہے عمران کو میں نے تلاش کیا مگر وہ بھاگ نکلنے میں کامیاب ہوا تھا بوجہ اندھیری رات بروقت رپورٹ کیلئے نہیں آسکا اب برائے رپورٹ آیا ہوں رپورٹ لکھی جا کر غور ہوئے دستخط انگریزی نشان اگوشا 5-6175327-14101 کارروائی پولیس حسب گفتہ سائل رپورٹ درج بالا ہو کر پڑھ کر درست تسلیم کر کے زیر رپورٹ خود نشان اگوشا ثبت کیا جسکی میں تصدیق کرتا ہوں متاثرہ محمد ثقلین کو بروئے نقشہ ضرر ہمراہ عبدالقادر معہ بغرض ملاحظہ درائے ڈاکٹری سول ہسپتال ہنگو بھجوایا جاتا ہے مراسلہ بغرض چاکیدگی پرچہ بدست کنسٹیبل اورنگزیب 95 ارسال تھانہ ہے بعد اندراج مقدمہ بغرض تفتیش حوالہ IBH سٹاف ہوئے دستخط انگریزی محمد رحیم ASHO تھانہ سٹی مورخہ 06/06/17 کارروائی تھانہ آمدہ مراسلہ حرف بحرف درج بالا ہو کر پرچہ جرم بالا چاک کیا گیا نقل پرچہ معہ مراسلہ بغرض تفتیش حوالہ انوشی گیشن سٹاف تھانہ سٹی کیا جاتا ہے پرچہ گزارش ہے۔

دستخط انگریزی

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OFFICE OF THE DEPUTY COMMISSIONER DISTRICT ORAKZAI

ORDER

In continuation of this office letter No. 1723/PA/LK dated 27-08-2017.

Levy Sepoy Imran Khan s/o Jan Muhammad of Malla Khel tribe is hereby terminated from service w.e.f 07-06-2018 due to his conviction u/s 377 PPC by the Court order of Additional Session Judge-I Hangu announced dated 07-06-2018.

Mahid
Deputy Commissioner
District Orakzai

No. 1291 IPA/LK

Dated 01/08/2018

Copy forwarded to

1. Accountant PA's office for necessary action
2. Official concerned.

Mahid
Deputy Commissioner
District Orakzai

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Opening sheet for criminal Appeals

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

Appellate side _____ Criminal Appeal No. 698-P/2018

District	Date of Filing Appeal	Whether filed by appellant in person or by pleader or agent	Stamp on petition or appeal
Hangu	07-06-2018	Shabbir Hussain Gigyani Advocate, Peshawar	Nil

Emran Khan S/O Muhammad

R/O Baba Tang Warri District Hangu-----Appellant

Versus

1. Muhammad Zahoor S/O Khan
R/O Babu Tang District Hangu

2. The State-----Respondents

Appeal U/S 410 Cr.P.C
from the order of:

The learned Additional Sessions Judge-I, Hangu

Dated:

07-06-2018

Charged U/S:

377 PPC

(FIR# 562, Dated: 06-06-2017 PS City, Hangu)

Sentence:

U/S. 377 PPC; 01 year R.I. with benefit of section 382-B Cr.P.C.

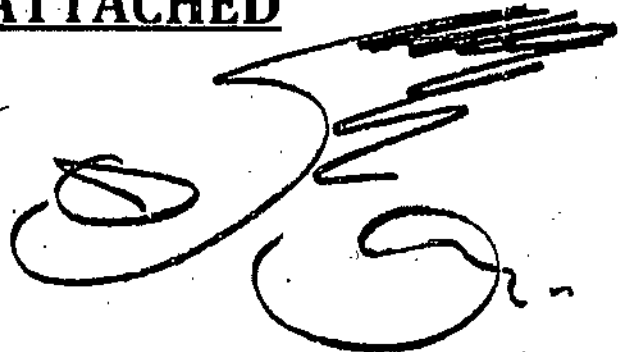
Prayer-in-Appeal:

On acceptance of this appeal, the order & judgment of the learned trial Court dated 07-06-2018 may graciously be set-aside and the appellant be acquitted.

GROUND ARE ATTACHED

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IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cri. Appeal No.698-P/2018

Imran Khan son of Muhammad,
r/o Baba Tang Warri District Hangu.

Appellant

VERSUS

The State etc

Respondents

For Appellant :-
State :-
For Respondent :-

Mr. Shabbir Hussain Gigyani, Advocate.
Mr. Mujahid Ali, AAG,
Muhammad Saqlain (victim) along with his
father.

Date of hearing: 25.03.2019.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- This appeal, filed by appellant Imran Khan, is directed against the judgment dated 07.06.2018, of learned trial Court/Additional Sessions Judge-I, Hangu, whereby the appellant having been found guilty of committing sodomy upon Muhammad Saqlain (minor victim), has been convicted under section 377 PPC and sentenced to undergo one year rigorous imprisonment, in case FIR No.562 dated 05.06.2017 registered at Police Station City, District Hangu. Benefit of section 382-B Cr.P.C. has been extended to him.

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2. Without dilating upon merits of the case, lest it may prejudice the case of either side, suffice it to say that minimum punishment provided for the offence under

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section 377 PPC, shall not be less than two years and the offender shall also be liable to fine. For the sake of convenience and ready reference, section 377 PPC is reproduced below:-

"S.377. Unnatural offences:-Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which (shall not be less than two years nor more than) then years, and shall also be liable to fine". (emphasis supplied).

By use of word "shall" in section 377 PPC, the learned trial Court by no stretch of imagination could exercise its discretion to deviate from the mandate of the statute. As discussed above, the learned trial Court has sentenced the appellant under the aforesaid section of law to 01 year R.I. without imposition of any fine. The words "and shall also be liable to fine" employed in section 377 PPC, have also taken away the discretion of the trial Court in respect of sentence of fine.

3. For what has been discussed above, the impugned judgment being against the mandate of section 377 PPC, is not sustainable in the eye of law, hence, the same is hereby set-aside. Case is remanded to the learned trial Court for re-writing judgment, after providing an opportunity of hearing to the parties. The learned trial Court while

Learned

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DIRECTOR
INVESTIGATION

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appreciating the evidence shall also kept in mind explanation attached to section 377 PPC, which for his guidance is reproduced below:-

"Explanation" Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section".

4. The appellant after serving sentence of one year has already been released, therefore, on receipt of record, the learned trial Court shall summon the appellant and proceed with the case in light of observations in the judgment.

With the above terms this appeal is disposed of accordingly.

Announced:
25.03.2019

Siraj Afridi P.S.

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JUDGE

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SB of Hon'ble Mr. Justice Rook-ul-Amin Khan,

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کمالیہ جیٹ روڈ سید احمد حسین خان صاحب صاحب
 11/6/19
 19/9/17
 2/4/19

Order No. 06
 22-05-2019
 26

Serial No. of Order/ Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
<p>Order No. 07</p> <p>6/6/17</p> <p>377</p> <p>377</p> <p>377</p>	<p>11-06-2019</p>	<p>Accused Imran Khan on bail present. DyPP Mr. Ibad ur Rehman for the State present.</p> <p>Arguments of learned counsel heard and have gone through the available record with their valuable assistance.</p> <p>Vide my separate detailed judgment consisting of three (03) pages, placed on file, since no case is made out as per observations made by worthy Peshawar High Court, Peshawar therefore accused Imran Khan stands acquitted in instant case from the charges levelled against him. Case property be disposed off in accordance with law. Case file be consigned to Record Room after its completion and compilation</p> <p><u>Announced</u> 11-06-2019</p> <p>(AJMAL SHAH) ADDITIONAL SESSIONS JUDGE-I, HANGU</p> <p>CERTIFIED TO BE TRUE COPY 25/6/19 EXAMINED COPYING AGENCY HANGU</p>

Annex - E

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IN THE COURT OF
AJMAL SHAH, ADDL. SESSIONS JUDGE-I, HANGU

The State

V E R S U S

*Imran Khan s/o Jan Muhammad R/o Babu Tang presently Shana Wari
District Hangu Hangu.....(Accused facing trial)*

Case FIR No.562 Dated 06-06-2017 U/section 377 PPC P.S. City Hangu.

Date of first Institution.....19.09.2017.

Date of first Decision.....07.06.2018.

Date of Remand to this Court.....02.04.2019

Date of Decision11.06.2019.

*Counsel for accused: Mr. Anjum Khan Advocate
State by: Mr. Ibaq ur Rehman (DyPP)*

J U D G M E N T

Accused Imran Khan had faced trial before this Court on charges of having committed sodomy with one minor Muhammad Saqlain.

2. Facts in brief as divulged from report of complainant Muhammad Zahoor to local police of P.S. City during gusht to the effect that on 05.06.2017, he along with other people after Ifari has gone to Masjid for performing Maghrib prayer. On returned back to his baithak at about 19:45 hrs, his brother Muhammad Saqlain told him that when they gone to Masjid, his cousin Imran s/o Jan Muhammad (accused facing trial) r/o presently Shna Wari caught him and made sodomy with him. He (complainant) searched for accused but he had succeeded in escape. Due to dark of night he did not make report. Thus he (complainant) charged the accused facing trial Imran Khan for commission of offence. Murasila Ex/P/WI was drafted which was got signed

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from complainant. Injury sheet ExPW-10/1 of victim Muhammad Saqlain was prepared which was handed over to constable Abdul Qadir for medical examination of victim at Civil Hospital Fangu while Murasila was handed over to constable Aurangzeb for taking the same to PS for registration of FIR and as such FIR ExPA was registered against the accused. Site plan is ExPB while recovery memo ExPC vide which the IO had taken into possession three bottles containing swab/semen etc taken from the body of victim and sealed in parcel No.1. One Qamees, Shalwar containing some stains of victim P-1 were also taken into possession vide recovery memo ExPW-6/2. Photographs of the place of occurrence are ExPW-6/1. House search of the accused was conducted but he was not available over there nor anything incriminating has been recovered. Three plastic bottles along with garments of victim were sent to FSL vide application ExPW-6/6, the report of which is ExPZ which shows that swabs was negative for human semen in PNO-1 while shirt and shalwar was positive for human semen in PNO-2.

3. Thereafter, on 06.06.2017, accused Imran Khan voluntarily surrendered before local police and he was formally arrested vide card of arrest ExPW-10/2. After completion of investigation, complete challan ExPW-7/1 against the accused was submitted for trial on 04.07.2017. He was summoned and when produced in custody in court, charge sheeted on 26.09.2017. Refusing the charge, prosecution was directed to produce its evidence. To prove its case prosecution examined ten witnesses during trial of accused.

4. After conclusion of the trial, accused was convicted and sentenced to one year rigorous imprisonment by this Court vide judgment dated 07-06-2018. Benefit of section 382-B CrPC was extended to accused.

Aggrieved by the same, the accused filed criminal Appeal No.698/2018

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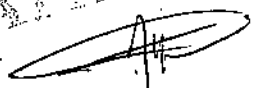
against his conviction and sentences before august Peshawar High Court, Peshawar where its order dated 25.03.2019, the case was remanded to this Court with directions for rewriting the judgment, after providing an opportunity of hearing to the parties and proceed with the case in light of observations in the Judgement. After receiving the case, the same was registered on 02.04.2019. In compliance of order of the august Peshawar High Peshawar accused being on bail, was summoned who appeared.

5. I have heard the arguments of learned DyPP Mr. Ibad ur Rehman for the State and learned defence counsel and perused the record with their valuable assistance.

6. Since, no case is made out as per observations made by worthy Peshawar High Court, Peshawar therefore accused Imran Khan stands acquitted in instant case from the charges levelled against him. Case property be disposed off in accordance with law. Case file be consigned to Record Room after its completion and compilation

Announced
11-06-2019



(AJMAL SHAH)
ADDITIONAL SESSIONS
JUDGE-I, HANGU

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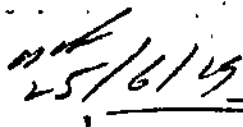
CERTIFICATE

Certified that this judgment consists of eleven (03) pages.

Each page has been read over, corrected and signed wherever necessary.


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(AJMAL SHAH)
ADDITIONAL SESSIONS
JUDGE-I, HANGU


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مختصر حساب کی پیشکش کے لئے منسلک مندرجہ ذیل

درخواست نمبر: جالی برسالہ آسامی

خدا جالی: کل زمینیں: کہ دست نامزد کی لیوی فورس میں پیشگی سہ ماہی مدد تھا۔

6 جون 2019ء پر سال پر دفعہ 377 کے تحت ایڈیشنل سیشن جج عدالت
فلو ہنگو کیس دائر کیا گیا۔ ایڈیشنل سیشن جج ہنگو عدالت سے سزا یافتہ
ہونے پر سائنس ڈاؤن کی فورٹ میں اپیل دائر کی۔ عدالت عالیہ
نے دوبارہ کیس کھولنے کے احکامات صادر فرمائے۔

دوبارہ عدالت ایڈیشنل سیشن جج کیس میں شامل کر
باغرت بلور پر بری کر دیا۔

اس دوران خان کو مدد نہ ملنے سے ہر قاعدت کیا گیا تھا۔
اس جبر سے نااہل نہ ہوا۔ عدالت سے باغرت بری ہو گیا ہے اور
لیوی فورس پولیس میں ضم ہو گیا ہے۔

لکھنا ہے کہ اس کے خلاف کو اپنے آسامی بر جالی کے احکامات
صادر فرمائے کہ مندرجہ ذیل

عبد الوہاب

العارف

26/06/2019

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Junjank

عوان خان طر جان نور خان مسدین
نہم چاڑھیت تن بدات منلو آوندگی
سالہ لیوی سہ ماہی

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28/6/19

HLY EC / SRC

OFFICE OF THE DISTRICT POLICE OFFICER, ORAKZAI

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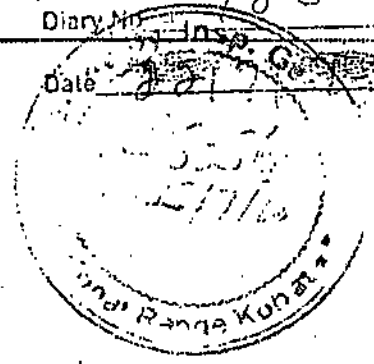
District Police Officer Orakzai

No. 446 /EC. dated Orakzai on 10/07/2019

Office of the DPO, District Orakzai

Diary No. 1810

Date 20/7/19



To: The Dy. Inspector General of Police, Kohat Region, Kohat.

Subject: APPLICATION / DEPARTMENTAL APPEAL

Memo.

An application preferred by Ex-Levy Sepoy Imran Khan, s/o Jan Muhammad Tribe Mula Khel of Orakzai District, requesting therein for re-instatement in service who was dismissed from service vide the Dy. Commissioner, Orakzai office order Endst. No. 129/PALK dated 01.08.2018 copy enclosed in the light of Addl. Sessions Judge, Hangu court order dated 07.06.2018 copy enclosed due to his involvement in criminal case FIR No. 562 dated 06.06.2017 u/s 377 PPC PS City Hangu.

The applicant submitted Cri: Appeal No. 698-P/2018 before the august Peshawar High Court Peshawar against the Addl. Sessions Judge Hangu Court order dated 07.06.2018 upon which the appellate court accepted his appeal and set-aside the impugned judgement dated 07.06.2018 of the learned trial court. The case was remanded to the learned trial court for re-writing judgement, after providing an opportunity of hearing to the parties vide the Peshawar High Court Peshawar order dated 25.03.2019.

The Court of Addl. Sessions Judge, Hangu has passed order dated 11.06.2019 that since no case is made out as per observations made by worthy Peshawar High Court Peshawar, therefore, accused Imran Khan stands acquitted in instant case from the charges levelled against him.

In view of the position explained above, the applicant submitted application for re-instatement in service in the light of court order dated 11.06.2019.

Submitted please DPO Orakzai

Encs (11)

For comments, complete inquiry file & service documents

District Police Officer, Orakzai

No. 6095 /EC

17/07/2019

DIG POLICE KOHAT

16/7/2019

ATTEST TO BE TRUE COPY

Handwritten notes on the left margin: 20/7/19, 15/7/19, 17/7/19, 16/7/19

OFFICE OF THE
DISTRICT POLICE OFFICER,
ORAKZAI

32

No.406/EC dated Orakzai the 10/07/2019

To The Dy. Inspector General of Police
Kohat Region Kohat

Subject: APPLICATION/DEPARTMENTAL APPEAL

Memo

An application preferred by Ex-Lavy Sepoy Imran Khan S/o Jan Muhammad Tribe Mula Khel of Orakzai District, requesting therein for reinstatement in service who was dismissed from service vide the Dy. Commissioner Orakzai office order Endst. No.129/PA/LK dated 01.08.2018 copy enclosed in the light of Additional Sessions Judge, Hangu Court order dated 07.06.2018 copy enclosed due to his involvement in criminal case FIR No.562 dated 06.06.2017 u/s 377 PPC Police Station City Hangu.

The applicant submitted Crl. Appeal No.698-P/2018 before the August Peshawar High Court, Peshawar against the Additional Sessions Judge Hangu Court Order dated 07.06.2018 upon which the appellate court accepted his appeal and set aside the impugned judgment dated 07.06.2018 of the learned trial court. The case was remanded to the learned trial court for re-writing judgment, after providing an opportunity of hearing to the parties vide the Peshawar High Court, Peshawar order dated 25.03.2019.

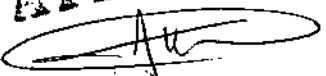
The court of Additional Sessions Judge, Hangu has passed order dated 11.06.2019 that since no case is made out as per observations made by worthy Peshawar High Court, Peshawar, therefore, accused Imran Khan stand acquitted in instant case from the Charges leveled against him.

In view of the position explained above, the applicant submitted application for re-instatement in service in the light of the court order dated 11.06.2019.

Submitted please

Sd/-xxx
District Police Officer
Orakzai


ATTESTED
TO BE TRUE COPY


ATTESTED

33

Amn - G

Phone No: 9260112
Fax No: 9260114

From: - The Regional Police Officer,
Kohat Region, Kohat.

To: - The District Police Officer, Orakzai.

No. 904 /EC, Dated Kohat the 16/1/2020.

Subject: - APPLICATION / DEPARTMENTAL APPEAL.

MEMO:

Please refer to your office Letter No. 2038/EC/LB, dated 26.11.2019 on the subject quoted above.

After perusing appeal of Ex-Levy Sepoy Imran Khan, it has been observed that he was terminated from service by the Deputy Commissioner, ^{Orakzai} Managu. The impugned order has not been passed by DPO concerned meaning thereby that the applicant / appellant was not at the strength of Police. The matter is beyond the jurisdiction of this office as Police Appellate Forum.

Therefore, the applicant may be informed accordingly, please.

Encls:
S/Book 101
connected
papers.

~~Regional Police Officer,
Kohat Region~~

~~F.C~~
~~[Signature]~~
District Police Officer
Orakzai
16/1/2020

236
17/1/2020

~~[Signature]~~
BE TRUE COPY

ATTACHED
~~[Signature]~~

34

From The Regional Police Officer,
Kohat Region, Kohat

To The District Police Officer, Orakzai

No.904/EC, Dated Kohat the 16/01/2020

Subject: APPLICATION/DEPARTMENTAL APPEAL

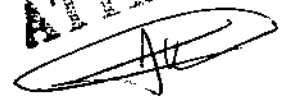
Memo;


Please refer to your office Letter No.2038/EC/LB, dated 26.11.2019 on the subject quoted above.

After perusing appeal of Ex-Lavy Sepoy Imran Khan, it has been observed that he was terminated form service by the Deputy Commissioner Orakzai. The impugned order has not been passed by DPO concerned meaning thereby that the applicant/appellant was not at the strength of police. The matter is beyond the jurisdiction of this office as Police Appellate Forum.

Therefore, the applicant may be informed accordingly, please.

Sd/-xxxx
Regional Police Officer
Kohat Region

ATTESTED



ATTESTED
TO BE TRUE COPY

IN THE PESHAWAR HIGH COURT PESHAWARW. P No 1818P 2020

(35)

An + - H

Imran khan S/O Jan Muhammad, Ex-levy Sepoy R/O Badaan
District Orakzai.

(Petitioner)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer Kohat Region.
3. District Police Officer (DPO) District Orakzai.
4. Deputy Commissioner District Orakzai

(Respondents)

WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973

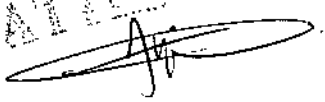
Prayer in Writ Petition:

On acceptance of this writ petition the order dated 01.08.2018, whereby the petitioners was terminated from his service, may please be set aside and the petitioner may kindly be reinstated into service with all back benefits or any other remedy deemed proper may also be allowed.

RESPECTFULLY SUBMITTED:

FILED TODAY
Deputy Registrar
29 FEB 2020

1. That the petitioner was appointed as Levy Sepoy in the office of Political Agent Orakzai. (Copy of the appointment order dated 16.06.2010 is attached as annexure A)
2. That the petitioner performed his duties with great zeal and devotion without any complaint whatsoever regarding his performance.

ATTESTED


3. That the petitioner was charged in the FIR no 562 under section 377 PPC P.S City Hangu. *(Copy of FIR is attached as annexure B).*
4. That the trial was commenced and the petitioner was convicted in the said FIR vide judgment and order dated 07.06.2018
5. That the on the basis of conviction the petitioner was terminated from his service vide order dated 01.08.2018 by respondent no 3. *(copy of the order dated 01.08.2018 is attached as annexure C).*
6. That the petitioner filed appeal against the order and judgment dated 07.06.2018 before the honourable Peshawar High Court Peshawar which was allowed vide judgment dated 25.03.2019 and the case was remanded back to the court of learned Additional Session Judge-I Hangu. *(Copy of the judgment dated 25.03.2019 is attached as annexure D).*
7. That after remand back the Additional Session Judge-I Hangu acquitted the accused from the charge leveled against him vide order and judgment dated 11.06.2019. *(Copy of the order and judgment dated 11.06.2019 is attached as annexure E).*
8. That after the acquittal the petitioner approached the respondent no 3 by submitting application dated 26.06.2019 for his reinstatement in service. *(Copy of application dated 26.06.2019 is attached as annexure F).*
9. That the respondent no 2 forwarded the said application/departmental appeal to the Deputy Inspector General of Kohat Region vide application dated 10.07.2019. *(Copy of the application dated 10.07.2019 is attached as annexure G)*
10. That the Regional Police Officer Kohat vide his letter dated 16.01.2020 refused to accept the application / departmental appeal of the petitioner and sent it back to the Respondent no 2 with the observation that the matter is beyond the

FILED TODAY

Deputy Registrar

29 FEB 2020

ATTESTED

jurisdiction of this office as police appellate forum. (*copy of the letter dated 16.01.2020 is attached as annexure H*)

11. That the respondent no 3 again vide Memo dated 06.02.2020 send the case of the petitioner to the District police officer orakzai (respondent no 2) on the ground that *all the function as section officer Levy and Khassadar Home dated 10.12.2019 been transferred to District Police Officer, therefore the case may be considered on merit. . (Copy of the Memo is attached as annexure I)*

12. That the Petitioner felt himself aggrieved of the above acts and omission, and having no other remedy available in law is constrained to invoke the Constitutional jurisdiction of this Honourable Court inter-alia on the following grounds.

GROUND OF WRIT PETITION

A. That the petitioner has not been treated in accordance with law hence rights of the petitioner secured and guaranteed under the law and constitution is badly violated.

B. That the petitioner was terminated from his service on the basis of conviction and after that the petitioner has been honourably acquitted by the competent court of law and hence entitled for reinstatement in service.

C. That the charge leveled against the appellant was disbelieved and was acquitted on the ground that no case has been made out against the petitioner.

D. That the Additional Session Judge-I Hangu acquitted the accused from the charge leveled against him vide order and judgment dated 11.06.2019.

E. That the respondents are not reinstating the petitioner and become a pendulum between the respondents who are sending the petitioner from one office to another office.

FILED TODAY
Deputy Registrar
29 FEB 2020

ATTESTED
A. J.

F. That after 25th amendment the FATA was merged in the Province of Khyber Pakhtunkhwa and all the levy force was also came under District Police Officer.

G. That the petitioner is young and energetic and wants to serve his department.


H. That the petitioner is jobless since his termination order.

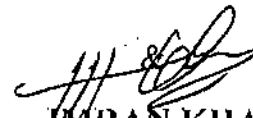
I. That the petitioner seeks the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this writ petition.

It is, therefore, prayed that on acceptance of this Writ Petition an appropriate Writ may please issued as prayed for in the heading of this Petition.

Petitioner

Through


ZARTAJ ANWAR
Advocate Peshawar


IMRAN KHAN
Advocate Peshawar

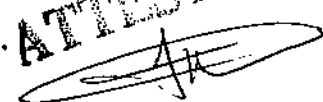
List of Books:-

1. Constitution, 1973.
2. Books according to need.

CERTIFICATE

Certified that no writ petition on the same subject and between the same parties was previously or concurrently filed.

FILED TODAY
Deputy Registrar
29 FEB 2020

Petitioner
ATTESTED


IN THE PESHAWAR HIGH COURT PESHAWAR

W. P No. ____/2020

Imran khan S/O Jan Muhammad, Ex-levy Sepoy R/O Badaan
District Orakzai.

(Petitioner)

VERSUSThe Provincial Police Officer, Khyber Pakhtunkhwa and
others..

(Respondents)

ADDRESSES OF PARTIES**Petitioner:**Imran khan S/O Jan Muhammad, Ex-levy Sepoy R/O Badaan
District Orakzai.**Respondents:**

1. The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar.
2. Regional Police Officer Kohat Region..
3. District Police Officer (DPO) District Orakzai.
4. Deputy Commissioner District Orakzai

Petitioner

Through

IMRAN KHAN
Advocate Peshawar

ATTESTED

FILED TODAY
Deputy Registrar
29 FEB 2020

40

IN THE PESHAWAR HIGH COURT PESHAWAR

W. P No. 1818P / 2020

Imran khan S/O Jan Muhammad, Ex-levy Sepoy R/O Badaan District Orakzai.

(Petitioner)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa and others..

(Respondents)

AFFIDAVIT

I, Imran khan S/O Jan Muhammad, Ex-levy Sepoy R/O Badaan District Orakzai., do hereby solemnly affirm and declare that the contents of the above writ petition are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Court.

Imran Khan
Deponent

0333-5017005

Identify by:-

[Signature]
IMRAN KHAN
Advocate, Peshawar

No: 23422

Certified that the above was verified on solemn affirmation before me on this 26 day of Feb 2020 at Orakzai s/o Jan Muhammad who was identified by Imran Khan who is personally known to me:

[Signature]
Oath Commissioner
Peshawar High Court

ATTESTED

FILED TODAY
Deputy Registrar
29 FEB 2020

PESHAWAR HIGH COURT, PESHAWAR
FORM "A"
FORM OF ORDER SHEET.

41

Court of
Case No.....

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	18.03.2020.	<p><u>WP No.1818- P/2020.</u></p> <p><u>Present:-</u></p> <p>Mr. Imran Khan Advocate, for the petitioner.</p> <p>Mr. Rab Nawaz Khan AAG for Provincial Government.</p> <p>=====</p> <p><u>IKRAMULLAH KHAN, J:-</u>Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioner has challenged the order dated 1.8.2018 passed by respondent No.4, whereby petitioner was terminated from his service, who also seeks his reinstatement into service with all back benefits.</p> <p>2. The record reveals that petitioner has filed an appeal against his termination order before respondent No.4 on the ground that petitioner has already been acquitted from the charges levelled against him. The Deputy</p>

ATTORNEY
AU

Commissioner concerned submitted/ sent the said appeal to the District Police Officer (DPO) Orakzai on the ground that Levy posts are regularized and merged into Police department however, the DPO concerned returned the appeal to the Deputy Commissioner that the petitioner was terminated prior to regularization of the post but the learned Deputy Commissioner once again vide order dated 6.2.2020 submitted/ sent the appeal of the petitioner to the District Police Officer, Orakzai.

3. As per record, petitioner has been terminated vide order of learned Deputy Commissioner, District Orakzai dated 1.8.2018 at the occasion when the FATA was not merged into the province of Khyber Pakhtunkhwa and levy post was also not regularized therefore, fate of appeal of petitioner, may be decided by the concerned Deputy Commissioner or Commissioner as the case may be. As such this writ petition is disposed of with direction to the worthy Deputy Commissioner Orakzai, to consider the case of petitioner in accordance with law however, in

ATTENDED
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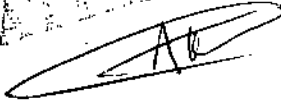
case of rejection of appeal of petitioner, the
worthy Deputy Commissioner shall give
reasons thereof.

(93)

Announced.
18.03.2020.


JUDGE


JUDGE

ATTENDED




BEFORE PESHAWAR HIGH COURT PESHAWAR

COC No. 24-P/2021
IN
W.P No. 1818 /2020

Imran Khan S/O Jan Muhammad, Ex-Levy Sepoy R/o Badaan
District Orakzai.....**Petitioner**

VERSUS

1. Dr. Sanaullah Abbasi, Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Tayyab Hafeez Cheema, Regional Police Officer Kohat Region.
3. Nisar Ahmad District Police Officer (DPO) District Orakzai
4. Muhammad Khalid Deputy Commissioner District Orakzai.....**Respondents**

**APPLICATION FOR INITIATING CONTEMPT OF
COURT PROCEEDINGS AGAINST THE RESPONDENTS/
CONTEMNORS UNDER ARTICLE 204 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN
FOR NOT IMPLEMENTING THE ORDER / JUDGMENT
OF THIS AUGUST COURT PASSED IN WRIT PETITION
NO. 1818/2020 DATED 18-03-2020**

Respectfully Sheweth

1. That the petitioner had filed Writ Petition No.1818-P/2020 which was disposed of vide judgment and order dated 18-03-2020 by this Hon'able Court. (Copy of Writ Petition and Judgment dated 18-03-2020 is attached as Annexure "A")

FILED TODAY
Deputy Registrar
11 JAN 2021

May
ATTESTED
EXAMINER
Peshawar High Court

- 2. That this Hon'ble High Court disposed of the Writ Petition with direction to Respondent No. 4 (Deputy Commissioner District Orakzai) to decide the appeal of petitioner in accordance with law.
- 3. That the certified copy of above mentioned Judgment and Order has already been handed over / sent to Respondent No.4 for implementation well in time.
- 4. That petitioner time and again visited Respondents for implementation of Judgment and order of this Hon'able Court but he did not receive any response except official correspondence carried out by Respondents. (Copies of Official Correspondent / Letters are attached as Annexure "B to "G")
- 5. That despite passing of sufficient time the Respondents have not complied with order of Hon'ble High Court which shows that they are not willing to implement the judgment and Order of Hon'ble High Court, exposing themselves to contempt of court proceedings, on the following grounds, inter alia:-

GROUND S

- a. That non compliance of the order of this Hon'ble Court shows that act and action of Respondents falls in the ambit of Contempt of Court proceedings.
- b. That the act and action of Respondents reflect that respondents have disobeyed and disregarded the order and directions of this Hon'ble Court.

FILED TODAY
 Deputy Registrar
 11 JAN 2021

May
 ATTESTED
 EXAMINER
 Peshawar High Court

- c. That the act of respondents is meant to their willful non compliance of Court Orders and lawful process of the court.
- d. That the respondents are legally bound to obey and comply with the order of Hon'ble Court passed in Writ Petition but they are willfully committing Contempt of Court amounting to disrespect, interference with process of law and lowering Authority of the court.
- e. That in-order to keep the public confidence in superior courts undiminished, initiation of contempt of court proceedings and awarding punishment to the contemnors is in the best interest of justice.

It is, therefore, prayed that Contempt of Court proceedings may graciously be initiated against the contemnors/ Respondents and they be punished under the law of contempt of court.

Petitioner

Through

[Signature]
Imran Khan,
 Advocate High Court, Peshawar

FILED TODAY
[Signature]
 Deputy Registrar
 11 JAN 2021

[Signature]
ATTESTED
 EXAMINER
 Peshawar High Court

47

BEFORE PESHAWAR HIGH COURT PESHAWAR

COC No. 24-P/2021
IN
W.P No. 1818 /2020

Imran KhanPetitioner

VERSUS

Sanaullah Abbasi & Others.....Respondents.

ADDRESSES OF PARTIES

PETITIONER

Imran Khan S/O Jan Muhammad, Ex-Levy Sepoy R/o Badaan
District Orakzai

RESPONDENTS

1. Dr. Sanaullah Abbasi, Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Tayyab Hafeez Cheema, Regional Police Officer Kohat Region.
3. Nisar Ahmad District Police Officer (DPO) District Orakzai
4. Muhammad Khalid Deputy Commissioner District Orakzai

Petitioner

Through

Imran Khan,
Advocate High Court, Peshawar

FILED TODAY

Deputy Registrar
11 JAN 2021

ADVOCATE, H.C. PESHAWAR
M 41
Subscribed and sworn to before me
at Peshawar High Court, Peshawar
on 11/08/2021 Under Article 113 of
the Constitution of Pakistan Order 1984

11 AUG 2021

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8

BEFORE PESHAWAR HIGH COURT PESHAWAR

COC No. 24-P /2021
IN
W.P No. 1818 /2020

Imran KhanPetitioner

VERSUS

Sanaullah Abbasi & Others.....Respondents.

AFFIDAVIT

I, Imran Khan S/O Jan Muhammad, Ex-Levy Sepoy R/o Badaan District Orakzai (Petitioner) do hereby solemnly declare that the accompanying COC is true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Imran Khan
Signature of Imran Khan
11 AUG 2021

Imran Khan
DEPONENT

0334-9326315

14101-0941445-1

Identified by

Imran Khan
Imran Khan,
Advocate High Court, Peshawar

FILED TODAY
Deputy Registrar
11 JAN 2021

No. <u>13321</u>
Certified that the above was verified on solemnly affirmation before me in office, this <u>21</u> day of <u>Dec</u> 20 <u>20</u> by <u>Imran Khan</u> s/o <u>Jan Muhammad</u> r/o <u>Orakzai</u> who was identified by <u>Imran Khan</u> Who is personally known to me:
<i>Imran Khan</i> Oath Commissioner Peshawar High Court Peshawar

Imran verified

49

PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET



Date of Order of Proceedings	Order or other Proceedings with Signature of Judge(s).
1	2
<p>12.04.2021</p>	<p><u>COC No24-P/2021 in W.P. No.1818-P/2020</u></p> <p>Present: Mr. Imran Khan, Advocate, for the petitioner.</p> <p>Mr. Rab Nawaz Khan, AAG, for the official respondents alongwith Mr. Imtiaz Ali Shah, Additional Assistant Commissioner, Lower Orakzai.</p> <p>*****</p> <p><u>IJAZ ANWAR, J.</u> At the very outset of hearing, the learned AAG produced before the Court order dated 29.03.2021 and stated that the order of this Court has been complied with.</p> <p>2. Since, this COC petition has served out its purpose; as such, it is disposed of. Notices issued to the respondents are hereby withdrawn.</p> <p><u>Announced</u> <u>Dt:12.04.2021</u></p> <p style="text-align: right;">JUDGE</p> <p style="text-align: right;">JUDGE</p> <p style="text-align: right;">11 AUG 2021</p>

3478

Date of Presentation of Application 11/8/21

No of Pages 11

Copying fee 24

Total 24

Date of Preparation of Copy 11/8/21

Date of Delivery of Copy 11/8/21

Received By: [Signature]

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11 AUG 2021

OFFICE OF THE DEPUTY COMMISSIONER
DISTRICT ORAKZAI

No. 687 /DC/R/C-21

Dated 29 /03/2021

50

ORDER

The petitioner/Ex-Lewis Sepoy Imran Khan was charged US 377 PPC vide FR No.562 dated 06/06/2017 PS City Hangu. Petitioner was tried and convicted by the Additional Session Judge-1 Hangu on 07/06/2018 U/S 377 PPC with 01 year R.I. Therefore the petitioner/accused was terminated from service by the then Deputy Commissioner, Orakzai on 01/08/2018 i.e. date of conviction i.e. 07/06/2018.

The petitioner/accused filed an appeal before the Peshawar High Court, Peshawar, and the case was remanded back to the trial court for decision afresh. After that, the petitioner/accused was acquitted from the charge on 11/06/2019.

The present writ petition was decided on 18/03/2020 with the directions to the Deputy Commissioner, Orakzai to consider the case of petitioner in accordance with the law, however, in case of rejection of appeal of petitioner, the worthy Deputy Commissioner, Orakzai shall give reasons thereof.


The case was presented before the Scrutiny Committee Law Department, who advised Administrative Department to decide the case of petitioner in the light of Peshawar High Court's final direction.

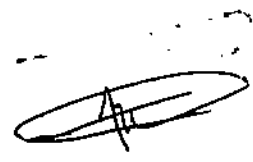
In the light of Peshawar High Court, Peshawar direction and Scrutiny Committee advice, the petitioner was summoned for personal hearing vide summon No.1 dated 25/09/2020, which was served on 01/10/2020 and through Assistant Reader Shafi Ullah also informed the petitioner to appear before the Deputy Commissioner, Orakzai, but he did not appear before the Deputy Commissioner, Orakzai. Therefore on dated 29/03/2021, last opportunity was given to the petitioner through summon/notice dated 26/03/2021 which was served upon him personally. On the given date i.e. 29/03/2021, the petitioner appeared, he was given full opportunity of personal hearing and to mention the reasons why he should not pursue his case in accordance with the then existing rules

...not ... the appellate authority i.e. Commissioner Kohat Division, Kohat after his dismissal/termination from service.

...with the directions of the august Peshawar High Court Peshawar, wherein the writ was allowed by Deputy Commissioner, Orakzai to consider the petitioners case. The law in a case of rejection of appeal of the petitioners case is that the writ can be thoroughly examined afresh which would mean that the petitioners case cannot be re-instated on the following grounds:

- 1. That the petitioners challenge the order of termination dated 01/08/2018 before appeal filed before Commissioner Kohat Division, Kohat.
- 2. That after the order dated 25/03/2019 the petitioner didn't file a review petition before the Commissioner.
- 3. That after the constitutional amendment the administrative powers of the Commissioner are limited for Deputy Commissioners to District Police Officers and the levy is collected through Khyber Pakhtunkhwa Levy Fund. The Deputy Commissioner, Orakzai is not empowered to consider the petitioners case.


 DEPUTY COMMISSIONER
 DISTRICT ORAKZAI
 Deputy Commissioner
 Orakzai



OFFICE OF DEPUTY COMMISSIONER
DISTRICT ORAKZAI
No. 687/DC/R/C-21
Dated: 29/03/2021

ORDER

The petitioner/Ex-levies Sepoy Imran Khan was charged U/s 377 vide FIR No. 562 dated 06.06.2017 PS City Hangu. Petitioner was tried and convicted by the Additional Session Judge-I Hangu on 07.06.2018 U/S 377 PPC with 01 year R.I. Therefore the petitioner / accused was terminated from service by the then Deputy Commissioner, Orakzai on 01.08.2018 w.e.f. date of conviction i.e. 07.06.2018.

The petitioner / accused filed an appeal before the Peshawar High Court, Peshawar and the case was remanded back to the trial court for decision afresh. After that the petitioner / accused was acquitted from the charge on 11.06.2019.

The present writ petition was decided on 18.03.2020 with the directions to the Deputy Commissioner Orakzai to consider the case of petitioner in accordance with the law, however, in case of rejection of appeal of petitioner, the worthy Deputy Commissioner, Orakzai shall give reasons thereof.

The case was presented before the Scrutiny Committee Law Department who advised Administrative Department to decide the case of petitioner in the light of Peshawar High Court, Peshawar direction.

In the light of Peshawar High Court Peshawar direction and Scrutiny Committee advice the petitioner was summoned for personal hearing vide summon No. 1 dated 25.09.2020 summon No. 2 dated 01.10.2020 and through Assistant Reader Shafi Ullah also informed verbally on 26.03.2021 to appear before the Deputy Commissioner, Orakzai but he didn't appear before the Deputy Commissioner, Orakzai. Therefore on dated 29.03.2021, last opportunity given to the petitioner through summon / notice dated 26.03.2021, which was served upon him personally on the given date i.e. 29.03.2021 the petitioner appeared, he was given full opportunity of personal hearing and to mention the reasons why he could not pursue his case in accordance with the then existing rules

ATTENDED

Au

by not filing an appeal before the appellate authority i.e. Commissioner Kohat Division, Kohat other, his dismissal termination from service.

In compliance with the directions of the august Peshawar High Court Peshawar, wherein the court had directed the Deputy Commissioner, Orakzai to consider the petitioner's case in accordance with law and in case of rejection of appeal of the petitioner to give the reasons. Thereof. The case was thoroughly examined afresh which revealed that the services of the petitioner cannot be re-instated on the following grounds:

1. That the petitioner didn't challenge the order of termination dated 01.08.2018 before appellate authority i.e. Commissioner Kohat Division, Kohat.
2. That after acquittal dated 25.03.2019 the petitioner didn't like file a review petition before competent authority.
3. That after 25th constitutional amendmet the administrative powers of levies / Khassadars have been shifted from Deputy Commissioners to Distrit Police Officers of the concerned Merged Districts through Khyber Pakhtunkhwa Levy Force Act, 2019, meaning thereby, that Deputy Commissioner, Orakzai is not competent authority for re-instatement of the petitioner.

Sd/-
Deputy Commissioner
District Orakzai

ATTESTED
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Ant-J

To

The District Police Officer,
Orakzai

Subject

REQUEST FOR RE-INSTAEMENT OF SERVICE

Respected Sir,

The applicant's respectfully submit are as under

1. That the applicant is the Ex-Lavies sepoy and was charged U/S 377 PPC for No. 562 dated 06/06/2017 PS City Hangu and was convicted by the A.S. Hangu on 07/06/2018 with 01 year R.
2. That the applicant was terminated from the service by the then Deputy Commissioner Orakzai on 01/08/2018 w.e.f date of conviction i.e. 07/06/2018.
3. That the applicant filed an appeal before the Peshawar High Court, Peshawar and the case was remanded back to the trial Court for decision afresh. After that the applicant was acquitted from the Charge on 11/06/2019 with the direction to the Deputy Commissioner Orakzai to consider the applicant case in accordance with law and in case of rejection of appeal of the applicant to give the reasons thereof.
4. That the Deputy Commissioner Orakzai was thoroughly examined the case of the applicant afresh which revealed that the services of the petitioner cannot be reinstated on the following grounds -

- i. That the applicant did not challenge the order of termination dated 01/08/2018 before appellate authority i.e. Commissioner Kohat Division, Kohat
- ii. That the applicant after acquittal dated 25/03/2019, the applicant did not file a review petition before competent authority.
- iii. That after 25th constitutional amendment, the administrative powers of Levies/Khassadars have been shifted from Deputy Commissioners to District Police Officer of the concerned merged District through KPK Levy Force Act 2019, meaning thereby that Deputy Commissioner Orakzai is not competent authority for re-instatement of the applicant.

Office of the DPO, District Orakzai
 Diary No. 35 PA
 Date 22-4-2021

ATTESTED

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iv. That the applicant has submitted application pertaining reinstatement to DC Orakzai on dated 14.04.2020 which was forwarded by DC Orakzai to DPO Orakzai on dated 25.07.2020 for further necessary action. DPO Orakzai endorsed the same to Regional Police Officer, Kohat but the matter was returned to DPO Orakzai to resubmit it to DC Orakzai and hence the case has become the shuttlecock among the offices and the matter has not been resolved till date.

In the light of court decision, it is humbly requested that my reinstatement case may properly be processed and be reinstated along with all benefits at the earliest, please.

I shall be very thankful to you for this act of kindness.

Almighty Allah bless you Sir.

Your's faithfully.

Muhammad Imran
27-06-2020

Muhammad Imran
Ex-Levies Sepoy.
District Orakzai.

Muhammad Imran

﴿ وگالت نامہ ﴾

بعدالتجارب خیر حکیم فوائسہ کی نگرانی میں

ضلع۔ اور کئی

مقدمہ فوجداری ادویاتی

معدت مورخہ

محمد انیس خان بنام گورنمنٹ آف خیر دستوں فرا وغیرہ

باعث تحریر آنکہ

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

محمد الیاس اور کئی، محمد شبیر خلیل ایڈووکیٹس ہائی کورٹ، پشاور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقریرات و فیصلہ برحلف دینے جواب دعویٰ اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا ایجیل کی برآمدگی اور منسوخی نیردا کرانے ایجیل نگرانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیش مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکورہ کریں۔

لہذا وگالت نامہ لکھ دیا تاکہ سند رہے۔

الرقوم:- ۵۶ ماہ اگست 2021

بمقام پشاور

Attested & Accepted

Muhammad Ilyas Orakzai

Advocate High Court

BC No:- 10-3471

CNIC 14101-0798923-7

Cell 0333-9191892

Muhammad Shabir Khalil

Advocate High Court

BC No:- 11-10999

CNIC 17301-1490356-7

Cell 0333-9047138

محمد انیس خان کے والد محمد شہباز نے قومی درجہ میں سے ڈگری حاصل کر لی اور کئی ضلع اور کئی ہائی کورٹ میں پشاور میں اور کئی ہائی کورٹ میں

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 7262/2021

Imran Khan Ex-Levy Sepoy.....Petitioner

VERSUS

Govt: of Khyber Pakhtunkhwa,

Through Secretary Home & TA's Department & Others.....Respondents

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DEPUTY COMMISSIONER
ORAKZAI TRIBAL DISTRICT



BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7262/2021

Imran Khan Ex-Levy Sepoy.....Petitioner

VERSUS

Government of Khyber Pakhtunkhwa
through Secretary Home & TA's Deptt, & Others.....Respondents

PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO.5

Respectfully Sheweth,

Reply to Preliminary objections:-

- a. That the appellant has got no cause of action to file the instant service appeal.
- b. That the appellant has got no locus standi.
- c. That the appellant has stopped the file the instant appeal due to his own conduct.
- d. That the appeal is not maintainable in the present form.
- e. That the appeal is not maintainable for mis-joinder and non-joinder of necessary party.
- f. That the instant appeal is not maintainable as such the appellant has not been submitted any departmental appeal against the impugned order.
- g. That the instant appeal is time barred.

On Facts:-

1. Pertains to record.
2. Pertains to record.
3. Matter of record.
4. Matter of record.
5. The appellant was terminated from service after conviction from the trial Court.
6. Correct as per record.
7. Correct as per record.
8. No comments.
9. No comments.
10. In reply, it is important to mentioned that after 25th Constitutional Amendment, the office Political Agent/Commandant Levies / Khasadars has been abolished and replace with the office of Deputy Commissioner who is no longer officer incharge of Levies/Khasadars since all the Levies/Khasadars of ex-FATA have been absorbed into Khyber Pakhtunkhwa Police under Levies Force Transition Ordinance 2019. Moreover, with this transition, all the affairs and record pertaining to the HR, Inquiries, Efficiency & Discipline (E&D) including penalties and reinstatement, salaries, Pension, Gratuity and other financial emoluments of newly created District Police have been handed over and transferred to the office of District Police Officer in all newly merged Districts (NMDs) of Ex-FATA including District Orakzai. The supervisory and operational/administrative control of the newly created police under the current dispensation lies with the District Police Officer being commandant under Levies Force Transition Ordinance 2019. **Hence, the office of Deputy Commissioner in NMDs is no longer the commandant of Levies / Khasadars after their absorption into the Khyber Pakhtunkhwa Police.** It is important to mentioned that the Deputy Commissioner, Orakzai has Considered the case of the appellant as per the direction of the Judgment of Hon'ble Peshawar High Court, dated 18/03/2020 although after 25th Constitutional Amendment and Levies Transition Ordinance 2019, the Deputy Commissioner, Orakzai is no longer Office incharge of the Levies/Khasadars who have been absorbed into the Khyber Pakhtunkhwa Police whose current command in all NMDs including District Orakzai lies with the District Police Officer.
11. In reply, it is stated that COC petition has been disposed off by the honorable Peshawar High Court vide order dated 12/04/2021.

12. As already explained that the directions of honorable Peshawar High Court have already been complied with and there was no fresh cause of action (judgment copy already annexed).
13. The appeal is incompetent inter-alia on following grounds:-

2

Grounds:-

- A. Incorrect, the order dated 01/08/2018 has been issued after conviction of the appellant by the trial court. Moreover, the order dated 29/03/2021 has been passed in light of the directions of honorable Peshawar High Court dated 18/03/2020.
- B. As explained in para-A.
- C. Already explained in para-A.
- D. As explained in para-10. ibid.
- E. Matter of record.
- F. Incorrect, as explained above.
- G. The order dated 29/03/2021 has been passed in light of the directions of honorable Peshawar High Court dated 18/03/2020.
- H. Matter of record. The order dated 01/08/2018 has been issued after conviction of the appellant by the trial court. Moreover, the order dated 29/03/2021 has been passed in light of the directions of honorable Peshawar High Court dated 18/03/2020.
- I. As explained in para-H.
- J. As explained in para-H.
- K. Incorrect, proper preliminary objections have been raised.
- L. The respondents be allowed to raise additional grounds during the arguments.

Prayers:-

It is humbly prayed that appeal and in view of the comments the subject appeal, being devoid of merits, may kindly be dismissed with costs.


DEPUTY COMMISSIONER
DISTRICT ORAKZAI
(RESPONDENT NO.5)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.7262/2021

Imran Khan Ex-Levy Sepoy.....Petitioner

VERSUS

Govt: of Khyber Pakhtunkhwa,
Through Secretary Home & TA's Department & Others.....Respondents

AFFIDAVIT

I, Imtiaz Ali Shah, Additional Assistant Commissioner, Lower Orakzai, do hereby solemnly affirm and declare on oath that the **parawise comments** are true and correct to the best of my knowledge and belief and nothing has been concealed.

Imtiaz Ali Shah
DEPONENT

CNIC#14203-4660194-5
Cell# 0336-9727777





OFFICE OF THE DEPUTY COMMISSIONER
DISTRICT ORAKZAI

No 622 /DC/R/C-22

Dated 21 /03/2022

AUTHORITY LETTER

Mr. Imtiaz Ali Shah, Additional Assistant Commissioner, Lower Orakzai is hereby authorized to submit the parawise comments in Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.7262/2021 in case titled "Ex-Levy Sepoy Imran Khan VS Deputy Commissioner, Orakzai & Others" on my behalf.


21.3.2022
DEPUTY COMMISSIONER
DISTRICT ORAKZAI

7

5

PESHAWAR HIGH COURT, PESHAWAR
FORM "A"
FORM OF ORDER SHEET.

Court of
Case No.....

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	18.03.2020.	<p><u>WP No.1818- P/2020.</u></p> <p><u>Present:-</u></p> <p>Mr. Imran Khan Advocate, for the petitioner.</p> <p>Mr. Rab Nawaz Khan AAG for Provincial Government.</p> <p>=====</p> <p><u>IKRAMULLAH KHAN, J.:-</u>Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioner has challenged the order dated 1.8.2018 passed by respondent No.4, whereby petitioner was terminated from his service, who also seeks his reinstatement into service with all back benefits.</p> <p>2. The record reveals that petitioner has filed an appeal against his termination order before respondent No.4 on the ground that petitioner has already been acquitted from the charges levelled against him. The Deputy</p>



ATTESTED

EXAMINER
Peshawar High Court

Commissioner concerned submitted/ sent the said appeal to the District Police Officer (DPO) Orakzai on the ground that Levy posts are regularized and merged into Police department however, the DPO concerned returned the appeal to the Deputy Commissioner that the petitioner was terminated prior to regularization of the post but the learned Deputy Commissioner once again vide order dated 6.2.2020 submitted/ sent the appeal of the petitioner to the District Police Officer, Orakzai.

3. As per record, petitioner has been terminated vide order of learned Deputy Commissioner, District Orakzai dated 1.8.2018 at the occasion when the FATA was not merged into the province of Khyber Pakhtunkhwa and levy post was also not regularized therefore, fate of appeal of petitioner, may be decided by the concerned Deputy Commissioner or Commissioner as the case may be. As such this writ-petition is disposed of with direction to the worthy Deputy Commissioner Orakzai, to consider the case of petitioner in accordance with law however, in

ATTESTED

EXAMINER
Peshawar High Court

(9)

(7)

case of rejection of appeal of petitioner, the worthy Deputy Commissioner shall give reasons thereof.

Announced.
18.03.2020.



JUDGE

JUDGE

IDENTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 47 of
The Qanun-e-Shahadat Order, 1984

07 JAN 2021

No. 21679
 Date of Presentation of Application 07-01-2021
 No of Pages 04
 Copying fee R.S. 16/-
 Total R.S. 16/-
 Date of Preparation of Copy 07-01-2021
 Date of Delivery of Copy 07-01-2021
 Received By J. M. Khan

"A. Qayum"

(DB)

Hon'ble Mr. Justice Ikramullah Khan & Hon'ble Mr. Justice Muhammad Nazam Anwar.