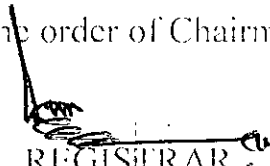


# FORM OF ORDER SHEET

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

Case No.:- \_\_\_\_\_

648/2023

Sl.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/03/2023	<p>The appeal of Mr. Naseeb Jan presented today by Naila Jan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

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

SERVICE APPEAL NO. 648/2023

Mr Naseeb Jan Ex-PASI NO 23/P Police Department Khyber Pakhtunkhwa District Peshawar..... (Appellant)

**Versus**

Capital City Police Officer Peshawar at Peshawar & others..... (Respondents)

**INDEX**

S#	Description of Documents	Annex	Pages
1.	Grounds of Appeal		1 to 3
2.	Affidavit		4
3.	Addresses of Parties		5
4.	Copy of the FIR	"A"	6
5.	Copy of the Dismissal Order dated 12/02/2021	"B"	7
6.	Copy of the Court Judgment dated 30/01/2023	"C"	8 to 11
7.	Copy of departmental Appeal	"D"	12, 13
8.	Copy of the impugned Appellate/final order dated 24/02/2023	"E"	14
9.	Copy of the judgment of the Apex Court dated 11.02.2021	"F"	15 to 19
10.	Wakalat N. 1		20

Appellant

Through

*Naila Jan*  
Naila Jan  
Advocate High Court  
Peshawar

Dated: 24/03/2023

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k

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

SERVICE APPEAL NO. 648 /2023

Mr Naseeb jan Ex-PASI NO 23/P Police Department Khyber Pakhtunkhwa District Peshawar..... (Appellant)

**Versus**

1. Capital City Police Officer Peshawar at Peshawar.
2. Superintendence of Police Saddar Division CCP Peshawar..... (Respondents)

**Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the impugned final /appellate Order dated 24/02/2023 , whereby dismissal order of the appellant dated 12/02/2021 has been set aside and the appellant has been reinstated with immediate effect instead of 12/02/2021 and the intervening period has been treated as leave of the kind due instead of full pay with all other back benefits in utter violation of law and the Khyber Pakhtunkhwa Police Rules 1975.**

**Prayers:** **On acceptance of this Service Appeal the impugned final /appellate Order dated 24/02/2023, may kindly be modified to the extent of reinstatement of the appellant w.e.f 12/02/2021 with all back benefits, instead of with immediate effect and illegally treating the intervening period as leave of the kind due ,with any other benefit deemed appropriate by the honourable Tribunal, not specifically prayed for.**

Respectfully sheweth;

**FACTS:**

The appellant submits the following facts with great Respect;

1. That the appellant was inducted into police department and since his appointment the appellant performed his duties with great zeal, zest, enthusiasm and to the entire satisfaction of the High ups.
2. That the appellant was lastly posted as In charge Police Post Sheikhan PS badaber where the appellant was falsely involved in criminal case FIR No 04 under Section 302/34/427 PPC of PS badaber and was arrested and sent to judicial custody. (Copy of the FIR is annexure -A)
3. that the appellant was proceeded departmentally without serving a charge sheet and without associating with the inquiry proceedings and final show cause Notice and resultantly the appellant was awarded major penalty of dismissal vide order dated 12/02/2021 by respondent No 02 in an illegal cursory manners. (copy of the charge sheet & inquiry report has not been provided to the appellant may kindly be requisitioned from the respondents)
4. That thereafter the appellant was released on Bail by Peshawar High court vide its judgment/order dated 11/03/2021 and after releasing ,the appellant approached for joining his duty however the appellant was orally informed that the appellant has already been dismissed from service during the period of confinement however the same was not provided to the appellant .

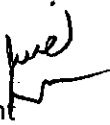
- 2
5. That the appellant got the impugned dismissal order dated 12/02/2021 on his own efforts which was issued at the back of appellant in total disregards of law, rules principles of natural justice. **(Copy of the Dismissal Order dated 12/02/2021 is annexed as annexure-B)**
  6. That the appellant feeling aggrieved from the impugned illegal dismissal order dated 12/02/2021, filed Departmental appeal before respondent No 01 and during pendency of the departmental appeal, the Court of Additional Session Judge XII honourably acquitted the appellant vide judgment dated 30/01/2023 from the charges. **(Copy of the Court Judgment dated 30/01/2023 and departmental Appeal are Annexures-C&D)**
  7. That Respondent No 01 was gracious enough, to accept the departmental Appeal of the appellant vide impugned order dated 24/02/2023 whereby the appellant has been reinstated into service with immediate effect, instead of from the date of dismissal i.e 12/02/2021 and quite illegally declared the intervening period as leave of the kind due in utter violation law rules and principles of Natural Justice with subsequent Order dated 09/03/2023. **(Copy of the impugned Appellate/final order dated 24/02/23 is Annexure-E)**
  8. That the appellant feeling aggrieved, having no other adequate remedy hence filling the instant appeal on the following grounds interalia;

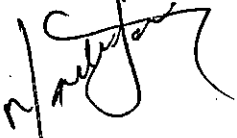
**GROUNDS:**

- A. That the impugned appellate order/final Order dated 24/02/2023 is against the law rules Principles of Natural Justice, hence liable to be modified to the extent of reinstatement into service with effect from the date of dismissal i.e 12/02/2021 with all back benefits pay etc.
- B. That no charge sheet along with statement of allegation has been issued/served before initiating the so called departmental ex party Inquiry which is mandatory under the law.
- C. That the appellant was in jail and this fact was in the knowledge of the inquiry officer which is evident from the inquiry report even then no statement of the appellant or any other witness has been recorded in the appellant presence which is utter violation of the Khyber Pakhtunkhwa Police Rules 1975.
- D. That no opportunity of personal hearing/defence has been provided to the appellant at any stage of the disciplinary proceedings. Hence the appellant has been condemned unheard.
- E. That no regular inquiry has been conducted in accordance with Khyber Pakhtunkhwa Police Rules 1975 and no opportunity of defence has been provided to the appellant.
- F. That the inquiry officer as well as the competent authority was in the knowledge that the appellant is behind the bar even then they did not associate the appellant with the disciplinary proceedings.
- G. That no opportunity of personal hearing has been provided before issuing the impugned order dated 12/02/2021 or final order dated 24/03/2023.
- H. That no statement of any witness has been recorded nor did the appellant have been confronted with anything and the inquiry officer failed to bring any iota of evidence against the appellant.
- I. That under FR 54 (a) **"Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:— if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal;"**  
However, in case of the appellant after acquittal from the criminal case in violation of the FR 54 the appellant was reinstated by treating the intervening period as leave of the kind due vide the final order dated 25/03/2023 and order 09/03/2023 hence the appellant has been deprived from the benefits of the intervening period.
- J. That the apex Court in C.P. Nos.517-L, 1019-L, 1062-L & 1232-L of 2016 and 1929-L/2017 titled Muhammad Sharif & others Vs Inspector General of Police, Punjab, Lahore, etc. dated 11.02.2021 has held in para 10 in the judgment **"If by virtue of a declaration given by the Court a civil servant is to be treated as being still in service, he should also be given the consequential relief of the back benefits (including salary) for the period he was kept out of service as if he were actually performing duties. A civil servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to back benefits."** (Judgment is Annexure F)

- K. That neither the appellant committed the alleged act nor did the appellant have been attributed the commission of the alleged acts however the appellant was made escape goat and was illegally penalised.
- L. That right of fair Trial has not been provided to the appellant as guaranteed by Article 10 A of the Constitution of Pakistan 1973.
- M. That the appellant has not been treated in accordance with Art 4 and 25 of the Constitution of Pakistan 1973.
- N. That no statement of any witness has been recorded nor did opportunity of cross examination have been provided to the appellant.
- O. That the appellant was not even charged in the FIR even then he was not only mala fidley involved but without providing any opportunity the appellant was dismissed from service without any proof.
- P. That since the impugned order the appellant is jobless and being the sole breed earner the family of appellant facing problems
- Q. That the appellant seeks permission of the honourable Tribunal to adduce other grounds during final hearing of the appeal.

It is therefore requested that the instant Service Appeal may kindly be accepted as prayed for.

Appellant 

Through 

Naila Jan

Advocate High Court Peshawar

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

9

SERVICE APPEAL NO. /2023

Mr Naseeb jan Ex-PASI NO 23/P Police Department Khyber Pakhtunkhwa District Peshawar..... (Appellant)

**Versus**

Capital City Police Officer Peshawar at Peshawar & others..... (Respondents)

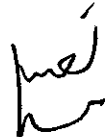
**AFFIDAVIT**

I, Naseeb jan Ex-PASI NO 23/P Police Department Khyber Pakhtunkhwa District Peshawar do hereby solemnly affirm and declare that all the contents of the **accompanied appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

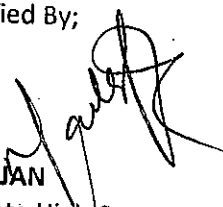
DEPONENT

CNIC:

Cell No:



Identified By;



NAILA JAN  
Advocate High Court  
Peshawar.

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

**SERVICE APPEAL NO. /2023**

5

Mr Naseeb jan Ex-PASI NO. 23/P Police Department Khyber Pakhtunkhwa District Peshawar..... (Appellant)

**Versus**

Capital City Police Officer Peshawar at Peshawar & others..... (Respondents)

**ADDRESS OF PARTIES**

**APPELLANT**

Naseeb jan Ex-PASI NO 23/P Police Department Khyber Pakhtunkhwa District Peshawar.

**RESPONDENTS**

1. Capital City Police Officer Peshawar at Peshawar.
2. Superintendence of Police Saddar Division CCP Peshawar.

Dated: 24/03/2023

Appellant

Through

**Naila jan**  
Advocate High Court  
Peshawar

### ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

فارم نمبر ۲۳-۵ (۱)

تاریخ	۲۰۲۱ء ۴ مئی ۵:۰۵ بجے
محل وقوع	پشاور
مذکورہ واقعہ کا بیان	مذکورہ واقعہ کا بیان
مذکورہ واقعہ سے ادرست	مذکورہ واقعہ سے ادرست
مذکورہ واقعہ کی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	مذکورہ واقعہ کی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو
مذکورہ واقعہ کی شدت	مذکورہ واقعہ کی شدت

### ابتدائی اطلاع نیچے درج کرو۔

مذکورہ واقعہ کا بیان ہے کہ ایک شخص نے ایک اور شخص کو قتل کر دیا۔ اس واقعہ کی اطلاع پولیس کو دی گئی اور پولیس نے موقعاً جاکر مقدمہ چلا دیا۔ اس واقعہ کی اطلاع درج کرنے میں کوئی تاخیر نہیں ہوئی۔

مذکورہ واقعہ کا بیان ہے کہ ایک شخص نے ایک اور شخص کو قتل کر دیا۔ اس واقعہ کی اطلاع پولیس کو دی گئی اور پولیس نے موقعاً جاکر مقدمہ چلا دیا۔ اس واقعہ کی اطلاع درج کرنے میں کوئی تاخیر نہیں ہوئی۔

مذکورہ واقعہ کا بیان ہے کہ ایک شخص نے ایک اور شخص کو قتل کر دیا۔ اس واقعہ کی اطلاع پولیس کو دی گئی اور پولیس نے موقعاً جاکر مقدمہ چلا دیا۔ اس واقعہ کی اطلاع درج کرنے میں کوئی تاخیر نہیں ہوئی۔

مذکورہ واقعہ کا بیان ہے کہ ایک شخص نے ایک اور شخص کو قتل کر دیا۔ اس واقعہ کی اطلاع پولیس کو دی گئی اور پولیس نے موقعاً جاکر مقدمہ چلا دیا۔ اس واقعہ کی اطلاع درج کرنے میں کوئی تاخیر نہیں ہوئی۔



OFFICE OF THE  
SUPERINTENDENT OF POLICE,  
SADDAR, CCP, PESHAWAR

NC

/PA

DATE: 12/02/2021

(7)

Amir

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ORDER

This order will dispose off the Departmental Inquiry against ASI Naseeb Jan the then Incharge PP Sheikhan PS Badhber vide this office No. 02/E/PA dated 09.01.2021. The inquiry in hand emanated from that while he was posted at PP Sheikhan, during investigation of case FIR No. 04 dated 04.01.2021 u/s 302/34/427 PPC PS Badhber, it was found that he is involved in instant murder case. Being a member of discipline force, this act is highly objectionable. For the said negligence proper departmental inquiry was conducted through SDPO Sadder Circle. He submitted his findings vide memo No. 01/E/ST dated 19.01.2021.

Final show cause notice was issued vide this office memo No. 02/E/PA dated 21.01.2021 and sent to Superintendent Central Prison Peshawar vide this office memo No. 271/PA dated 21.01.2021 for service upon him, but to no avail.

Keeping in view the circumstances and the recommendations of inquiry officer and other material available on record, the undersigned came to the conclusion that the defaulter official found guilty. In exercise of the power vested in me under E&D Rules 1975 amended with 2014, he is hereby awarded major punishment of dismissal from service with immediate effect.

Order announced.

  
Superintendent of Police, Sadder Division  
CCP, Peshawar.

OB. No. 549 dated 12/2/2021.

Copy of above is forwarded for information and necessary action to:

1. The Capital City Police Officer, Peshawar
2. The Senior Superintendent of Police Operations CCP Peshawar.
3. Pay officer CCP Peshawar.
3. FMC along with Inquiry file for record.
4. All concerned



**IN THE COURT OF MUHAMMAD AYAZ KHAN**  
**ADDITIONAL SESSIONS JUDGE-XII, PESHAWAR**

SESSIONS CASE NO. 159/SC OF 2021

Date of Institution 14.07.2021  
Date of Decision 30.01.2023

ORDER  
30.01.2023

1. APP for the State present. The accused facing trial Fazal Manan, Saleh Muhammad, Naseeb Khan Shakeel and Ijaz Ullah on bail present.
2. Through instant order, this Court is going to decide an application U/S 265-K Cr.P.C in case FIR No.04 dated 04.01.2021 U/S 302/324/427/34 PPC registered at the Police Station Badhber, Peshawar.

Brief facts of the instant case are that, the injured Riaz reported the matter to the police, that he alongwith his friend Akbar Khan was travelling in Motorcar bearing No.ADS-348 towards his home. When they reached to the place of occurrence, in the meanwhile firing started from a shop on the vehicle of complainant. Due to said firing, the complainant sustained injury on his back and the firing also hit the vehicle, however, other eye witness Akbar Khan escaped unhurt. The complainant charged two unknown persons for commission of offense.

ATTEST  
BY  
District

4. Later on, in supplementary statement of Fatch Khan and Muhammad Akbar Khan, they charged the accused Naseeb Khan PASI, Fazal Manan 805 LHC, Constable Shakeel No.6962 and Saleh Muhammad 1765.

5. Argument heard and record perused.

6. Perusal of the record reveals that instant case was sent to this Court for trial by the Hon'ble District & Sessions Judge, Peshawar on 14.07.2021. Accused were summoned by the court who appeared before the court. Proceedings U/S 265-C Cr.P.C were complied with on 12.10.2021 while charge was framed on 03.11.2021. The accused facing trial pleaded not guilty and claimed trial. Consequently, prosecution was directed to produce evidence. In order to prove its case against the accused facing trial, the prosecution produced 14 PWs till date. Brief resume of the PWs are as follows.

7. PW-01 is the statement of eye witness namely Muhammad Akbar Khan S/o Muhammad Asghar Khan, who stated on oath that on date and night of occurrence, he alongwith Riaz Khan (deceased) S/o Futi Khan R/o Khazana Payan alongwith other friends went to the Hujra of one Qismat Ullah S/o Said Ahmad R/o Masho Pekey, Badsher, Peshawar for dinner. His friend namely Riaz Khan wanted to leave the said Hujra, therefore, they said to their friends that they had some important work. On this, he alongwith his friend Riaz Khan left the said Hujra in the Motorcar bearing No.ADS-34S/Islamabad white in color. He sat on the driving seat while Riaz Khan sat on the front seat, he was having 05 Lacs

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B/B

party) also fired in self-defense. He further admitted that the day and time the police party were nominated as accused they were there and then arrested by then SHO Ijaz Ullah Khan. He also admitted that it was also investigated by him that the SHO in his statement recorded before him that the police officials and Incharge PP Sheikhan concealed the true facts from him for almost 03 days and that he was continuously discussing the matter regarding the actual facts with the SP and DSP Saddar Circle. He admitted that it was dark night occurrence and that before proceedings to the FIR he had gone to the spot. If the above said admissions of the father of the complainant, eye witness and Investigation Officer are taken into juxta-position, it is clearly suggested that it is a case of consultation and deliberation and the accused were charged on the instance of the high-ups of the police, which verify the factum of malafide. The august Supreme Court of Pakistan has laid down the dictum that whenever there is deliberation and consultation before registration of FIR, then, the accused shall be acquitted in circumstances. The present case is classical example of deliberation and consultation.

25. Under the circumstances, the fate of the case would be nothing but acquittal of the accused. Proceedings further with the case would be of no use as no case is made out against the accused on the basis of available record.

26. Therefore, the application is accepted and above accused is therefore, acquitted in the circumstances. Bail bonds of the accused

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stands cancelled and their sureties stand discharged from liability of the bail bonds. Case property be disposed of as per law.

27. Requisitioned police record be returned back to the quarter concerned alongwith a copy of this order accordingly.

28. File of this Court be consigned to record room after its necessary completion and compilation.

Announced In open Court:  
30<sup>th</sup> Day of January, 2023

MUHAMMAD AYAZ KHAN,  
ADDL: SESSIONS JUDGE-XII,  
PESHAWAR

No.	6959
Registered	02-2-23
Class	Judicial
Subj.	P-24
File No.	02-2-23
Signature	02-2-23
Printed	
Date	

Duty

No. 17-09  
Date: \_\_\_\_\_

CPD

بجوریت جہاں سیشن ٹی بی ایچ فیڈریشن کے پشاور

میں کئی ایسٹریٹس کے خلاف عزم اور ڈیڑھ 1/2/02 عزم 12/12/02  
زبردستی کی قریب SP کے ساتھ ڈیڑھ 1/2/02 عزم اور جہاں سیشن  
مائل کو ملازمت سے برخواستہ کیا گیا ہے۔

E-2  
13/4/2021

عنا عالیہ سیدہ حبیبہ بی بی

(1) یہاں سیشن ٹی بی ایچ فیڈریشن کے "Bessie Freeman" کے نام سے ایک ایسٹریٹ ہے جس کا پتہ ABC اور "D" ہے۔  
کوہستان ٹی بی ایچ فیڈریشن کے ساتھ مل کر اس کی شناخت کی گئی ہے۔

(2) یہاں سیشن ٹی بی ایچ فیڈریشن کے ساتھ مل کر اس کی شناخت کی گئی ہے۔

(3) یہاں دو ایسٹریٹس کے خلاف ایک من گھڑت اور بے بنیاد مقدمہ چل رہا ہے۔

عزم 04/01/02 عزم 302/34/427 PM

(4) یہاں چونکہ سیشن ٹی بی ایچ فیڈریشن کے ساتھ مل کر اس کی شناخت کی گئی ہے۔

فائل کے حوالہ دینا اور راجہ قرار اختیار کرنے کے لیے۔

(5) فوجیوں کے خلاف مقدمہ چل رہا ہے۔

مقدمہ میں سیشن ٹی بی ایچ فیڈریشن کے ساتھ مل کر اس کی شناخت کی گئی ہے۔

عزم 11/03/02 عزم 11/03/02

(6) یہاں سیشن ٹی بی ایچ فیڈریشن کے ساتھ مل کر اس کی شناخت کی گئی ہے۔

جسٹس کے سامنے کو سیشن ٹی بی ایچ فیڈریشن کے ساتھ مل کر اس کی شناخت کی گئی ہے۔

کی عزم کو جو دہریہ سیشن ٹی بی ایچ فیڈریشن کے ساتھ مل کر اس کی شناخت کی گئی ہے۔

13/4/2021

For comment

PC

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me

ad

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Police

13/4/2021

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(7) یہ کہ مسائل کے ساتھ درگتی زیادتی چینی ایک طرف ہے جا طور پر SHO کی  
 کی نا اہلی کوہ سے بغیر میں ہے جا طور پر ملوث کیا جا کر حکم دینا طرف  
 مسائل کے خلاف کوئی کارروائی نہیں لائی جا کر مسائل ہی مدیم موجودگی میں  
 مسائل کو ملازمت پر خواہت کیا گیا۔ اور اس کے ساتھ کارروائی جو نہ ہو والا  
 کے خلاف نام نہ لکھیں میں بنیامان گیا۔

چونکہ مسائل ایک غریب شخص ہے۔ اور تمام گھرانے کا واحد کفیل ہے  
 اس ملازمت کے علاوہ دوسرا کوئی ذریعہ معاش نہیں ہے۔  
 اس لئے درخواست حضور التوح ہے کہ درج بالا ضائق کو  
 پیش نظر رکھ کر مسائل کو ملازمت پر دوبارہ بھیج دیا جائے  
 بحال و فاکر شکور رضا کیس۔ ٹی کو رہا تو رہا

اللہ  
 08.04.2021

ایکٹا ایلڈ اے آر اے جہاں سابقہ  
 Pasi حال  
 Contact: No. 0302-5510915.  
 DISMITS.

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24

Amir

E

OFFICE OF THE  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

ORDER.

This order will dispose of the departmental appeal preferred by Ex-PASI Naseeb Jan No. 23/P who was awarded the major punishment of "Dismissal from service" under KP PR-1975 (amended 2014) by SP/Saddar Peshawar vide OB No.549, dated 12-02-2021.

2- Short facts leading to the instant appeal are that the accused PASI while posted as I/C PP Shekhan Police Station Badaber Peshawar was proceeded against departmentally on account of his involvement in criminal case vide FIR No. 04, dated 04.01.2021 u/s 302/34/427 PPC Police Station Badaber Peshawar.

3- He was issued proper Charge Sheet and Summary of Allegations by SP/Saddar Peshawar. SDPO/Saddar Peshawar was appointed as enquiry officer to scrutinize the conduct of the accused official. The inquiry officer after conducting proper inquiry submitted his findings in which the accused officer was found guilty. The competent authority in light of the findings of the enquiry officer issued him Final Show Cause Notice, which was sent to Superintendent Central Prison Peshawar vide No. 271/PA, dated 21.01.2021 for service upon him, but to no avail. hence awarded the above major punishment.

4- He was heard in person in O.R and the relevant record along with his explanation perused. During personal hearing the appellant categorically denied the allegations and stated that he was falsely been implicated in the said FIR. Moreover, the Honourable Court of Additional Session Judge-XII Peshawar vide order dated 30.01.2023 acquitted him of the charges levelled against him in the said FIR. Keeping in view his plea and other documentary proof, his appeal for reinstatement in service is hereby accepted. The punishment order of SP/Saddar Peshawar is hereby set aside. **He is hereby reinstated in service with immediate effect. The period he remained out of service is treated as leave of the kind due.**

535  
24-2-2023

(MUHAMMAD LAZ KHAN) PSP  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

No. 235-41 /PA dated Peshawar the 24 / 02 / 2023

Copies for information and necessary action to the :-

1. SP/Saddar Division Peshawar.
2. SP/IIQr: Peshawar
3. EC-II, Pay Officer & CC
4. JMC along with Fouji Missal.
5. Official Concern



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**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Manzoor Ahmad Malik  
Mr. Justice Syed Mansoor Ali Shah

**C.P. Nos. 517-L, 1019-L, 1062-L & 1232-L of 2016 and 1929-L/2017**  
(Against the judgment(s)/order(s) of Punjab Service Tribunal, Lahore dated 21.12.2015 passed in Appeal No.494/2015, and 09.02.2016 passed in Appeal No.3223/2015, and 01.03.2016 passed in Appeal No.1025/2015)

Muhammad Sharif (in CP 517-L/2016)  
Chief Traffic Officer, Lahore & 2 others (in CP 1019-L/2016)  
Inspector General of Police Punjab, etc. (in CP 1062-L/2016)  
Capital City Police Officer, Lahore, etc. (in CP 1232-L/2016)  
Secretary, Government of the Punjab, Health Department, Lahore  
(In CP 1929-L/2017)

.....Petitioner(s)

**Versus**

Inspector General of Police, Punjab, Lahore, etc. (in CP 517-L/16)  
Roqyya Khushnood (in CP 1019-L/2016)  
Muhammad Sharif (in CP 1062-L/2016)  
Riasat Ali (in CP 1232-L/2016)  
Dr. Muzaffar Nasrullah Chattha (in CP 1929-L/2017)

.....Respondent(s)

For the petitioner(s):  
(in CP 517-L/2016)

Mr. Khan Muhammad Vehniwal,  
ASC.

(in CP 1019-L, 1062-L, 1232-L  
of 2016 & CP 1929-L/2017)

Rana Shamshad Khan, Addl. A.G.  
Ch. Zafar Hussain Ahmad, Addl. A.G.  
a/w Shaukat Ali, DSP.  
Munir Hussain, DSP.  
Mr. Naeem Cheema, Law Officer.  
Mr. Imran Ashraf, S.P.  
Muhammad Ijaz Khan, Lit. Officer.  
Muhammad Anwar Yasir, Lit. Officer.

For the respondent(s):  
(in CP 1929-L/2017)

Mr. Mahmood Ahmad Qazi, ASC.

Research Assistance:

Mr. Hasan Riaz, Research Officer-  
Civil Judge, SCRC, Islamabad.

Date of hearing:

11.02.2021

**JUDGMENT**

**Syed Mansoor Ali Shah, J.**- We consider in these petitions the scope of entitlement of a civil servant to *back benefits* on his reinstatement in service after his wrongful removal or dismissal

16

has been set-aside or on his being restored to his post after the penalty imposed on him has been set-aside. We also consider the treatment of the period spent by a civil servant away from duty (due to dismissal from service or absence from duty, etc.) and the purpose and meaning of the terms *leave without pay* or *leave of the kind due* granted to a civil servant.

**Brief facts of the petitions**

2. In **CP 517-L of 2016**, the petitioner, Muhammad Sharif, Sub Inspector in Punjab Police, was compulsorily retired from service by the departmental authority. He preferred a departmental appeal and on expiry of the period stipulated for its decision, moved an appeal before the Punjab Service Tribunal ("Tribunal"). The Tribunal reinstated him in service though the period since the onset of compulsory retirement till reinstatement in service was directed to be treated as leave without pay. He now prays that this intervening period be treated with pay. The department has also called in question the order of reinstatement of Muhammad Sharif in **CP 1062-L of 2016**.

3. In **CP 1019-L of 2016**, the respondent, Roqyya Khushnood, Lady Traffic Warden, was dismissed from service by the Chief Traffic Officer, Lahore. The appellate authority taking a lenient view reinstated her in service but the period spent away from duty was treated as leave without pay. The Tribunal accepted her appeal and the period during which she remained out of service was adjudged to be considered as leave of the kind due. The department now prays that the Tribunal's interference with the departmental proceedings be overturned.

4. In **CP 1232-L of 2016**, the respondent, Riasat Ali, Constable, was dismissed from service by the departmental authority. The appellate authority taking a lenient view reinstated him in service. Nevertheless, minor penalty of censure was imposed and the period between dismissal and reinstatement was directed to be treated as leave without pay. The Tribunal accepted the civil servant's appeal and held that the period during which he was kept away from duty be treated as leave of the kind due. The

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penalty of censure was, however, maintained. The department now prays that the order of the Tribunal be reversed.

5. In **CP 1929-L of 2017**, the respondent, Dr. Muzaffar Nasrullah Chattha, Consultant Orthopedic Surgeon, was awarded major penalty of forfeiture of two years of service for absence which was reduced to forfeiture of one year in departmental appeal. The period of absence was to be treated as extraordinary leave without pay. The Tribunal accepted his appeal and decided that the period of absence be treated as earned leave.

6. The petitioners have sought leave of this Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") to appeal against the decisions of the Tribunal.

#### **Back Benefits**

7. At the very outset, it is important to underline that the term *back benefits* has not been mentioned in the service laws of Punjab or Pakistan, however, the term has a wide usage in the sub-continental jurisprudence, including ours, for a longtime. According to Black's Law Dictionary<sup>1</sup>, *Back Pay* is the salary that an employee should have received but did not because of an employer's unlawful action. *Back Pay Award*<sup>2</sup> is a judicial decision that an employee or ex-employee is entitled to an accrued but uncollected salary or benefits. The purpose of a back pay award is to make the employee whole i.e., restore the economic status quo that would have obtained but for the wrongdoing on the part of the employer.<sup>3</sup> Back pay is a compensation for the tangible economic loss resulting from an unlawful employment practice.<sup>4</sup> Back pay largely translates into back benefits under our jurisprudence. "Back benefits" are, therefore, retroactive payments.<sup>5</sup> Even though the term back benefits is wider than back pay as it includes other

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<sup>1</sup> 10<sup>th</sup> Edition, Thomson Reuters, 2014, 166.

<sup>2</sup> *ibid.*

<sup>3</sup> *Aguinaga v United Food & Commercial Workers Int'l Union* 993 F.2d 1463, 1473.

<sup>4</sup> *Robinson v Lorillard Corp.* 444 F.2d 791, 804.

<sup>5</sup> *Smith v West* 1999 U.S. App. Vet. Claims LEXIS 475, 6.

18

benefits but for the purposes of this case we restrict the meaning of back benefits to arrears of pay or back pay.<sup>6</sup>

8. Reinstatement in service means to place again in a former state or position<sup>7</sup> from which the person had been removed.<sup>8</sup> Reinstatement is effected from the date of dismissal with back pay from that date.<sup>9</sup> A reinstated employee is to be treated as if he had not been dismissed and is therefore entitled to recover any benefits (such as arrears of pay) that he has lost during his period of unemployment. However, pay in lieu of notice, ex gratia payments by the employer, or supplementary benefits, and other sums he has received because of his dismissal or any subsequent unemployment will be taken into account.<sup>10</sup>

9. An employee, i.e. civil servant in this case, whose wrongful dismissal or removal has been set-aside goes back to his service as if he were never dismissed or removed from service. The restitution of employee, in this context, means that there has been no discontinuance in his service and for all purposes he had never left his post. He is therefore entitled to arrears of pay for the period he was kept out of service for no fault of his own. No different is the position where an employee has been served with a penalty like reduction in rank or withholding of increment(s) or forfeiture of service, etc. and the penalty has been set-aside. The employee stands restored to his post with all his perks and benefits intact and will be entitled to arrears of pay as would have accrued to him had the penalty not been imposed on him. This general principle of restitution fully meets the constitutional requirements of fair trial and due process (Article 4 & 10A<sup>11</sup>) besides the right to life (Article 9<sup>12</sup>) which includes the right to livelihood ensuring all lawful economic benefits that come with the post. Reinstating an employee but not allowing him to enjoy the same terms and conditions of service as his colleagues is also discriminatory

<sup>6</sup> Back benefits may include other than the pecuniary benefits, like the right to seniority or the right to promotion, etc.

<sup>7</sup> *Black's Law Dictionary* (10<sup>th</sup> Edition, Thomson Reuters, 2014) 1477.

<sup>8</sup> *Black's Law Dictionary*, (6<sup>th</sup> Edition, St. Paul, MINN., West Publishing Co., 1990) 1287.

<sup>9</sup> *Aiyar's Judicial Dictionary* (10<sup>th</sup> Edition, 1988) 871.

<sup>10</sup> *Oxford Dictionary of Law* (Fifth Edition, Reissued with new covers, 2003) 419-420.

<sup>11</sup> Of the Constitution of the Islamic Republic of Pakistan, 1973.

<sup>12</sup> *ibid.*

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19

(Article 25<sup>13</sup>). All this snowballs into offending the right to dignity (Article 14<sup>14</sup>) of an employee for being treated as a lesser employee in spite of being reinstated or restored into service.

10. The "concept of reinstatement into service with original seniority and back benefits" is based on the established principle of jurisprudence that "if an illegal action/wrong is struck down by the Court, as a consequence, it is also to be ensured that no undue harm is caused to any individual due to such illegality/wrong or as a result of delay in the redress of his grievance."<sup>15</sup> If by virtue of a declaration given by the Court a civil servant is to be treated as being still in service, he should also be given the consequential relief of the back benefits (including salary) for the period he was kept out of service as if he were actually performing duties.<sup>16</sup> A civil servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to back benefits.<sup>17</sup> A five Member Bench of this Court in *Inspector-General of Police, Punjab v. Tariq Mahmood*<sup>18</sup> authoritatively reiterated:

"[T]he grant of back benefits to an employee who was reinstated by a Court/Tribunal or the department is a rule and denial of such benefit is an exception on the proof of that such a person had remained gainfully employed during such period."

11. It follows that where the order of dismissal, removal or reduction in rank is set aside unconditionally, back benefits are to be paid necessarily.<sup>19</sup> The grant of back benefits to an employee who has been illegally kept away from his employment is a rule and denial of service benefits to such reinstated employee is an exception.<sup>20</sup> When a civil servant is reinstated in service and his dismissal from service is held to be illegal and for no fault of his,

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> *Federation of Pakistan v Sindh High Court Bar Association* PLD 2012 SC 1067.

<sup>16</sup> *Pakistan v Mrs. A. V. Issacs* PLD 1970 SC 415; *Muhammad Bashir v Government of the Punjab* 1994 SCMR 1801; *Inspector-General of Police, Punjab v Tariq Mahmood* 2015 SCMR 77, 2015 PLC (CS) 366.

<sup>17</sup> *Chairman State Life v Siddiq Akbar* 2013 SCMR 752; *Umer Said v District Education Officer (Female)* 2007 SCMR 296.

<sup>18</sup> 2015 SCMR 77, 2015 PLC (CS) 366.

<sup>19</sup> *Qadeer Ahmad v Punjab Labour Appellate Tribunal* PLD 1990 SC 787.

<sup>20</sup> *General Manager v Mehmood Ahmed Butt* 2002 SCMR 1064; *Muhammad Hussain v E.D.O. (Education)* 2007 SCMR 855; *Umer Said v District Education Officer (Female)* 2007 SCMR 296; *Inspector General of Police, Punjab v Tariq Mahmood* 2015 SCMR 77, 2015 PLC (C.S.) 366; *Sohail Ahmed Usmani v DG CAA* 2014 SCMR 1843; *Chairman State Life v Siddiq Akbar* 2013 SCMR 752.

قیمت 50 روپے	68370			
ایڈوکیٹ: <u>Jaila Jan</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل / ایسوسی ایشن نمبر: <u>Bc 13-472</u>				
رابطہ نمبر: <u>03129215471</u>				

بعد اٹ جناب: ضمیمہ نمبر پنجواہ سرمنسٹر جنرل لغمان

مخانب: <u>اسٹارٹ</u>	دعویٰ: <u>سرمنسٹر</u>
 <p>نصیب جان بنام</p>	علت نمبر: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____
<b>باعث تحریر آنگہ</b>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ  
 آن مقام لغمان کیلئے نصیب جان کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارانت حاصل ہوں گے اور اس کا ساختہ پرداخت منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 24/3/2023  
 PESHAWAR BAR ASSOCIATION  
 KHYBER PAKHTOONKHWA

مقام لغمان شماره واہ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی کوئی کاپی ناقابل قبول ہوگی۔

Accepted  
Accepted

نصیب جان / اسٹارٹ

نصیب جان