

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	18.02.2019	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 628/2015</p> <p>Date of Institution ... 03.06.2015 Date of Decision ... 18.02.2019</p> <p>Sajjad Khan (Ex-SET), S/o Raj Wali Khan R/o Urmarr Payan, Tehsil & District Peshawar.</p> <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> The Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar. Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar. Executive District Elementary & Secondary Education Peshawar. <p align="right">Respondents</p> <p>Mr. Naveed Akhtar Advocate ... For Appellant</p> <p>Mr. Kabirullah Khattak, Additional Advocate General ... For Respondents</p> <p>Mr. Hamid Farooq Durrani Chairman Mr. Muhammad Hamid Mughal Member (J)</p> <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Appellant with counsel present. Learned Additional Advocate General for the respondents present.</p> <p>2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 07.02.2011 whereby the appellant was awarded major penalty of</p>

removal from service on the ground of willful absence from duty.

3. Learned counsel for the appellant argued that the appellant was falsely charged in a murder case vide F.I.R No. 384 dated 30.06.2007 of Police Station Chamkani Peshawar; that the respondent department without waiting for result of the trial, removed the appellant from service vide impugned order dated 07.02.2011; that though the appellant was convicted by the Trial Court however on appeal before the Hon'ble Peshawar High Court Peshawar, the appellant earned his acquittal vide judgment dated 14.01.2015; that soon after his release the appellant approached the respondent department and there the impugned order of removal from service came to his knowledge; that on 04.02.2005 the appellant filed departmental appeal/representation against the original impugned order dated 07.02.2011 but the same was not responded. Next contended that the impugned order is against law, facts and norms of justice; that the absence of the appellant from duty was due to compelling circumstances; that no formal inquiry was conducted against the appellant; that the departmental action was taken under Rule 8-A of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973 instead of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance-2000 having overriding effect and punishment was awarded to the appellant without affording him opportunity of defense and personal hearing; Learned counsel for the appellant stressed that the appellant has not been treated in accordance with law and the appellant

deserves his reinstatement in service.

4. As against that learned AAG argued that the appellant has concealed material facts from this Tribunal; that the departmental appeal and service appeal of the appellant are hopelessly time barred; that the appellant had gone into hiding in a murder case vide FIR No. 384 dated 30.06.2007 and resultantly he was proceeded against departmentally on account of his willful absence from official duty; that absence notices were issued to the appellant on his postal address and through publication in two (02) daily newspapers but the appellant did not assume his duties nor explained his position with regard to his willful absence from duty; that the appellant was willfully absent from duty from the year 2007 till the issuance of the impugned order in the year 2011, during which period the appellant was an absconder and fugitive from law. Next contended that codal formalities were fulfilled prior to the issuance of the original impugned order.

5. Arguments heard. File perused.

6. The appellant joined the Education Department in the year 2005 as SET. Upon the registration of criminal case against the appellant in the year 2007, he absconded and remained as a fugitive from law. In the judgment dated 14.01.2015 of the Hon'ble Peshawar High Court Peshawar referred to by the learned counsel for the appellant, it is clearly mentioned that initially all the four (04) accused after commission of alleged crime went into hiding therefore Challan u/s 512 CrPC. was submitted against them to the

court of learned Additional Sessions Judge Peshawar who on completion of proceedings u/s 512 Cr.PC, declared all the four (04) accused as proclaimed offenders and issued perpetual warrants of arrests against them.

7. The appellant was removed from service after issuance of absence notices through publication in the daily newspapers. This Tribunal has already held in judgment dated 16.01.2018 passed in Service Appeal No.720/2012 titled Mst. Mehmoona Bibi Versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and 2 others, that since the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance-2000 never provided for procedure for willful absence as was provided by Rule 8-A of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973, Rule 8-A of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 1973 was very much alive during the continuance of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance-2000.

8. It is not the case of the appellant that during the period when the departmental action was taken against him he was not hiding. Even otherwise if a civil servant does not deny his involvement in a criminal case and his willful absence from duty, how the non-holding of regular inquiry would cause any prejudice to him.

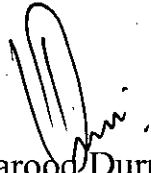
9. It is also settled that the acquittal order in a criminal case, shall not, per se, absolve the civil servant of his departmental

liability.

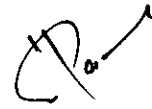
10. There is more than sufficient delay on the part of the appellant in filing the departmental appeal against the original impugned order.

11. In the light of above discussion the appellant has not been able to seek indulgence of this Tribunal. Consequently the present service appeal is dismissed. Parties are left to bear their own costs.

File be consigned to the record room after its completion.



(Hamid Farooq Durrani)
Chairman



(Muhammad Hamid Mughal)
Member

ANNOUNCED

18.02.2019

21.12.2018


Learned counsel for the appellant Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come for arguments on 18.02.2019 before D.B.

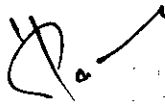

(Hussain Shah)
Member


(Muhammad Amin Kundi)
Member

18.02.2019

Appellant with counsel and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Vide separate judgment of today of this Tribunal placed on file, the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.


(Hamid Farooq Durrani)
Chairman


(Muhammad Hamid Mughal)
Member

ANNOUNCED
18.02.2019

19.03.2018

Appellant with counsel and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. The present case was heard by the bench also comprising of Mr. Gul Zeb Khan (Member) who has now been retired. Adjourned. To come up for re-arguments on 07.05.2018 before D.B.



(Muhammad Hamid Mughal)
Member

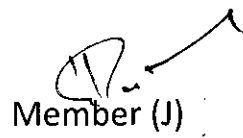
07.05.2018

The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come on 20.07.2018


READER


20.07.2018

Due to engagement of the undersigned in judicial proceeding before S.B, further proceeding in the case in hand could not be conducted. To come on 14.09.2018 before D.B


Member (J)

14.09.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 08.11.2018 before D.B


(Hussain Shah)
Member
(Muhammad Hamid Mughal)
Member

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 21.12.2018.



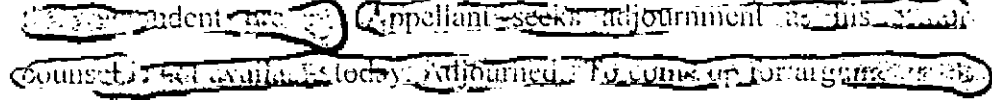




READER

06.2.2018

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG for the respondents present. Due to shortage of time, arguments could not be heard. To come up for arguments on 02.3.2018 before the D.B.


Member


Chairman

02.03.2018

Counsel for the appellant present. Mr. Muhammad Jan, DDA for the respondent present. Arguments heard. To come up for order on 06.03.2018 before D.B.


(Gul Zeb Khan)
Member


(M. Hamid Mughal)
Member

06.03.2018

Learned counsel for the appellant Mr. Muhammad Jan, Learned Deputy District Attorney for the respondents present. The present case was heard by the bench also comprising Mr. Gul Zeb Khan (Member). Adjourned. To come up for further proceedings on 19.03.2018 before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

28.02.2017.

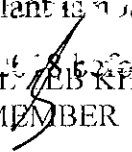
Counsel for the appellant and Addl: AG for respondents present. Learned counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and final hearing on 01.06.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

27.11.2017
01.06.2017

Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mukhtiar Ali, Assistant Secretary for the respondents present. Counsel for the appellant is not in attendance. To come up for arguments on 06.2.2018 before the D.B.


(GUL-E-B KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Chairman

Member

27.09.2017

Appellant in person and Asst: AG for the respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 27.11.2017 before D.B.


Member


Chairman

27.11.2017

Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mukhtiar Ali, Assistant Secretary for the respondents present. Counsel for the appellant is not in attendance. To come up for arguments on 06.2.2018 before the D.B.


Member


Chairman


29.10.2015

Counsel for the appellant and Mr. Khurshid Khan, SO alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 25.2.2016 before S.B.


Chairman

25.02.2016

Counsel for the appellant and Mr. Javed Ahmed, Supdt. alongwith Addl: A.G for respondents present. Written reply by respondents No. 1 and 2 submitted. The learned Addl: AG relies on the same on behalf of respondent No. 3. The appeal is assigned to D.B for rejoinder and final hearing for 14.6.2016.


Member

14.06.2016


Appellant in person and Mr. Kabirullah Khan Khattak, Assistant AG for respondents present. Rejoinder not submitted and requested for further time. To come up for rejoinder and arguments on 25.10.16.


MEMBER


MEMBER

25.10.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for rejoinder and arguments on 28.02.2017 before D.B.


Member


Chairman

4

27.07.2015

Agent of counsel for the appellant present. Counsel for the appellant is not in attendance. Adjourned to 10.8.2015 for preliminary hearing before S.B.


Chairman

5

10.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as SET when subjected to inquiry on the allegations of wilful absence from duty and removed from service vide impugned order dated 7.2.2013. That the absence of the appellant was not intentional as he was retained and convicted in a criminal case registered vide FIR No. 384 dated 30.7.2007 under section 302/324 PPC at PS Chamkani. That the appellant was finally acquitted from the charge on 14.1.2015 by the august Peshawar High Court vide judgment recorded in a criminal case No. 288-P/2012 where after he preferred departmental appeal on 4.2.2015 followed by service appeal on 3.6.2015.

That the absence of the appellant was not wilful and the appellant was not suspended as required under CSR-194. That the inquiry proceedings were not only irregular but also void in view of the provisions of Removal from Service (Special Powers) Ordinance 2001.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 29.10.2015 before S.B.


Chairman




Appellant Deposited
Security & Process Fee



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 628/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.06.2015	<p>The appeal of Mr. Sajjad Khan resubmitted today by Mr. Naveed Akhtar Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	22-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>23-6-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	23.06.2015	<p>None present for appellant. Notice be issued to counsel for the appellant for 27.7.2015 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Sajjad Khan SET son of Raj Wali Khan received to-day i.e. on 03.06.2015 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of Charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal may be attested.

No. 857 /S.T,


Dt. 4/6 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Naveed Akhtar Adv. Peshawar.

R/ Sir

No charge sheet, statement of allegations, show cause
was issued ~~and~~ enquiry ~~was~~ held, however from
the official record the appellant was provided
copy of show cause notice published in unpopuler
Newspaper Surkhab. which is annex Page 31.
Resubmitted after the necessary completion.


11/6/15

IN THE KPK SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 628 /2015

Sajjad Khan (SET).....Appellant

VERSUS

The Secretary (E&SE), KPK and others.....Respondents

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5.	Copy of Copy of appeal and judgment of High Court dt.14.01.2014	B-C	8-29
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Appellant

Through



Naveed Akhtar

Advocate Supreme Court

Dated: 2/6 /2015

①

IN THE KPK SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 628 /2015

Sajjad Khan (SET),
S/o Raj Wali Khan
R/o Urmarr Payan, Tehsil & Distt, Peshawar
Presently at Dargai Miana, Malakand Agency.....Appellant

H.W.F. Province
Service Tribunal
Diary No. 639
Dated 03-6-2015

V E R S U S

1. The Secretary,
Elementary & Secondary Education,
KPK, Peshawar
2. The Director,
Elementary & Secondary Education, KPK, Peshawar
3. Executive District Officer,
Elementary & Secondary Education, Peshawar
.....Respondents

Appeal u/s 4 of the Services Tribunal Act,
1974 against the order dated 07.02.2011,
whereby the appellant was removed from
service by respondent No.2 and against the
non-disposal of his departmental appeal
dated 04.02.2015

Respectfully Sheweth:

1. That the appellant was appointed as SET after having been duly recommended by the Khyber Pakhtunkhwa Public Service Commission.
2. That since his appointment, the appellant performed his duties under the law to the fullest satisfaction of his high-ups.

Filed to-day

Registrar
3/6/15

re-submitted to-day
and filed.

Registrar
3/6/15

3. That the appellant was lastly posted at GHS, Urmarr Miana, Peshawar when on 30.07.2007, the appellant was falsely charged in a case under section 302, 324, 34 PPC vide FIR No.384 of PS Chamkani, Peshawar.

(Copy of FIR is Annexure "A")

4. That the appellant at his back was proceeded against and without waiting for result of the trial, he was removed from service vide order dated 07.02.2011. (Copy of order dated 07.02.2011 is Annexure "B")

5. That on conclusion of trial, the appellant was convicted by the trial court but on appeal before the Honourable Peshawar High Court, Peshawar, the appellant was acquitted of all the charges on merits vide judgment dated 14.01.2015. (Copy of appeal and judgment of High Court dated 14.01.2014 are Annexure "C")

6. That soonafter, his release from jail, the appellant reported to the department for resumption of his duty, but there he was informed about the impugned order of removal from service.

7. That wasting ^{no} moment, the appellant filed his departmental appeal/ representation against the order dated 07.02.2011 of the then Directress, Elementary & Secondary Education, Peshawar before the worthy respondent No.1 on 04.02.2015. (Copy of departmental appeal/ representation dated 04.02.2015 is Annexure "D")

8. That the departmental appeal of the appellant was not responded ^{to} within the statutory period, hence the instant appeal, inter alia, on the following grounds:


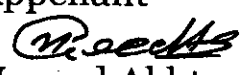
GROUNDS:

- A. That the impugned order of removal from service, is against the law and fact on the file.
- B. That during his service, the appellant has never been reported to have given a chance of complaint to his high-ups and has rendered services to the fullest satisfaction of the department.
- C. That absence of the appellant from duty was due to the compelling circumstances as narrated in the above narration of facts and was not wilful.
- D. That it is settled law of the country as laid down by superior courts and this Honourable Tribunal that every acquittal is an honourable acquittal.
- E. That except the false charge in the FIR by a private party against the appellant, there is nothing on file against the appellant viz-av-viz the performance of duties in the department.
- F. That even during the so-called proceedings against the appellant, the department did not conduct any formal inquiry or for that matter, the appellant could not come to know even about the proceedings carried against him.
- G. That the charges against the appellant are no more in the field, therefore, his removal from service cannot sustain under the law, rather the same shall amount to double jeopardy against the appellant.
- H. That the impugned order of removal from service is not sustainable under the law.

- I. That the whole proceedings have been conducted at the back of appellant.
- J. That no opportunity of personal hearing has been afforded to the appellant before passing the impugned order or for that matter no inquiry was ever conducted to know the fate of the criminal case against the appellant.
- K. That the appellant has sustained great losses on account of false charge in a criminal case on the one hand and now the unjustified removal from service by his department on the other hand, which has not only put the appellant to great monetary losses but has also put the appellant to gross injustice.
- L. That the appellant may kindly be allowed to put forward any other argument/ document at the time of hearing of the instant appeal.

It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned order from removal of service dated 07.02.2011 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.

Any other order / relief deemed proper and appropriate by this Honourable Court, in circumstances of the case, may kindly be passed as well.

Appellant 
 Through 
 Naveed Akhtar
 Advocate Supreme Court

Date: 2/6/2015

5

IN THE KPK SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. _____/2015

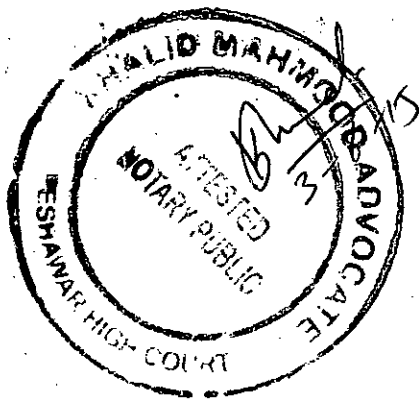
Sajjad Khan (SET).....Appellant

VERSUS

The Secretary (E&SE), KPK and others.....Respondents

AFFIDAVIT

I, Sajjad Khan (SET), S/o Raj Wali Khan R/o Urmarr Payan, Tehsil and District, Peshawar presently at Dargai Miana, Malakand Agency, do hereby solemnly affirm and declare on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Coosk
D:EPONENT

6

IN THE KPK SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. _____/2015

Sajjad Khan (SET).....Appellant

V E R S U S

The Secretary (E&SE), KPK and others.....Respondents

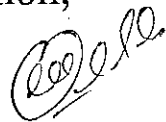
ADDRESSES OF PARTIES

APPELLANT

Sajjad Khan (SET),
S/o Raj Wali Khan
R/o Urmarr Payan, Tehsil and District, Peshawar
Presently at Dargai Miana, Malakand Agency

RESPONDENTS:

1. The Secretary,
Elementary & Secondary Education,
KPK, Peshawar
2. The Director,
Elementary & Secondary Education,
KPK, Peshawar
3. Executive District Officer,
Elementary & Secondary Education,
KPK, Peshawar



Appellant

Through



Naveed Akhtar

Advocate Supreme Court

Dated: 2 / 6 /2015

Annual A (7)

DIRECTORATE OF ELEMENTARY &
SECONDARY EDUCATION, NWFP

NOTIFICATION

1. WHEREAS, Mr. Sajjad Khan SET GHS Urmar Miana Peshawar was accused under Section PPC-302-334-34 vide FIR dated 30-6-2007, but he has absconded. He has also been willfully absent from duty since 30-7-2007.
2. AND WHEREAS, according to Rule-8-A of the NWFP Govt: Servants (Efficiency & Disciplinary) Rules 1973, a notice was issued to him on his home address and directed him to resume duty under register cover vide No. 1386 dated 22-12-2009, but no response has been received from him. A notice was also issued in two leading newspapers (i.e. Daily Express on 11-8-2010 & Daily Surkhhab on 11-8-2010) with the direction to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision will be taken against him, but he failed to report for duty uptill now.
3. AND WHEREAS, on the expiry of the stipulated period given in the notice, the authorized officer i.e Executive Distt: Officer (E&SE) Mardan has submitted the case to the Authority for further necessary action against the teacher concerned.
4. NOW, THEREFORE, in exercise of powers conferred by the NWFP Govt: Servants (Efficiency & Disciplinary) Rules 1973 (Rule-8-A), the Competent Authority (Directress Elementary & Secondary Education Khyber Pakhtunkhwa), is pleased to impose major penalty of removal from service upon Mr. Sajjad Khan SET GHS Urmar Miana Peshawar.

DIRECTRESS
ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR

617-21
Endst.No. _____ /F.No.36/A-14/SET(M) Dated Peshawar the 7/2 /2011.

Copy forwarded to the:--

- 1- Executive District Officer (E&SE) Peshawar with the remarks that Mr. Sajjad Khan Ex-SET GHS Urmar Miana Peshawar may be informed on his home address.
- 2- District Account Officer Peshawar
- 3- Headmaster GHS Urmar Miana Peshawar.
- 4- PA to the Directress E&SE Khyber Pakhtunkhwa, Peshawar
- 5- Ex-teacher concerned.

All-Set
To be Truly
Cm

[Signature] 3/2/2011
Deputy Director (Establishment)
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar

Ammer B.

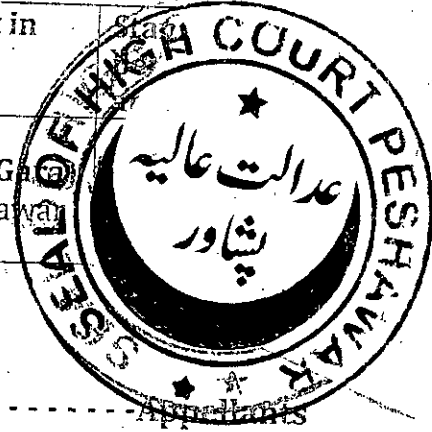
Opening sheet for criminal Appeals

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

2

Appellate side _____ Criminal Appeal No 288-P/125

District	Date of Filing petition	Whether filed by appellant in person or by pleader or agent
Peshawar	28-05-2012	Khwaja Muhammad Khan (Gha) Advocate, Peshawar



1. Sajjad aged about 37 years
2. Javed aged about 42 years both sons of Raj Wali
Both residents of Urmar Payan Peshawar-----

VERSUS

1. Aziz Khan S/O Hakim Khan
R/O Urmar Payan, Tehsil & District Peshawar

2. State ----- Respondents

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

The learned
Additional Sessions Judge-I, Peshawar

Dated:

23-05-2012

Charged U/S:

302/324/34 PPC

Sentence:

U/S. 302(b) PPC: Life imprisonment with
compensation of RS. 1,00,000/- in terms of
section 544-A Cr.P.C.

U/S 324 PPC: 05 years R.I. on three (03) counts
with fine of RS. 10,000/- each or in default of
payment 06 months S.I.

All the sentences shall run concurrently 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
23-05-2012 may graciously be set-aside and the
appellant be acquitted.

GROUND:

- 1) That the order and judgment of the learned trial court convicting the appellants is against law and facts on the file; hence untenable.

ATTESTED
EXAMINER
Peshawar High Court
04 FEB 2015

- 2) That the learned trial court has not vetted the prosecution evidence in its correct, legal and factual spectrum which has caused grave miscarriage of justice.
- 3) That the learned trial court has made a complete departure from the well-settled principles relating to the safe administration of criminal justice and has taken into consideration irrelevant and inadmissible pieces of evidence, which is bad in law.
- 4) That the appellant had no motive, whatsoever to commit the delict. Admittedly the motive has been attributed to the absconding co-accused Shad Muhammad alias Shaday.
- 5) That the depositions of the complainant Aziz Khan PW-2 and the so-called eye-witness Ali Rehman PW-3 are discrepant inter-se and contradicted by the medical evidence, the site plan and other attending circumstances of the case.
- 6) That major improvements have been introduced by the so-called eye-witnesses during the trial to strengthen the prosecution case, which the learned trial Court should have taken cognizance of for dismissal of the prosecution case.
- 7) That in view of the admitted facts on the file, presence of the so-called eye-witnesses on the spot at the relevant time is most un-natural. They could not, at all, establish their presence on the scene of occurrence at the fateful time with the deceased.
- 8) That the locale of injuries upon the deceased squarely negates the ocular version and the same openly speak about the non-presence of the so-called eye-witnesses at the tragic time with the deceased.
- 9) That, admittedly, the number of injuries does not correspond to the number of accused. For two inlet wounds four persons have falsely been roped in the case.

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FILED
 Deputy Registrar
 28 MAY 2012

- 10) That the observation of the learned trial Judge in the concluding Para of the impugned judgment regarding the number of injuries and that accused charged uproots the whole prosecution case.
- 11) That the incident has not occurred in the manner, time and place as depicted by the prosecution.
- 12) That the appellants had not absconded. They were avoiding arrest on account of fear and false implication in the case. Be that as it, the abscondence can't cure the inherent defects of the prosecution case.
- 13) That the prosecution has miserably failed to bring home charge against the appellants beyond shadow of a reasonable doubt.

It is, therefore, humbly prayed that on acceptance of this appeal, the order and judgment of the learned trial court dated 19-04-2012, convicting the appellant and sentencing him U/S. 302(b) PPC Life imprisonment with compensation of RS. 1,00,000/- in terms of section 544-A Cr.P.C., U/S 324 PPC 05 years R.I. on three (03) counts with fine of RS. 10,000/- each or in default of payment 06 months S.I., may graciously be set aside and he be acquitted.

Sajjad & another (Appellants)

Through

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1. Khwaja Muhammad Khan (Gara)

Jalal Khan
2. Jalal-ud-Din Akbar Azam Khan (Gara)

3. Shabbir Hussain Gigyani
Advocates, Peshawar

Dated: 28-05-2012

Amnudin. etc. (11)

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

JUDGMENT



Cr. A. No. 288-P/2012.
Date of hearing 14.1.2015.
Sajjad, etc..... versus.....Aziz Khan, etc.
Appellant (s) by Mr. Jalal-ud-Din Akbar Azam Gara, advocate.
Complainant by Mr. Kanwar Kamal, advocate and Syed Sikandar Hayat Shah, Additional Advocate General, KPK.

SYED AFSAR SHAH, J.— The tragic incident of the

instant criminal appeal as reflected by and unfolded in the

F.I.R. Ex.PA registered at the instance of Aziz Khan, father of

the deceased Hazrat Ali and re-affirmed by him as PW-2 is to

the effect that on 30.6.2007, he alongwith his sons Ali Rehman,

Abdur Rehman and Hazrat Ali had gone to the house of their

relative Abid situated in village Shagai Qilla and on their way

back when they reached near to the High School, Zahirabad,

accused Javed, Sajjad, Shad Muhammad alias Shaday and

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Bhutto duly armed with deadly weapons already present there started firing at them, resultantly, Hazrat Ali was hit and seriously injured whereas Aziz Khan, the complainant and PWs Ali Rehman and Abdur Rehman luckily escaped unhurt. They were shifting the injured to the hospital but on way he succumbed to the injuries. Motive behind the crime was that Mst. Fauzia daughter of the complainant was having a bad name with accused Shad Muhammad alias Shaday. The occurrence in addition to the complainant is stated to have been witnessed by his sons Ali Rehman and Abdur Rehman. He has charged all the four accused for commission of the offence.

Muhammad Riaz ASI (since dead) who is the author of the FIR after writing report of the complainant prepared the injury sheet alongwith inquest report in respect of the body of the deceased, whereafter, it was sent for autopsy to Khyber Medical College (KMC), Peshawar under the escort of FC Ajmal.

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Investigation was started in the case by the local police of police station Chamkani and since initially all the four accused after commission of the alleged crime went into hiding, therefore, challan under section 512 Cr.P.C. was submitted against them to the court of learned Additional Sessions Judge, Peshawar who on completion of the proceedings under section 512 Cr.P.C, declared all the four accused as proclaimed offenders and issued perpetual warrants of arrest against them.

Later on, on arrest of the accused-appellants, Javed and Sajjad, supplementary challan was submitted against them to the court of Addl. Sessions Judge-1/Judge, Special Court, Peshawar where at the commencement of the trial, the prosecution produced as many as twelve witnesses whose statements were recorded and placed on file. On close of the prosecution evidence both the accused were examined under section 342 Cr.P.C. wherein they denied the charges professed innocence and stated to have falsely been implicated in the case. They,

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however, wished to produce no defence nor to examine themselves on oath as required under section 340 (2) Cr.P.C.

2- The learned trial Judge on conclusion of the trial, convicted both the accused-appellants under section 302(b) PPC and sentenced them to imprisonment for life with a compensation of Rs.1,00,000/- (rupees one lac) payable to the legal heirs of the deceased. They were further convicted under section 324 PPC and sentenced to five years RI each (on three counts) with a fine of Rs.10,000/- each or in default thereof to undergo six months SI with benefit of section 382-B Cr.P.C., vide its judgment dated 23.5.2012.

3- The appellants have questioned their conviction and sentences through this appeal.

Arguments heard and record perused.

4- Since in the instant case, the most decisive role is that of the ocular account of the two witnesses, therefore, in our view we would like to discuss it by making careful re-appraisal

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of the same as on one hand, a young man had lost his life while on the other hand, four accused are charged including one father and two sons alongwith their close relative. In other words, all the accused belonged to one and the same family, so lest innocent one is not remained in the jail for his life time on account of mis-reading or non-reading of material evidence. We understand that our judicial obligation has become onerous to undertake fair and proper re-appraisal of evidence. To test the testimony of a witness courts should not only consider whether there is consistency in the narrative but should also consider whether the version is probable or not. The above proposition is well attended by the august Supreme Court in its leading judgments "Din Muhammad Vs. The Crown (1969 SCMR

777) and "Iqbal alias Bala Vs. The State" (1994 SCMR-1)

5- According to the prosecution version on the fateful day, Aziz Khan, the complainant alongwith his three sons Ali Rehman, Abdur Rehman and Hazrat Ali (deceased) had gone to

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the house of their relative Abid situated in village Shagai. Simple is that the entire male members of one family had gone to the house of their relative but while going through the record of the case, there is nothing in the same which could show as to for what purpose they had gone to there. Was there any ceremony in the house of their relative or for that matter they visited the house of Abid for offering a "Fateha" (if any) or for any other important discussion? The prosecution version on this precise subject stood in vacuum. To establish their visit to the house of their relative, the prosecution at least ought to have examined Abid. Again it is in the evidence that besides the deceased, the complainant Aziz Khan and his two sons were also fired at by the accused. On the other hand, it appears from the site plan Ex. PB which is prepared on the showing of the complainant and eye witnesses that they (complainant and eye witnesses) were within the range of guns of the accused and here the question arises that how they did not receive even a

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single scratch on their bodies. The eye account on this score too appears to be doubtful. In this respect case of "Muhammad Ashraf Vs. Sultan and 05 others" (1997 SCMR 441) can well be referred.

6- We have also seen and have sensed serious intrigues having been pressed into service with regard to the time of making the report which is shown as 8.30 A.M. i.e. within one hour and thirty minutes of the occurrence. It is in the evidence of both the eye witnesses that after the occurrence they were taking the deceased then injured to the hospital in a vehicle but on way he succumbed to the injuries i.e. before reaching to the hospital, whereafter, the dead body was immediately taken to the police station where the incident was reported to the local police. Muhammad Ismail, SI who is the Investigating Officer of the present case when examined as PW-8 stated that there was OPD chit with the injury sheet/inquest report of the deceased which has been placed on

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record by author of the report, that when he was investigating the case, the said OPD chit was available on file with him. He has made it clear that on the above OPD chit it was mentioned that the body of the deceased was received in the casualty of the hospital on 30.6.2007 at 7.55 A.M. Dr. Iftikhar (PW-9) who conducted autopsy on the body of the deceased has admitted in his cross-examination that in view of the maximum probable time between death and post-mortem, the death might have occurred at 4.00 A.M. The complainant who is father of the deceased and Ali Rehman, his brother were allegedly with the deceased at the time of occurrence. As per their version, they were taking the deceased then injured to the hospital but on way he succumbed to the injuries and hence they immediately rushed to the police station alongwith body of the deceased for lodging the report, which version as stated earlier has been negated by the Investigating Officer by stating about the OPD

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chit and receipt of body of the deceased in the casualty of the hospital at 7.55 A.M.

7- The combined study of the above facts would strongly suggest and legitimate inference could be drawn that the time of report given in the murasila as 8.30 hours is clearly fabricated one and the only inference that one could draw from such course of events is that body of the deceased was first brought to the casualty of the hospital and on reaching of his relatives, it was shifted to the police station for lodging the report. In the given position extreme dis-honesty on the part of the Investigating Officer cannot be ruled out and in fact the F.I.R. was lodged after considerable consultations and deliberations.

8- It appears from the record that in this case the occurrence took place on 30.6.2007 at 700 hours whereas the report has been lodged on the same day at 8.30 hours. Besides the complainant his sons Ali Rehman and Abdur Rehman are

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also eye witnesses of the incident. It is in the evidence of the Investigating Officer that he recorded statements of both the eye witnesses on 2.7.2007, after about two days of the occurrence and for which he has not furnished any plausible explanation. Admittedly, there is inordinate delay of silence on the part of Ali Rehman (PW-3), which creates doubt about his veracity. Delay of 24 hours in reporting the matter to the police or recording the statement of witnesses by the police has been found adversely affecting the veracity of a witness as held in the case of "Muhammad Sadiq and another Vs. The State" (PLD 1960 SC-223). The view was re-enforced by the august Supreme Court in the case of "Syed Mahmood Shah and another Vs. The State" (1993 SCMR-550), where it was ruled by their lordships that statement recorded by police after delay and without explanation is to be ruled out of consideration. It was again reiterated by the apex court in the case of "Rahat Ali Vs. The State" (2010 SCMR-584), where it was observed by their

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lordships that delay in recording the statement of a witness by police without furnishing any plausible explanation is fatal to the prosecution case and the statement of such witness is not to be relied upon. In the present case, the statement of (PW-3) Ali Rehman is coming within the scope of above rules laid down by the Hon'ble Supreme Court and hence it cannot be safely relied upon in the peculiar facts and circumstances of the case.

There is indeed another disturbing point for a judicial mind and which pertains to the attribution of motive.

According to the complainant his daughter Mst. Fauzia was having a bad name with accused Shad Muhammad alias Shaday. The said Shaday had gone into hiding but so far as the convict-appellants are concerned they had no motive against the deceased and, therefore, in the given circumstances this possibility cannot be ruled out that they have been roped in the case being brothers of the said Shaday. In the case of "Sadiq and another Vs. The State" (1993 SCMR 1864), almost a

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similar question was attended by the august Supreme Court and the roping of accused in being the relation of their co-accused to whom motive was attributed has been condemned and the accused-appellants were acquitted.

Again when Mst. Fauzia daughter of the complainant was having a bad name with absconding accused Shad Muhammad alias Shaday, in our society in situation like one the right of pre-emptive attack lay with the complainant-party and not with the accused. A similar question was attended by this court in the case of "Banaras and others Vs. the State and others" (PLD 1995 Peshawar-144), where accused-appellant was finally acquitted.

Another glaring discrepancy in the case of the prosecution is the inconsistency between ocular account and the medical evidence and in this view of the matter, if one goes through the site plan Ex. PB one gets to observe that at point No.1 deceased has been shown whereas points No.6, 7, and 8

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have been given to the complainant and eye witnesses and similarly at points No. 2, 3, 4 and 5, the accused have been mentioned. According to the prosecution, on the day of occurrence, the complainant and his sons including the deceased were on way to their home and when reached near to the High School, Zahirabad they were fired at by the accused. In the site plan, the deceased has been shown ahead of the complainant and eye witnesses and hence in the given position he ought to have received injuries on the front of his body. As against that it is in the statement of the doctor that both the entrance wounds on the body of the deceased are on his back. We know that the deceased then alive was not a statue but in the instant case the position is a little bit different in that here both the entrance wounds are on his back. Thus, the eye witnesses account does not tally with the medical evidence. In this respect wisdom is derived from case laws "Mirza Daulat

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Hussain Vs. Abdul Khaliq and another" (1970 SCMR-467)

and Ameen Ali and another Vs. The State (2011 SCMR-323).

9- Again a judicial mind remains disturbed when the prosecution has charged four persons. All are stated to have fired at the complainant-party but the Investigating Officer during the spot inspection has not recovered even a single empty from the venue of crime. In the given circumstances, it was but natural that empties should have been present at the spot but these were missing. There is no evidence that the empties were removed or taken away from the crime venue by the culprits.

The circumstances do reveal that an attempt has been made by the prosecution to implicate as many persons as possible in crime but the number of accused is not commensurating with pieces of circumstantial evidence brought on record because as stated above no empty was recovered from the crime venue or other point wherefrom the accused had

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opened fire. This is yet another fact which gives a serious jolt to the version of prosecution. Rel. "Zaab Din and another Vs. The State" (PLD 1986 Peshawar 188).

Moreover, in this case, a spent bullet was recovered by the I.O. from the spot of occurrence but the same is not sent for opinion of the firearm expert which could show its bore/caliber, moreso, when the prosecution version throughout is silent about the kind of weapons which the assailants were having at the time of occurrence. Non-sending of bullet to FEL was callously noted by the apex court in the case of "Imran Hussain Vs. Amir Arshad and 02 others" (1997 SCMR-438).

It appears from the statement of Dr. Iftikhar (PW-9) who conducted autopsy on the body of the deceased that in view of the maximum probable time between death and post-mortem which is six hours, the death might have been occurred on 4.00 A.M. In view of the post-mortem report and medical

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testimony furnished by doctor Iftikhar one could reach to the conclusion that the occurrence appear to have taken place in the dark of night than in broad day light as set up by the prosecution. In fact, the two eye witnesses have given perjured testimony. In this respect, we are fortified by a case titled "Liaqat Ali Vs. The State" (2011 SCMR-910).

10- We have noted another glaring discrepancy in the case set up by the prosecution and which is the element of improvement. According to the prosecution case on the fateful day, the complainant alongwith his sons was on way to his house and when reached to the crime venue, there the convict-appellants and absconding co-accused duly armed with deadly weapons made firing at them. Not only in the site plan Ex. PB but also the complainant in his court statement has categorically stated that the time of occurrence his deceased son was ahead of him. Going ahead of his father by a son is seldom in our society any way to bring his eye account in line with the medical

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بندہ سرخون ۱۸ سالہ سن میں ایک اور کھیلے جانے والی کھیل ہے۔
 سے کوئی خط لکھ کر ہرگز نہیں لکھ کر دیا جائے گا۔
 ۲۰۱۰-۲۰۱۱ کے سیزن میں سرخون ۲۵-۰۸-۲۰۱۰ کو
 ۲۰۱۰-۲۰۱۱ کے سیزن میں سرخون ۲۵-۰۸-۲۰۱۰ کو
 ۲۰۱۰-۲۰۱۱ کے سیزن میں سرخون ۲۵-۰۸-۲۰۱۰ کو



این ایچ اے کے سیزن ۲۰۱۰-۲۰۱۱ اور اس سیزن میں سرخون ۲۵-۰۸-۲۰۱۰ کو

نوٹس

اظہار وجوہ بنام: ساجد خان SET کورنٹ ہائی سکول اور میاٹہ پشاور

آپ کو بذریعہ اشتہار پتہ اطلاع کیا جاتا ہے کہ آپ مورخہ 2007-07-30 سے
 سکول پتہ سے بغیر کسی اطلاع کے اپنی ڈیوٹی سے غیر حاضر ہیں آپ کو بحالہ رجسٹری
 نمبر 1386 مورخہ 2009-12-22 آپ کے گھر ڈیوٹی پر حاضر ہونے کیلئے
 چھٹی بھیجی گئی لیکن آپ ڈیوٹی پر حاضر ہونے سے قاصر رہے اب بذریعہ اشتہار آپ
 کو مطلع کیا جاتا ہے کہ اس اشتہار کی اشاعت کے 15 یوم کے اندر اندر زبردستی
 کے دفتر میں حاضر ہو کر اپنی غیر حاضری کی وجوہات بیان کریں ورنہ آپ کے
 خلاف مروجہ قانون کے مطابق کارروائی عمل میں لائی جائے گی جس میں آپ کی
 ملازمت سے برخواستگی بھی ہو سکتی ہے۔

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روزنامہ پشاور
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11/8/10

جماعت اسلامی کے
 قائدین کے دوروں کا
 شیڈول جاری

پشاور (پ ر) جماعت اسلامی سہیلہ کورنٹ ہائی سکول کے قائدین
 کے لیے ڈیوٹی سرگرمیوں میں بگانی پشاور پر اشاعت کرنے اور سرگرمی اور
 سہیلہ کورنٹ ہائی سکول کے دوروں کے شیڈول کا اعلان کیا ہے۔ سہیلہ کورنٹ
 ہائی سکول کے قائدین نے مرکز اسلامی پشاور سے مختلف اشاعت کے ذریعہ
 داران اور سہیلہ کورنٹ ہائی سکول جاری کیا۔

پاکستان تمباکو بورڈ

بصورتی / اطلاع عام

حوالہ اشتہار مورخہ 24 جولائی 2010ء مرام الناس اور انھوں نے کہا کہ کینیڈا،
 ڈیڑوں، جیکب آباد اور دیگر مختلف اقسام کی اطلاع کے لئے وضاحت کی جاتی
 ہے کہ کہا کہ (Cess) کے نئے ریٹ درج ذیل ہیں۔

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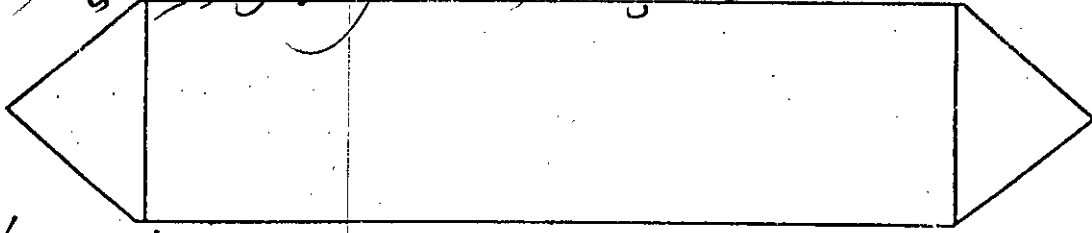
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46۔ ٹی آس ایئر لائنز، گیت 7، پشاور، فون نمبر: 091-9217245، فیکس نمبر: 091-9217149

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اصول

2015ء پنجاب

سجاد خان سبہر گورنٹ بنام

مورثہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ
آن مقام ~~سبہر~~ کیلئے ~~نور احمد~~ کے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سدر ہے۔

البرقوم _____ ماہ _____ سن 20 _____

_____ واہ _____

_____ کے لئے منظور ہے۔ _____ مقام

سبہر

اصول
اصول
اصول

1730/1347752-7

سجاد خان

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**BEFORE THE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 628/2015

Sajad Khan Ex-SET GHS Urmar Miana District Peshawar.Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.Respondents

PARAWISE COMMENTS ON FOR BEHALF OF RESPONDENTS No: 1-3.

Respectfully Sheweth :-

Respondent submitted as under:-

PRELIMINARY OBJECTIONS.

- 1 That the appellant has got no cause of action / locus standi .
- 2 That the instant Service Appeal is badly time barred.
- 3 That the appellant has concealed material facts from this Honorable Tribunal in the instant service appeal.
- 4 That the instant service appeal is based on malafide intentions.
- 5 That the appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the appellant is not entitled for the relief sought from this Honorable Tribunal .
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant appeal is based on malafide intentions just to put extra pressure on the Respondents for gaining illegal service benefits against SET post.
- 9 That the appeal is not maintainable in its present form.
- 10 That the appeal is bad for mis joinder & non joinder of the necessary parties.
- 11 That the instant Service Appeal is barred by law.
- 12 That the appellant is not competent to file the instant appeal against the Respondents.

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13 That the Notifications dated 07-2-2011 & 04-2-2015 are legally competent & are liable to be maintained in favour of the Respondents.

14 That the appellant is not an aggrieved person.

FACTS

- 1 That Para-1 needs no comments being pertains to the service record of the appellant.
- 2 That Para-2 is also pertains to the record, hence needs no comments.
- 3 That Para-3 is correct that the appellant was involved in a criminal FIR No: 384 at Police Station Chamkani 4/3, 302, 324 & 34 PPC and since than the appellant was absconded , hence he been proceeded against the Efficiency & Disciplinary Rules 2011 on account of his willful absence from his official duty against SET (Male) at GHS Urmar Miana District Peshawar

Therefore, on the report of the Headmaster concerned, the then EDO(S&L) now DEO(M) Peshawar has published a Notice dated 11-8-2010 in the dailies "**Surkhab & Express**" Peshawar with the directions to the appellant for the resumption of his official duty with in 15-days from the publication of the said Notice date . But the appellant did not resume his duty nor explained his position with regard to his willful absence from duty wef 30-6-2007.

Hence on the expiry of the stipulated period, given in the Notice dated 11-8-2010, the appellant has been removed from service vide Notification dated 07-2-2011 by the Respondent No: 2 (copies of the Notice & Notification are attached as Annexures A&B).

- 4 That Para-4 is also incorrect & denied. The appellant has proceeded under the E&D rules 2011 after observing all the codal formalities as mentioned para, hence the plea of the appellant is baseless.
- 5 That Para-5 is correct to the extent that the appellant has been connected for life imprisonment alongwith a fine of Rs.100000/- by the Learned Trial Court vide judgment dated 19-4-2012 in the light of FIR bearing No: 384 registered at Police Station Chamkani Peshawar.

The appellant while feeling aggrieved from the judgment dated 19-4-2012 of the Learned Trial Court has filed a criminal appeal Under Section-410 CRPC against the said judgment before the August Peshawar High Court Peshawar on 28-5-2012 which the appellant has been acquitted (copy of the judgment is annexure-C).

- 6 That Para-6 is incorrect & denied. The appellant has been found guilty of his willful absence from his official duty since 30-7-2007. Hence he has been removed from service vide Notification dated 07-2-2011 by the Respondent No: 2.
- 7 That Para-7 is also incorrect & denied. No Departmental appeal has been filed by the appellant nor any such record is available till date. Hence the plea of the appellant is baseless. //

- 39
- 8 That Para-8 is also incorrect & denied. Detailed reply of this Para has been given in Para-7. Hence needs no further comments. However, the Respondents further submit on the following grounds inter alia:-

GROUND.

- A Incorrect not admitted. The impugned order / Notification dated 07-2-2011 is within legal sphere & in accordance with the law, facts & circumstances of the case. Hence is liable to be maintained in favour of the Respondents.
- B Incorrect & not admitted the statement of the appellant is baseless & is liable to be dismissed in terms of the above made submissions mentioned in the foregoing Paras.
- C Incorrect & denied. The appellant has been found guilty by the competent authority on account of his willful absence from his official duty wef 30-6-2007 against the SET post. Hence he has been removed from service vide Notification dated 7-2-2011 issued by the Respondent No: 2 after observing all the codal formalities.
- D Incorrect and not admitted. Detailed reply has been given in the foregoing Paras. Hence needs no further comments.
- E Incorrect & denied. The appellant has been found guilty of willful absence from his official duty wef 30-6-2007 against the SET post by the competent authority, hence he has been removed from service vide Notification as mentioned above.
- F Incorrect & denied. The Respondent have acted as per law, rules & policy prior to issuance of the said Notification dated 2-7-2011.
- G Incorrect & denied. The appellant has been found guilty of his willful absence from his official duty wef 30-6-2007 till the said Notification dated 2-7-2011 issued by the Respondent No: 2 against the appellant under the relevant of provision of law & has thus got finality against the appellant. Therefore, the same is liable to be maintained in favour of the Respondents.
- I Incorrect & denied. The Notification dated 2-7-2011 is in accordance with law, rules & set procedure & is liable to be maintained in favour of the Respondents.
- J Incorrect & denied. The appellant has been properly served through Notices on his postal address as well as final Show Cause Notices in the above mentioned Newspapers alongwith fair opportunity of his personal hearing prior of the issuance of said Notification dated 2-7-2011 by the Respondent No: 2 against the appellant. Hence the plea of the appellant in this para is totally baseless & without any solid justification.

- K Incorrect & denied. The appellant has been treated as per law & set procedure after observing all the required codal formalities prior to the issuance of the Notification dated 2-7-2011 by the Respondent No: 2 in the light of the facts & circumstances of the case, hence the plea of the appellant regarding suffering financial losses is directly falls within the ambit of his domestic problems having no concern with the Respondents in the given circumstances of the case.
- L Legal, Hence needs no comments. However the Respondents seek leave of this Honorable Tribunal to submit additional case law & record at the time of arguments on main appeal.

In view of the above made submissions, it is requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Department.


Director

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2,&3)


Secretary

E&SE Department Khyber
Pakhtunkhwa, Peshawar.

A

4

پندرہ برسوں سے اس مسئلہ کو حل کرنے میں مددگار بننے کے لیے
ہر سال کی طرح یہ مسئلہ حل کرنے میں مددگار بننے کے لیے
ہر سال کی طرح یہ مسئلہ حل کرنے میں مددگار بننے کے لیے



ان اچھے کے سبب یا کارڈ پھر سرحدی اور اسٹنٹ ڈائریکٹر رضوان نام سیلاب سے متاثر ہونے والے ہیں اور انہیں شہر انہوں نے اسے برسرِ تک و سہارے ہیں

نوٹس

اظہار وجود جوہ بنام: سناہہ خان SET گورنمنٹ ہائی سکول ارمزمیا تہ پشاور
آپ کو بذریعہ اشتہار بتا دیا گیا جاتا ہے کہ آپ سوری 07-2007-30 سے
سکول بڈا سے بغیر کسی اطلاع کے اپنی ذیویٹی سے غیر حاضر ہیں آپ کو بحوالہ رجسٹری
نمبر 1386 سوری 12-2009-22 آپ کے گھر ذیویٹی پر حاضر ہونے کیلئے
جنسی بھیجی گئی لیکن آپ ذیویٹی پر حاضر ہونے سے قاصر رہے اب بذریعہ اشتہار آپ
کو مطلع کیا جاتا ہے کہ اس اشتہار کی اشاعت کے 15 یوم کے اندر اندر زبردستی
کے دفتر میں حاضر ہو کر اپنی غیر حاضری کی وجوہات بیان کریں ورنہ آپ کے
خلاف مزید قانون کے مطابق کارروائی عمل میں لائی جائے گی جس میں آپ کی
ملازمت سے برخواستگی بھی ہو سکتی ہے۔

محکمہ صحتی رابطہ آفس پشاور (جسٹس الرحمان)
ایگزیکٹو ڈسٹرکٹ آفس راجی اینڈ ایس پشاور
IN/A/2009 also available on www.hyberPakhtunkhwa.gov.pk

جماعت اسلامی کے
تاکیدین کے دوروں کا
شیڈول جاری

پاکستان تمباکو بورڈ

بھارتی اشتہار بورڈ 24 جولائی 2010ء مرام الناس اور اطعموں تھا کہ کہیں
ڈیٹوں، ٹیکسوں اور دیگر مختلف اقسام کی اطلاع کے لئے وضاحت کی جاتی
سے کہ تھا کہ سیس (Cess) کے نئے ریٹ درج ذیل ہیں۔

ایک روپیہ ستر پیسے (Rs.1.70) فی کلوگرام	Nicotiana Tabacum FCV, DAC, Burley Hubble Bubble Tobaccos	1
ایک روپیہ (Rs.1/-) فی کلوگرام	Nicotiana Rustica WP, BL, Niswar/Snuff, Khaka, Kurra & Roh	2

پاکستان تمباکو بورڈ پشاور
46 بی ایس ایف۔ ٹریڈ مارک 12 پشاور فون نمبر 091-9217245 فیکس نمبر 091-9217149

اعوذ ظہیر سبحانی
11/8/10

سید سہیل
ع

11/8/10

Annual: A (7)

25

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, NWFP

B.

NOTIFICATION

1. WHEREAS, Mr. Sajjad Khan SET GHS Urmur Miana Peshawar was accused under Section PPC-302-334-34 vide FIR dated 30-6-2007, but he has absconded. He has also been willfully absent from duty since 30-7-2007.
2. AND WHEREAS, according to Rule-8-A of the NWFP Govt: Servants (Efficiency & Disciplinary) Rules 1973, a notice was issued to him on his home address and directed him to resume duty under register cover vide No. 1386 dated 22-12-2009, but no response has been received from him. A notice was also issued in two leading newspapers (i.e. Daily Express on 11-8-2010 & Daily Surkhhab on 11-8-2010) with the direction to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision will be taken against him, but he failed to report for duty uptill now.
3. AND WHEREAS, on the expiry of the stipulated period given in the notice, the authorized officer i.e Executive Distt: Officer (E&SE) Mardan has submitted the case to the Authority for further necessary action against the teacher concerned.
4. NOW, THEREFORE, in exercise of powers conferred by the NWFP Govt: Servants (Efficiency & Disciplinary) Rules 1973 (Rule-8-A), the Competent Authority (Directress Elementary & Secondary Education Khyber Pakhtunkhwa), is pleased to impose major penalty of removal from service upon Mr. Sajjad Khan SET GHS Urmur Miana Peshawar.

DIRECTRESS
ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR

617-21

Endst:No. _____ /F.No.36/A-14/SET(M) Dated Peshawar the 7/2 /2011.

Copy forwarded to the:-

- 1- Executive District Officer (E&SE) Peshawar with the remarks that Mr. Sajjad Khan Ex-SET GHS Urmur Miana Peshawar may be informed on his home address.
- 2- District Account Officer Peshawar
- 3- Headmaster GHS Urmur Miana Peshawar.
- 4- PA to the Directress E&SE Khyber Pakhtunkhwa, Peshawar.
- 5- Ex-teacher concerned.

Deputy Director (Establishment)
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar

[Signature]
3/2/2011

[Handwritten initials]

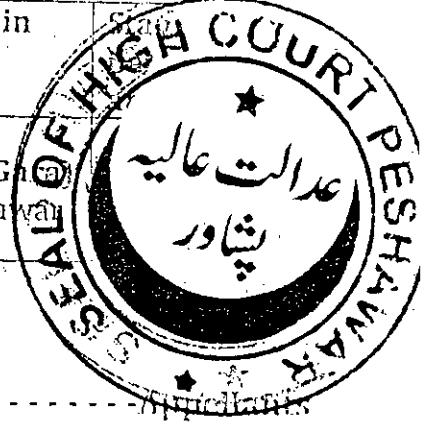
Accepted in Mr. Sajjad Mardan 11/8/11

Amir B. [Signature]

Opening sheet for criminal Appeals
BEFORE THE PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

Appellate side 9 Criminal Appeal No 288-P/125

District	Date of Filing petition	Whether filed by appellant in person or by pleader or agent
Peshawar	28-05-2012	Khwaja Muhammad Khan (G.O.) Advocate, Peshawar



1. Sajjad aged about 37 years
2. Javed aged about 42 years both sons of Raj Wali
Both residents of Urmar Payan Peshawar

VERSUS

1. Aziz Khan S/O Hakim Khan
R/O Urmar Payan, Tehsil & District Peshawar

2. State ----- Respondents

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

The learned Additional Sessions Judge-I, Peshawar

Dated:

23-05-2012

Charged U/S:

302/324/34 PPC

Sentence:

U/S. 302(b) PPC: Life imprisonment with compensation of RS. 1,00,000/- in terms of section 544-A Cr.P.C.

U/S 324 PPC: 05 years R.I. on three (03) counts with fine of RS. 10,000/- each or in default of payment 06 months S.I.

All the sentences shall run concurrently with benefit of section 382-B Cr.P.C.

ATTESTED
EXAMINER
Peshawar High Court
04 FEB 2015

Prayer-in-Appeal:

On acceptance of this Appeal, the order & judgment of the learned trial court dated 23-05-2012 may graciously be set-aside and the appellant be acquitted.

GROUND:

- 1) That the order and judgment of the learned trial court convicting the appellants is against law and facts on the file; hence untenable.

- 2) That the learned trial court has not vetted the prosecution evidence in its correct, legal and factual spectrum which has caused grave miscarriage of justice.
- 3) That the learned trial court has made a complete departure from the well-settled principles relating to the safe administration of criminal justice and has taken into consideration irrelevant and inadmissible pieces of evidence, which is bad in law.
- 4) That the appellant had no motive, whatsoever to commit the delict. Admittedly the motive has been attributed to the absconding co-accused Shad Muhammad alias Shaday.
- 5) That the depositions of the complainant Aziz Khan PW-2 and the so-called eye-witness Ali Rehman PW-3 are discrepant inter-se and contradicted by the medical evidence, the site plan and other attending circumstances of the case.
- 6) That major improvements have been introduced by the so-called eye-witnesses during the trial to strengthen the prosecution case, which the learned trial Court should have taken cognizance of for dismissal of the prosecution case.
- 7) That in view of the admitted facts on the file, presence of the so-called eye-witnesses on the spot at the relevant time is most un-natural. They could not, at all, establish their presence on the scene of occurrence at the fateful time with the deceased.
- 8) That the locale of injuries upon the deceased squarely negates the ocular version and the same openly speak about the non-presence of the so-called eye-witnesses at the tragic time with the deceased.
- 9) That, admittedly, the number of injuries does not correspond to the number of accused. For two inlet wounds four persons have falsely been roned in the case.

ATTESTED
 EXAMINER
 Peshawar High Court
 04 FEB 2015

FILED
 Deputy Secretary
 13 MAY 2015

10

23

- 10) That the observation of the learned trial Judge in the concluding Para of the impugned judgment regarding the number of injuries and that accused charged uproots the whole prosecution case.
- 11) That the incident has not occurred in the manner, time and place as depicted by the prosecution.
- 12) That the appellants had not absconded. They were avoiding arrest on account of fear and false implication in the case. Be that as it, the abscondence can't cure the inherent defects of the prosecution case.
- 13) That the prosecution has miserably failed to bring home charge against the appellants beyond shadow of a reasonable doubt.

It is, therefore, humbly prayed that on acceptance of this appeal, the order and judgment of the learned trial court dated 19-04-2012, convicting the appellant and sentencing him U/S. 302(b) PPC Life imprisonment with compensation of RS. 1,00,000/- in terms of section 544-A Cr.P.C., U/S 324 PPC 05 years R.I. on three (03) counts with fine of RS. 10,000/- each or in default of payment 06 months S.I., may graciously be set aside and he be acquitted.

Sajjad & another (Appellants)

Through

ATTESTED
EXAMINED
Peshawar
04 FEB 2012

[Signature]
1. Khwaja Muhammad Khan (Gara)

[Signature]
2. Jalal-ud-Din Akbar Azam Khan (Gara)

[Signature]
3. Shabbir Hussain Gigyani
Advocates, Peshawar

D/S

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEM: & SEC: EDU: PESH

REINSTATEMENT IN SERVICE.

Consequent upon his involvement and arrest of Mr. Hidayat Khan, PST GPS No. 1, Umar Payan Peshawar in case under FIR No. 288 dated 20/9/2005 charged under section 302/324/34 PPC, he is under suspension w.e. from 20/9/2005 till decision of court vide Endst: No. 4676-80 dated 21/4/2006 and convicted under sentence 8 years RI with fine of 1,00,000/-

Under the provision of rules FR 54 & CSR 194, Mr. Hidayat Khan PST GPS No. 1, Umar Payan Peshawar is hereby re-instated on service w.e. from 31/5/2010 on expiry of his sentence.

NOTE :-

1. Necessary entry should be made in his service book.
2. The suspension period will be decided latter-on.

(JAMIL UR REHMAN)
Executive District Officer,
Elem: & Sec: Edu: Peshawar.

Endst: No. 830-37 / Dated Peshawar the 11 / 8 / 2010
Copy for information and necessary action to the :-

1. District Accounts Officer Peshawar
2. Deputy District Officer (Male) Peshawar along with service book.
3. Teacher concerned.

Jamil Ur Rehman
District Officer (Male)
Elem: & Sec: Edu: Peshawar.