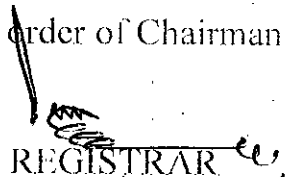


# FORM OF ORDER SHEET

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

Case No. - 753 /2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/04/2023	<p>The appeal of Mr. Sajjad Ahmad resubmitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Sajjad Ahmad son of Saeed Khan r/o Metahband Bathela, Ex-Constable no. 4327 Police Line Peshawar received today i.e. on 29.03.2023 is incomplete on the following score which is returned to the co Counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Annexures of the appeal are unattested.
- 4- Memorandum of appeal be got signed by the appellant.
- 5- Affidavit is not attested by the Oath Commissioner.
- 6- Annexure-F of the appeal is illegible which may be replaced by legible/better one.
- 7- Five more copies/sets of the appeal along with annexures i.e complete in all respect may also be submitted with the appeal.

No. 1041 /S.T,

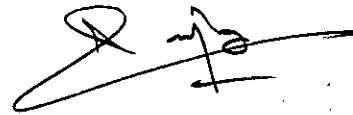
Dt. 31/3 /2023

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Saadullah Khan Marwat Adv.  
High Court at Peshawar.

Sir,

Re-submitted after removing  
the objections.



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

S.A. No. 753 /2023

Sajjad Ahmad

versus

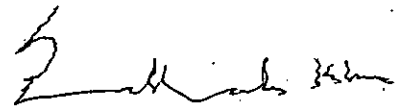
Superintendent & Others

**I N D E X**

S. No.	Documents	Annex	P. No.
1.	Memo of Appeal		1-5
2.	FIR dated 10-02-2011.	"A"	6-7
3.	Conviction / Judgment by Special Judge CNS dated 21-05-2014	"B"	8-19
4.	Dismissal order dated 03-06-2012	"C"	20
5.	Judgment of Lahore HC dt. 12-09-19	"D"	21-30
6.	Representation dated 04-10-2019.	"E"	31-32
7.	Rejection order dated 05-12-2019	"F"	33
	Service Appeal No. 888/2020 dated 03-01-2020	"G"	34-37
	Judgment dated 25-04-2022	"H"	38-42
	Reinstatement order dated 21-07-22	"I"	43
	Final Show Cause Notice, 06-10-22	"J"	44
	Reply to Final Show Cause Notice 10-10-2022	"K"	45
	Final order dated 09-11-2022	"L"	46
	Representation dated 06-12-2022	"M"	47-49

Appellant

Through



Saadullah Khan Marwat  
Advocate  
21-A, Nasir Mansion,  
Shoba Bazaar, Peshawar.  
Ph: 0300-5872676

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**S.A No. 753/2023Khyber Pakhtunkhwa  
Service TribunalEntry No. 4620Dated 29/3/2023

Sajjad Ahmad S/O Saeed Khan,  
R/O Metahband Batkhela,  
Ex - Constable No. 4327,  
Police Line Peshawar . . . . . Appellant

Versus

1. Superintendent of Police  
Hqr: Peshawar.
2. Capital City Police Officer,  
Peshawar.
3. Provincial Police Officer,  
KP, Peshawar . . . . . Respondents

⊕&lt;=&gt;⊕&lt;=&gt;⊕&lt;=&gt;⊕&lt;=&gt;⊕

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974**  
**AGAINST OB NO. 2967 DATED 09-11-2022 OF R. NO.**  
**1, WHEREBY APPELLANT WAS DISMISSED FROM**  
**SERVICE AND THE INTERVENING PERIOD OF**  
**ABSENCE & OUT OF SERVICE WAS TREATED AS**  
**WITHOUT PAY:**

⊕&lt;=&gt;⊕&lt;=&gt;⊕&lt;=&gt;⊕&lt;=&gt;⊕

**Respectfully Sheweth:**

1. That appellant was enlisted as Constable on 02-10-2002.
2. That FIR No. 10 dated 10-02-2011, Police Station ANF Lahore was lodged against appellant along with two others U/S 9 (C) CNSA and was arrested by the ANF on the spot. (Copy as annex "A")

Filed to-day  
Registrar  
29/3/2023

3. That after completion of investigation and recording of evidence in pro & contra in the case, appellant was convicted by the Learned Session Judge / Judge Special Court CNS, Lahore vide judgment dated 21-05-2014 sentenced him to RI for five years and six months and with fine of Rs. Twenty Five Thousand or in default thereof to undergo 05 months and 15 days SI. (Copy as annex "B")
4. That on 03-06-2012, appellant was dismissed from service from the date of absence from duty retrospectively. (Copy as annex "C")
5. That on 24-05-2014, appellant filed appeal in the Lahore High Court, Lahore against the aforesaid judgment for setting aside the conviction and sentence which came up for hearing on 12-09-2019 and the hon'ble court was pleased to allow the appeal, the conviction and sentence of the appellant etc was set aside and was acquitted from the baseless charges. (Copy as annex "D")
6. That on 04-10-2019, after release from jail, appellant submitted appeal before R. No. 02 for reinstatement in service which was rejected on 05-12-2019. (Copies as annex "E" & "F")
7. That against the said impugned orders, appellant filed Service Appeal No. 888/20 on 03-01-2020 before the hon'ble Service Tribunal which came up for hearing on 11-05-2022 and then the hon'ble Tribunal was pleased to accept the same in the following manner:-

The appeal in hand is, therefore, allowed by setting aside the impugned orders. The appellant is reinstated in service with directions to the respondents to conduct de-novo enquiry strictly in accordance with the Law & Rules within 60 days of the receipt of copy of this judgment, failing which the appellant shall be considered to have been reinstated in service with all back benefits. (Copies as annex "G" & "H")

8. That the said judgment was remitted to the respondents on 03-06-2022 for compliance but no heed was paid to the same to do the needful within the given time, so they extinguished their right of further probe into the matter and then made futile exercise in the case.
9. That on 21-07-2022, appellant was reinstated in service for the purpose of de-novo enquiry by R. No. 01 and reported for duty on the said date i.e. 21-07-2022. (Copy as annex "I")
10. That on 06-10-2022, appellant was straight away served with Final Show Cause Notice by R. No. 01 which was replied on 10-10-2022 and denied the allegations with cogent reasons. (Copies as annex "J" & "K")
11. That on 09-10/11-2022, appellant was again dismissed from service with immediate effect and period of absence and out of service was treated as without pay by R. No. 01. (Copy as annex "L")
12. That thereafter, on 06-12-2022, appellant filed representation before R. No. 02 which met dead response till date. (Copy as annex "M")

Hence this appeals, inter alia, on the following grounds:

**GROUND S:**

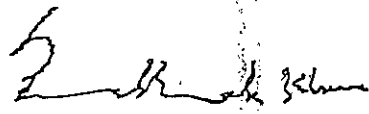
- a. That in the earlier round too, the matter was not dealt with by the authority as per the mandate of law and then for the reason the appeal was accepted by the hon'ble Tribunal by not complying with the codel formalities.
- b. That the authority was given opportunity of de-novo enquiry to the department but the same was again not conducted as per the mandate of law because neither any statement of any concerned was recorded nor appellant was afforded opportunity of cross examination.


- c. That in the judgment, 60 days was given to the respondents to conduct the enquiry as per the law and rules but no such efforts were made and the enquiry was not conducted within the prescribed time, so authority extinguished her right and the subsequent exercise was of no legal effect.
- d. That the Impugned order dated 09-11-2022, double punishments were awarded to appellant, i.e. dismissal from service and intervening period as well as out of service period was treated as without pay.
- e. That the impugned order is not per the mandate of law, so is based on malafide.

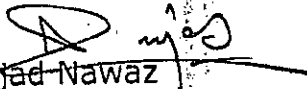
It is, therefore, most humbly prayed that the impugned order dated 09-11-2022 of R. No. 01 be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

  
Appellant

Through

  
Saadullah Khan Marwat

  
Arbab Saiful Kamal

  
Amjad Nawaz

Advocates

Dated: 24-03-2023

**AFFIDAVIT**

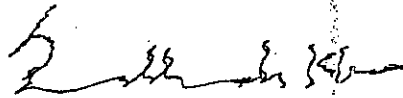
I, Sajjad Ahmad S/O Saeed Khan Ex-Constable No. 4327 Police Line, Peshawar (Appellant), do hereby solemnly affirm and declare that contents of Service Appeal are true and correct to the best of my knowledge and belief.



DEPONENT

**CERTIFICATE:**

As per instructions of my client, Service Appeal No. 888/20 has earlier been filed by the appellant before this Hon'ble Tribunal.



ADVOCATE



انڈرائج اٹھلائی رپورٹ

حالت نمبر 10، تمام ANF ضلع لاہور تاریخ 10<sup>2</sup>/<sub>11</sub> قوت قاعدہ 12/15 بجے  
 تاریخ و وقت رپورٹ - بجوام ریٹ 11 بجوت 5-30 بجرات - تمام سے روانگی مارچ وقت 11 بجوت 5  
 نام و کونٹ مکتب - بزرگ عمر میر تنخواہ ٹھکان خوش سب انڈیکو تمام ANF لاہور -  
 کھنڈر کتبہ جرم - 1997، ANSA، 215-C-9 - برآمدگی جس وزنی 104.400 کلو گرام، انون  
 وزنی 24 کلو گرام از موضع موٹر سے راوی شمال پلازہ لاہور، بنا صلہ  
 جاتے وقت نامعلوم سمت - توپیا 50 کلو میٹر بجانب شمال مغرب -  
 سارواں متعلق نہیں - بلا توقف

مختص محمد شتیق دانا - خیلہ ASI نمر

نمر تمام ANF لاہور - انڈرائج بالا کو فیرا پورٹی کہ نصرت اللہ خان، سجاد احمد پورٹ  
 ساکنانے یہ وہ خبر مختصر خواہ جن کا تعلق منشیات سنگروں سے ہیں اللہ تو اسی گروہ سے ہے،  
 امرتسر قریب 12 بجرات بزرگ عمر کارپری 913-ARP- سندھو ٹوٹا ٹاٹا کرولہ برف سفید  
 منشیات کی بھاری مقدار لاکر موٹر سے راوی شمال پلازہ لاہور لائیں گئے، چنانچہ اس  
 اطلاع پر ایک ریڈنگ پارٹی بشمول من SI خادم حسین سرمدیار منٹیں 21:45 بجے عید  
 طاہرہ، 12 بجے ابھو، شبیر، طارق، قمر شہزاد، رفیق، اسماعیل، شہدت سیال، حمید  
 ڈرائیور تیار کر کے زیر نگرانی صاحب خان AD 2201 لیواری سرکاری گاڑی لے گئے  
 قریب 12 بجے بھرہ سے ڈر قریب راوی شمال پلازہ لاہور سنگر مول کی ناکم بند کا کرنا  
 گئی۔ قریب 12:15 بجے کارپری 913-ARP کو ٹھہرے میں نے کہیں رشتا میں سوار  
 تھے، موٹر سے راوی شمال پلازہ لاہور لائی، جسکو حسب نشانی کو دی کر کے یہ  
 ادھر ادھر سے گمان روک کر ٹھہرے میں نے کہ اس میں سوار تین اشخاص کو حسب اطلاع  
 جانو گئے، جنہوں نے بددیانتی اپنے مکمل نام و پتہ جات بااثر تیبہ اور ڈرائیورنگ  
 سیٹ پر بیٹھے ہوئے نے پرویز ولو قادر خان قوم درانی سکھ جھوٹ ڈاکٹار دیا  
 ڈیڑھ بجے تک واصل ہار سدہ، فرنٹ سیٹ پر بیٹھے ہوئے نے (2) سجاد احمد ولد  
 سعید خان رائیڑی گلی محلہ کونر چیم ڈاکٹار نے بیٹھ خیمہ تحصیل سوان ضلع مالکانہ  
 اور فرنٹ سیٹ کے پیچھے بیٹھے ہوئے (3) نصرت اللہ ولد دلور خان قوم اور کڑی سکھ  
 عزیز بلڈنگ کالی باڑی ٹیوسد خان وردی سکان بنگرا پتہ اور حالی درمنگلی پتہ سیالو  
 خیل تحصیل وضع بنگو تیلایا۔ مذکورہ اشخاص سے منشیات کا پوچھنے پر پرویز مذکورہ  
 نے ڈرائیورنگ سیٹ کے پیچھے اور دائیں فرنٹ ورداؤ سے میں تختیہ لہور پر چھپانے  
 پورٹ 5:15 بجے جس سجاد احمد اپنے پاؤں میں رکھے دھما بیگٹ جس  
 دور نصرت اللہ خان مذکورہ نے پھیلی سیٹ کے پیچھے خانے میں سے 25 بیگٹ  
 متعلق جس 20 بیگٹ معلوم ایفون نکال کر پیش کئے۔ پرویز مذکورہ سے  
 برآمدہ 1 بیگٹ جس کا وزن کیا گیا تو 1200 | 2300 | 2300 گرام ملی 1200  
 کلو گرام جس پورٹی - برآمدہ 1 بیگٹ جس میں سے 10 | 10 گرام جس

بلور فونہ بغیر کسی قیمت پر نیماٹی علیحدہ علیحدہ نکالی کر محکمہ بقیہ سے کل 20/12/2011ء  
 پارسلز کو پیر بھی 20/12/2011ء سے سر پھر کر کے بذریعہ فرو قبضہ کیا گیا۔  
 ملزم سجاد کے برآمدہ دو ٹیکٹ جس کا وزنی کیا گیا، تو 20/12/2011ء (20/12/2011) گرام  
 کل 24 سو کلو گرام جس میں بیوی، برآمدہ ٹیکٹ جس میں سے 20/12/2011  
 ملزم جس کا بلور فونہ بغیر کسی قیمت پر نیماٹی علیحدہ علیحدہ نکالی کر محکمہ  
 بقیہ سے کل 20/12/2011ء پارسلز کو پیر بھی 20/12/2011ء سے سر پھر کر کے بذریعہ فرو  
 قبضہ ANF نے کیا گیا، ملزم فقیر اللہ خان کے پاس آمد پر ٹیکٹ جس میں  
 اٹیوٹ کا وزنی کیا گیا، تو پیر ٹیکٹ جس کا اٹیوٹ 20/12/2011 (20/12/2011) گرام فی کل  
 90 کلو گرام جس کا 20/12/2011 کلو گرام اٹیوٹ بیوی، برآمدہ پیر ٹیکٹ جس  
 اور اٹیوٹ میں سے 20/12/2011 گرام جس اٹیوٹ بلور فونہ بغیر کسی قیمت پر نیماٹی علیحدہ  
 علیحدہ نکالی کر محکمہ جس سے 20/12/2011 پارسلز اٹیوٹ 20/12/2011 عدد پارسلز بقیہ  
 جس میں بندہ پارسل اور بقیہ اٹیوٹ کا بھی ایک عدد پارسل کل 20/12/2011 عدد پارسلز میں  
 بھی 20/12/2011 سے سر پھر کر کے ہم کارز پیری 813-ANF سندھ ٹیوٹا کر کے پیر  
 سندھ (جن کی نمبر 379770 ANF، جس نمبر 6014141-20 ANF) تھیات کی  
 استغاثی کو بلور و جہت بذر پیر شدہ ANF میں کیا گیا، ملزمان مذکورہ  
 دستا کر کے اور دیگر اشیاء کو بلور کسی پیر (پیری) بذریعہ علیحدہ علیحدہ خرد قبضہ  
 ANF میں لیا گیا۔ ملزمان مذکورہ نے باہم صلاح و مشورہ سے جو کہ منشیات پیش کردہ  
 کو اپنے قبضہ میں رکھ کر فروخت اور اس کی ترسیل کر کے جرم زبردست 1997-ANF-15-99  
 کا ارتکاب کیا ہے، لہذا تحریر استغاثہ ہذا بغرض تاخیر مقدم بہت سے اسمیل سپاہی  
 ارسال تمام ہے۔ مقدمہ درج رقم کر کے مقدمہ سے نکال کر میں، میں مرتبہ پیر معروف  
 تفتیش بیوی۔ از حوتہ نوٹرز سے راوی مالی پلازہ لاہور بوقت 15/12/2011 بجے رات۔  
 دستخط و تکریری لسانی عورت سب انسپکٹر تمام ANF لاہور 2011-2-20  
 از تمام۔ اسی وقت ایک تحریر استغاثہ مرتبہ فرسٹ لہان عورت 5 بدست  
 اسماعیل سپاہی تمام ANF لاہور میں موصول ہوا، جس پر مقدمہ درج رقم  
 کر کے اس کی تحریر استغاثہ سے نکل FIR بدست اور مذکورہ سپاہی عقب  
 SI صاحب موصوف برائے اینڈ تفتیش مقدمہ ارسال ہے۔

محمد شفیع رانا نمبر ASJ  
 تمام ANF لاہور  
 2011-2-20

3 8

The State

Vs.

Pervaiz Ahmad and others

# IN THE COURT OF NISAR AHMAD, JUDGE, SPECIAL COURT CONTROL OF NARCOTIC SUBSTANCES, LAHORE

The State

Vs.

1. Pervaiz Ahmad s/o Qadar Khan, 58 years, cultivator, caste Durani, r/o Jhamat, P.O, Amba Dheer, Tehsil & District Charsadha,
2. Sajjad Ahmad s/o Saeed Khan, 31 years, sepoy r/o Street/ Mohallah Kozcharn, P.O. Seejand But Khela, Tehsil Swat, District Malakand &
3. Nusaratullah Khan s/o Dilawar Khan, 45 years, Havaladar caste Orakzai, r/o Aziz Building, Kali Bady, Tipu Sultan Road, House No.7, Peshawar. Permanent Address, Shahew Khel, Tehsil & District Hangu.

Case FIR No.10/2011 dated 10.02.2011 of PS ANF Lahore,  
U/section 9-C /15 of Control of Narcotic Substances Act, 1997.

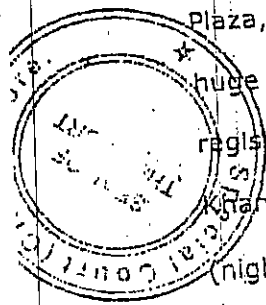
Present.

Rana Schail Iqbal SP for the state.  
Mr. Muhammad Rasheed Ch. Adv. for Pervaiz accused.  
Mr. Major @ Aftab Ahmad Adv. for Sajjad accused.  
Ch. Iftikhar Ahmad Adv. for Nusaratullah accused.

## JUDGMENT

The prosecution story in brief is that Nouman Ghous SI, Khadim Hussain Subedar, Mazhar Havl., Abdul Majeed Tahir/HC, Zaheer-ul-Hassan, Bashjr, Tariq, Quraish, Asif, Ismail, Shafqat sepoy's Hameed driver and Munawar driver under the supervision of Sahib Khan Assistant Director, while boarding in official vehicles at about 11.40 p.m reached Motorway Ravi Toll Plaza, Lahore and made a Naka Bandi there, on receipt of information that huge quantity of narcotics would be transported through car bearing registration No.AGP-813/Sindh Toyota Corolla white colour by Nusratullah Khan, Sajjad Ahmad and Pervaiz r/o K.P.K. On 10.2.2011 at about 12.15 a.m (night) the car No.AGP-813/Sindh attracted at M/way Ravi Toll Plaza and on the pointing out of informer, raiding party, overpowered three persons sitting in it. The driver of the car disclosed his name Pervaiz s/o Qadar Khan,

21-5-14  
21-5-14  
21-5-14



Attested True Copy  
Registrar Special Court, CNS,  
Lahore

whereas the person who was sitting on the front seat disclosed his name Sajjad Ahmad s/o Saeed Khan and the person who was sitting on the rear seat disclosed his name Nusratullah s/o Dilawar.

On inquiry about narcotics, Pervaiz accused brought out 05 packets of charas from underneath the driving seat and 05 packets of charas from the secret cavities of right front door of the car, on weighing, each packet of charas was of 1200 gram. Thus, the total recovered charas became 12 kgs. 10 grams charas was separated from each packet for chemical analysis and I.O prepared 10 sealed sample parcels. Remaining charas was also separately sealed into a parcel. Complainant took sample parcels and case property P-1, into possession vide recovery memo Ex.PB, attested by Sahib Khan AD/(P.W-4) and Abdul Majeed Tahir /HC.

During the course of personal search of Pervaiz accused, PKR.810/- P-6, photocopy of ID card P-7, mobile phone P-8, purse P-9 and misc. papers were recovered and I.O. took it into possession; vide recovery memo Ex.PE.

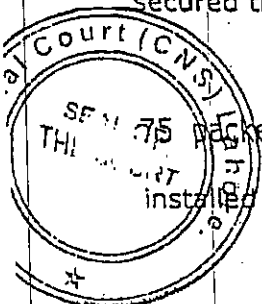
On inquiry about narcotics, Sajjad Ahmad accused handed over two packets of charas lying underneath his feet, on weighing, each packet of charas was of 1200 grams. Thus, the total recovered charas became 2400 grams. 10 grams charas was separated from each packet for chemical analysis and I.O prepared 2 sealed sample parcels. Rest of the charas was also separately sealed into a parcel. Complainant took sample parcels, case property P-2, into possession, vide recovery memo Ex.PC, attested by Sahib Khan AD/(P.W-4) and Abdul Majeed Tahir /HC.

During the course of personal search of Sajjad Ahmad accused, cell phone P-10, service card P-11, purse alongwith misc. papers P-12, ID Card P-13, wrist watch P-14 and PKR.10/- P-15 were recovered and I.O. secured the same, vide seizure memo Ex.PF.

On Inquiry about narcotics, Nusratullah accused got recovered 15 packets of charas and 20 packets of opium from the secret cavities installed in the back seat of the car. On weighing, each packet of charas was

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Registrar Special Court, CNS,



of 1200 grams. Thus, the total recovered charas became 90 kgs. On weighing, each packet of opium was of 1200 grams. Thus, the total recovered opium became 24 kgs. Investigation officer separated 10/10 grams charas and opium from each packet for chemical analysis and prepared 75 sealed sample parcels of charas and 20 sealed sample parcels of opium, while rest of the charas and opium were also separately sealed into two parcels. Complainant took sample parcels, case properties P-3, P-4 and car P-5, into possession, vide recovery memo Exh.PD, attested by Sahib Khan AD/(P.W-4) and Abdul Majeed Tahir /HC.

During the course of personal search of Nusratullah accused, mobile phone P-16, registration book AGP-813 P-17, ID card P-18, purse alongwith misc. papers P-19 and PKR.4390/- P-20, were recovered and I.O. took it into possession, vide recovery memo Ex.PG.

The seizing officer/complainant recorded the Murasila Exh.PH and sent it to PS ANF, Lahore through Ismail sepoy where on the basis of which F.I.R Exh.PA, was registered against the accused.

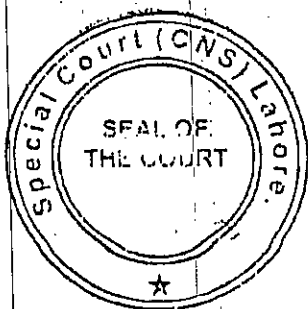
After usual investigation accused were found involved in the crime in question and report U/S 173 Cr. P. C, was submitted in the court. Copies as required U/S 265-C, Cr. P. C were supplied to the accused. Charge in this case was framed on 22.06.2011 by Mr. Muhammad Azhar Ch. the then Learned Judge, Special Court (Control of Narcotic Substances), Lahore, to which accused pleaded not guilty and claimed trial. In order to substantiate the charge against the accused, prosecution examined four witnesses in all.

Gist of their evidence is hereby re-produced below:-

P.W-1, Muhammad Saleem/HC deposited 87 sealed sample parcels said to contain charas and 20 sealed sample parcels said to contain opium in the office of Chemical Examiner, Lahore, intact.

P.W-2 Muhammad Shafique/ASI is author of F.I.R. Exh.PA, he kept 87 sealed sample parcels said to contain charas and 20 sealed sample parcels said to contain opium, 04 sealed parcels of recovered charas & 01 parcel of recovered opium and other belongings recovered from the accused alongwith relevant

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documents for safe custody in malkhana. On 12.02.2011, he handed over 87 sample parcels of charas and 20 sample parcels of opium to Muhammad Saleem/H.C, for its onward transmission to the office of Chemical Examiner, Lahore.

P.W-3, Noman Ghous S.I is complainant/I.O. of this case.

P.W-4, Sahib Khan/AD, is recovery witness.

Abdul Majeed Tahir /HC was given up by learned SP, tendered in evidence reports of Chemical Examiner Exh.PJ, Exh.PK, Exh.PL & Exh.PM and closed prosecution evidence.

3. On close of prosecution evidence, accused were examined U/S 342 Cr. P. C. Describing themselves scapegoats, they denied the charges, professed innocence and stated to have falsely been implicated. Pervaiz and Sajjad Ahmad accused opted to produce defence evidence. However, the accused did not opt to appear in the witness box as required U/S 340(2) Cr. P. C. In reply to question why this case against you and why P.Ws deposed against you, Pervaiz accused replied as under:-

"I was arrested on 8.2.2011, when I was coming from K.P.K. During the checking of wagon at Gujranwala, officials of ANF off-loaded me from the wagon. I protested why they off-loaded me. Later on, they brought me at Lahore and confined me in unknown place. After some days, I was produced before the court. Then I came to know that this case has been registered against me and other persons. I did not know the other persons. I belong to Charsada. I have no relationship with other accused. Staff of Gujranwala involved me on the ground that I protested over my off-loading from wagon. I was not arrested at Ravi Toll Plaza. No photograph was produced as I have been shown as driver of the car. The said car is not owned by me. This case has been filed malafidely."

Sajjad Ahmad replied the same question as follow:-

"I am serving as Constable in District Peshawar. My brother was serving in Pakistan Army stationed at Lahore. I came to see him and de-boarded from the Bus at Badami Bagh Lorry Adda, Lahore. Suddenly, a private Dala stopped near me and the person sitting in the Dala asked my whereabouts. During this conversation, the man sitting in the Dala got annoyed as



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I did not answer their questions. Hot words were exchanged and they forcibly took me to their head quarter. I was kept for one day at PS. During this period, A.N.F. officials arrested four persons belonging from K.P.K. I was also made the member of that team when 2 kgs charas was stated to be recovered from me. Nothing was recovered from me".

Nusratullah Khan accused replied as under:-

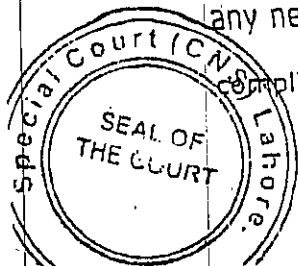
"May have ANF officers/officials apprehended drug paddlers but subsequently they were released and I have been implicated and involved in this case and made me scapegoat just to show efficiency on their part as myself is Govt. official serving as Head Constable in K.P.K while apprehending me from the Derbar Data Ganj Buxh r.a. The P.Ws have deposed against me because I.O. is Junior to Sahib Khan Assistant Director, second recovery witness/Incharge Raiding party and they deposed against me to fulfill their whims and wishes of their high ups".

Ijaz Ahmad (D.W-1) had stated that in the month of February Sajjad his brother came to see him, he went to Badami Bagh to receive him and in his presence hot words were exchanged between police and his brother. Police officials brought his brother to PS ANF Johar Town, and involved him in this case.

Mohsin Ali (D.W-2) had stated that on 8.2.2011, at about 12:30/12:45 p.m. ANF officials stopped their vehicle near Gujranwala and picked Pervaiz Khan and no contraband was recovered from the accused"

C.W-1 Dr. Zaman Mehdi @ Assistant Chemical Examiner had deposed that chemical reports Exh: PJ, to Ex.PM were issued and signed by him. He verified these reports as correct. .

04. Learned defence counsel has contended that there is nothing on record to connect the accused with the crime; that prosecution has failed to prove the recovery of huge quantity of charas and opium from the accused; that they were not apprehended on the date, time and place mentioned by prosecution witnesses; that there is nothing on record that the accused have any nexus with the car; that provisions of Section 103 Cr. P. C had not been complied with; that the witnesses who have deposed against them are



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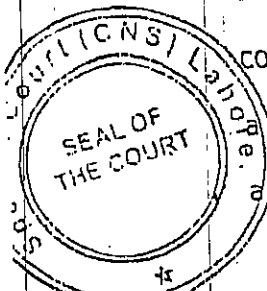
officials of ANF and to show their efficiency to their high-ups they have falsely deposed against the accused; that there are material contradiction in the statements of P.Ws.; that finger print in present case has not been obtained and receipt of Toll Plaza has not been produced in the court.

05. On the other hand, learned SP for the state argued that accused were caught red-handed alongwith the car from where huge quantity of charas and opium was recovered; that accused had full-conscious knowledge about the huge quantity of narcotics concealed in the car. He pleaded that recovery of huge quantity of narcotics from the possession of the accused is proved. Elaborating his view-point he stated that prosecution version is fully supported by direct evidence and positive reports of Chemical Examiner.

06. HEARD

07. Court has heard the learned counsel for the parties and has gone through record with their kind assistance. The record shows that Nouman Ghous SI (P.W-3) and Sahib Khan AD (P.W-4) have furnished ocular account in this case. They have deposed that their his high ups received prior information about the intended transportation of contraband by the accused via Motorway Ravi Toll Plaza, Lahore through car bearing registration No.AGP-813/Sindh. On this information; a raiding party consisting of ANF officials reached pointed place at 11.40 p.m. and remained alert over there, when on 10.2.2011 at about 12:15 a.m, above mentioned car alongwith three passengers reached there. They were stopped and charas and opium as mentioned in the F.I.R. Exh.PA and recovery memos Exh.PB, Exh.PC and Exh.PD were recovered. The car was taken into custody alongwith the recovered contraband. The accused were caught red-handed at the spot and F.I.R. was registered by Muhammad Shafiqe /ASI (P.W-2). Both these prosecution witnesses have demonstrated complete unanimity on all aspects of the case. Learned defence counsel could not point out any material contradiction in the statements of the prosecution witnesses, so as to create doubt in the prosecution case. No enmity, ill-will or grudge has been alleged against the prosecution witnesses to falsely implicate the accused and

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despite lengthy and searching cross-examination, their veracity could not be shattered and nothing favourable to the defence could be extracted from their statement. The most important aspect of the case is that huge quantity of contraband weighing 114 kgs was recovered from conscious possession of Nusratullah Khan accused. Likewise, 12 kgs charas was recovered from the conscious possession of Pervaiz Ahmad accused whereas 2.400 kgs charas was recovered from Sajjad Ahmad accused. Such huge quantity of contraband could not be thrust upon the accused in absence of any tangible and concrete enmity. More over, it is not possible for the P.Ws to arrange such a huge quantity of narcotics against the accused having no previous relation, enmity or ulterior motive which has not been proved by defence. For just decision of the case, some important excerpts of cross-examination of P.W-3 and P.W-4 are hereby reproduced below:-

P.W-3

"The vehicle used by the accused was a private one"

"Two packets of charas recovered from accused Sajjad lying openly between the feet of accused".

"The charas was in a compact form in the two packets recovered from Sajjad accused".

"It is correct that two packets of charas were found lying underneath the feet of Sajjad accused while sitting on front seat of the car and same was visible while standing nearest to front glasses of the car".

"I took out two samples from the slabs recovered from Sajjad".

"According to version of my complaint, white car was coming from Islamabad side which was stopped by me and my officials and contraband was recovered".

"The charas recovered from the accused was in a form of slabs".

"The opium was in a form of packet".

"The packets of opium were in round shapes".

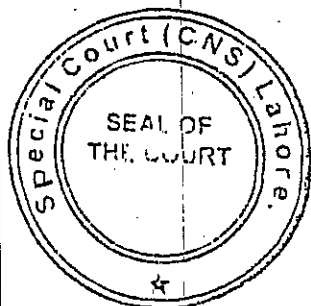
"The contraband was produced before me by Nusratullah accused himself".

"Charas and opium were wrapped in polythene papers".

"The first recovery was produced before me by Pervaiz accused".

"The fard maqbozgi was prepared in the name of Nusratullah".

MISAFI AHMAD  
21/5/14 Judge  
(CNS)



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The State

Vs.

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"The accused Nusratullah lastly produced the alleged recovery".

"The car was being driven by Pervaiz accused".

"The samples were sealed which were taken from each slab of the charas but the remaining charas was sealed in a bag of cloth".

P.W-4

"The contraband was lying between the two feet of Sajjad accused".

"In the preliminary investigation of the I.O., all accused are friends and deal in business of narcotics jointly. Volunteered that Sajjad and Nusratullah are police officials".

"The charas recovered from Sajjad accused was wrapped in solo-thin-multi-coloured paper."

(At the request of learned counsel of Sajjad accused, P-2/case property is de-sealed) solo-thin-multi-coloured paper was torn by the counsel of the accused before this court".

"The sample parcels were taken from the slabs".

"The car was encircled by the raiding party".

"The charas was in a form of slab".

"The opium was in round shape".

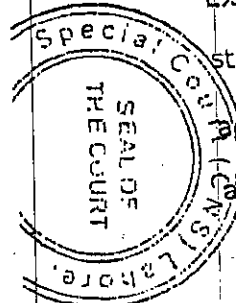
"03 recovery memos were prepared regarding narcotics whereas 03 memos of personal belongings were prepared in this case".

The result of above detailed discussion is that defence leave no stone unturned to prove the prosecution story as narrated in the F.I.R and deposed by the P.Ws on oath in the court.

08. There is nothing in the cross-examination of both the P.Ws, which may give an impression that the raiding party was all out to implicate Pervaiz Ahmad, Sajjad Ahmad and Nusratullah Khan accused, falsely or for that matter they were prompted by anyone to foist such huge quantity of narcotics upon them. In fact, their testimony is free from any material infirmity.

09. The reports of Chemical Examiner Exh.PJ, Exh.PK, Exh.PL and Exh.PM are available on record and perusal of the same would show that the stuff recovered, from Pervaiz and Sajjad Ahmad accused which was in their active control was in fact, charas and stuff recovered from Nusratullah Khan accused was in his active control was in fact, charas and opium. The

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prosecution In support of said reports has got examined Muhammad Saleem /HC (P.W-1) and Muhammad Shafique /ASI (P.W-2).

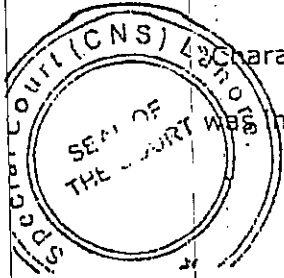
10. It is in the evidence of Muhammad Shafique /ASI (P.W-2) that on arrival of the I.O. to the P.S, he handed over to him 87 sealed sample parcels said to contain charas, 20 sealed sample parcels of opium, 04 sealed parcels of charas and one sealed parcel of opium. He further stated that on 12.02.2011, he handed over the sealed sample parcels to Muhammad Saleem /HC (P.W-1) for taking it to the office of Chemical Examiner. The statement of above named witnesses remained unchallenged. C.W.1 Assistant Chemical Examiner (R) further verified that reports were issued and signed by him.

11. From the version of above two witnesses, who as stated earlier, have been examined by the prosecution in support of Chemical Examiner's reports Exh.PJ, Exh.PK, Exh.PL and Exh.PM, one could reach an irresistible conclusion that reports of Chemical Examiner are free from any doubt.

12. No doubt that all witnesses are police officials, but now it is settled principle of law that police officials are as good as other witnesses unless any kind of motive, grudge or ill-will is shown on their part leading to a conclusion that because of that reason they opted to give false evidence against the accused. There is no plausible material on the record which may persuade the Court to hold that the prosecution witnesses opted to come forward with an untrue story and planted a huge quantity of narcotics against the accused.

In the case of Mst. Rasheeda Bibi v. state (2010 P Cr. LJ 900), it has been held that application of Section 103, Cr. P. C, having been excluded by Section 25 of Control of Narcotic Substances Act, 1997, objection about non-association of any private witness in the recovery proceedings, had no substance. Complainant police officer was a witness to the recovery of "Charas" weighing 6 kgs from the accused. Report of Chemical examiner was positive. Conviction and sentence were maintained in circumstances".

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The State

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Pervaiz Ahmad and others

From the above cited case law, as well as the provisions of Section 25 CNS Act, it is crystal clear that the non-association of private mashir for the recovery of narcotics would not defeat the case of the prosecution by referring the provisions of Section 103, Cr. P.C, particularly in present case, when the alleged recovery of narcotics were made at 12:15 a.m at Highway, therefore, the process of recovery of narcotics could not be discarded on the above account.

13. It is appropriate to note over here that learned defence counsel hotly contended that secret cavities are not present at the back of the rear seat. My learned predecessor during the cross-examination of P.W-3 observed that car in question shall be inspected by the court at the time of final arguments regarding the existence of secret cavities. Today, the car No.AGP-813/Sindh was inspected in presence of accused persons and found that secret cavities are present therein as mentioned in the complaint Exh.PH.

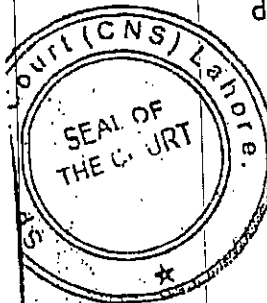
14. DEFENCE PLEA

It has already been reproduced in detail. Briefly, the plea of all the accused is that they are innocent. It is worth mentioning that according to record, it was not first version of the accused before police. Last but not least it is evident from the testimony of D.W-1 that he failed to disclose date and time of arrival of Sajjad Ahmad accused at Badami Bagh, Lahore when confronted learned defence counsel failed to wriggle out from the same. Likewise, testimony of Mohsin Ali (D.W-2), is of no use to Pervaiz accused in the given circumstances of the case in hand. Last but not least, Nusratullah Khan also took the plea of substitution. However, plea of substitution was denied by Sahib Khan AD (P.W-4) when to a specific question of learned defence counsel, he replied that:-

**"It is incorrect that one Amanullah was arrested at the Naka and he was substituted to present accused Nusratullah".**

There is no earthly reason that why the complainant would substitute the accused for the real culprit. Even otherwise, Nusratullah accused badly failed

MEHAR AHMAD  
Judge (S)  
Exh.PH.  
21-5-14



SEAL OF THE COURT  
COURT (CNS) Lahore

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The State

Vs.

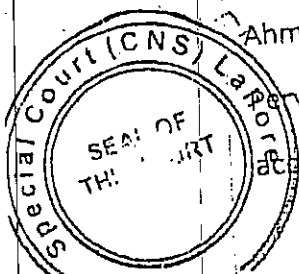
to substantiate his plea. It does not appeal to the mind that complainant and P.Ws would let off the real culprit in order to falsely implicate and involved Nusratullah accused. It is established from record that Nusratullah accused and his co-accused were caught red-handed and huge quantity of narcotic substances was recovered from their conscious possession. It can be safely, therefore, said that plea of Nusratullah and his co-accused is afterthought.

15. The defence plea raised by above named accused persons is nothing but a cock and bull story. It is well-settled when a specific plea is advanced by the accused then burden shift on them to prove the same. The accused during trial failed to substantiate that they were not present in car No.AGP-813/Sindh from where huge quantity of charas and opium was recovered from their conscious possession, therefore, merely raising plea that they were not present in the car and arrested earlier is not sufficient to exonerate them from the charge.

It is provided in Section 29 of the Act that it may be presumed, unless and until contrary is proved, that the accused has committed the offence under this Act in respect of any narcotic drug, psychotropic substance or controlled substance and once prosecution establishes recovery beyond doubt then the burden shifted to defence to discharge innocence of the accused. The defence version that the recovered charas and opium have been foisted upon the accused, is neither plausible nor born out from record. The prosecution has been able to prove that at the time of apprehension the car was under the control of above named accused persons. Pervaiz accused was driving the car whereas Sajjad Ahmad was sitting on the front seat and Nusratullah Khan was present on the rear seat, hence, whatever articles lying in it would be under their control and possession.

17. As a result of above discussion, the prosecution has proved its case beyond any reasonable shadow of doubt against Pervaiz Ahmad, Sajjad Ahmad and Nusratullah Khan accused. 12 kgs charas was recovered from Pervaiz, whereas 2.400 kgs charas was recovered from Sajjad Ahmad accused. 90 kgs charas and 24 kgs opium was recovered from Nusratullah

3/1/2014  
Sajjad Ahmad  
14/1/2014  
16/1/2014



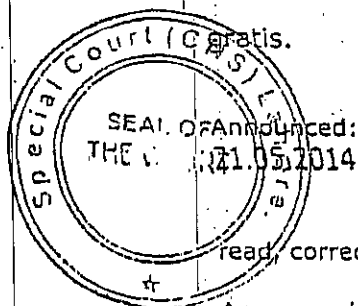
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Khan accused, therefore, all the accused are held guilty, convicted U/S 9 © of C.N.S Act, 1997 and sentenced as under:-

- i) Pervaiz Ahmad accused is sentenced to imprisonment for life with a fine of Rs.10,00,000/- (One million) or in default thereof to undergo three years S.I.
- ii) Sajjad Ahmad accused is sentenced to R.I for five years and six months with a fine of Rs.25,000/- (twenty five thousand) or in default thereof to undergo five months and fifteen days S.I.
- iii) Pervaiz and Sajjad Ahmad convicts are given benefit of Section 382-B, Cr. P. C.
- iv) Nusratullah Khan accused is sentenced to death. He is also burdened with Rs.10,00,000/- (One million) as fine or in default thereof undergo 03 years S.I. Convict shall be hanged by the neck till declare dead. Sentence of death shall not be executed until its confirmation by Hon'ble Lahore High Court, Lahore.

Record of this case and exhibited articles be sent to Hon'ble High Court, Lahore for confirmation of sentence of death. Nusratullah convict has been informed that he can prefer an appeal against this conviction and sentence within 07 days.

18. Since, Pervaiz Ahmad, Sajjad Ahmad and Nusratullah Khan have been sentenced for a period exceeding three years; therefore, all their assets derived from trafficking of narcotics shall be forfeited in favour of Federal Government, unless this court is satisfied otherwise. Personal belongings of the convicts except cash be handed over to them and recovered narcotics from convicts be destructed after efflux of time of appeal/revision, if any. Car No.AGP-813/Sindh P-5 shall remain intact till the decision of appeal/revision, if any. Copy of the judgment be supplied to the convicts and SP for the state



Announced:  
21.05.2014

Certified that this judgment consists of twelve pages, which has been read, corrected and signed by me.

NISAR AHMAD  
District & Sessions Judge,  
Judge, Special Court CNS,  
Lahore.

Judge,  
Special Court, CNS, Lahore

Registered Type  
Registrar Special Court,  
Lahore

C 20 3-6-12

**ORDER**

This office order will dispose off the departmental proceedings against Constable Sajjad No. 4327 who while posted at Police Station Gulberg, remained absent from his lawful duty w.e.f 12.02.2011 till to-date without any leave or permission from his senior.

On the basis of the above mentioned allegations, disciplinary proceedings were initiated against him and he was issued Charge Sheet alongwith Statement of allegations. **SDPO/Hayatabad** was appointed as Enquiry Officer.

Findings of E.O, SDPO Hayatabad were received in which the E.O issued several Parwanas to defaulter constable to appear and defend himself but MM of PS Gulberg reported that he again absented from 02.07.2012 till to date. Therefore, the Enquiry Officer recommended him for ex-parte action.

Subsequently, he was issued Final Show Cause Notice through DCO Malakand on 15.05.2013. The DC Malakand reply that Constable Sajjad No. 4327 on reply is still in Lahore Jail and the show cause notice has been handed over to his father which is received on 23.05.2013.

Keeping in view of the above and recommendation of Enquiry Officer, I being a competent authority, agree with the recommendation of the enquiry officer. Therefore, **under Police Disciplinary Rules 1975, Constable Sajjad No. 4327 is hereby awarded major punishment of dismissal from service from the date of his absence.**

O. B. No: 1958

Date: 3-6-2013

  
**SUPERINTENDENT OF POLICE,  
CANTT: PESHAWAR.**

No. 421-29 /SP/Cantt: dated Peshawar, the 3/6/2012.

Copy for information and necessary action to the:-

10. The CCPO Peshawar.
11. The SSP, Operation, Peshawar.
12. The SP HQrs: Peshawar.
13. SDPO/Town (E.O).
14. Pay Officer.
15. CRC,
16. OASI branch.
17. Fuji Missal branch with enquiry file for record.
18. Official concerned.

D

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12-9-19

Private Use  
Examiner  
Supply Section  
Lahore High Court, Lahore  
20/9/19

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE**

Criminal Appeal No.1113 of 2014  
(Sajjad Ahmed Vs. The State)

Date of hearing: 12.9.2019  
Appellant(s) by: Major (R) Aftab Ahmed Khan Advocate  
Respondent (State) by: Mr. Zafar Iqbal Chohan, Special  
Prosecutor for ANF.

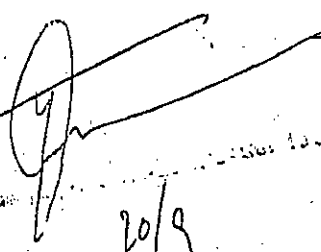
Sardar Muhammad Sarfraz Dogar, J.:- For the reasons recorded in our judgment of even date passed in connected Criminal Appeal No.1430 of 2014, the instant appeal is allowed and the conviction and sentence of the appellant recorded by the learned trial court is set aside. He is acquitted of the charge by extending the benefit of doubt to him. He is on bail. His surety stands discharged from the liability.

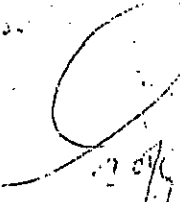
  
(Aafia Neelum)  
JUDGE

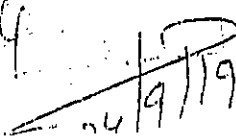
  
(Sardar Muhammad Sarfraz Dogar)  
JUDGE

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In Case No. ....  
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Lahore High Court, Lahore

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JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE

Capital Sentence Reference No.25-N-2014  
(The State Vs. Nusratullah Khan).

Criminal Appeal No.1430 of 2014  
(Nusratullah Khan Vs. The State)

Criminal Appeal No. 1431 of 2014  
(Pervaiz Ahmad Vs. The State)

&  
Criminal Appeal No. 1113 of 2014.  
(Sajjad Ahmed Vs. The State)

Date of hearing: 12.9.2019

Appellant(s) by: Malika Saba Imran, Advocate for the  
appellant in Crl. Appeals No. 1430 &  
1431 of 2014.

Major (R) Aftab Ahmed Khan Advocate  
for the appellant in Crl. Appeal No. 1113  
of 2014.

Respondent (State) by: Mr. Zafar Iqbal Chohan, Special  
Prosecutor for ANF.

.....

Sardar Muhammad Sarfraz Dogar, J.:- Having faced trial in case FIR No. 10/2011, dated 10.2.2011, offence under section 9(c) read with section 15 of the Control of Narcotic Substances Act, 1997, registered with the Police Station ANF, Lahore, the appellants Pervaiz Ahmad, Sajjad Ahmad and Nusratullah Khan were convicted by the learned Sessions Judge/Judge Special Court CNS, Lahore vide judgment dated 21.5.2014, under section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced them as under:-

Pervaiz Ahmed appellant was sentenced to imprisonment for life with a fine of Rs.10,00,000/- (one million or in default thereof to undergo three years S.I.

Sajjad Ahmed appellant was sentenced to R.I. for five years and six months with a fine of Rs.25,000/- (twenty five thousand) or in default thereof to undergo five months and fifteen days S.I.

Nusratullah Khan appellant was sentenced to death. He was also burdened with fine of Rs.10,00,000/- (one million) or in default thereof undergo 03 years S.I.

The benefit of Section 382-B Cr.P.C. was extended to the appellants Pervaiz Ahmed and Sajjad Ahmed.

2. The appellants have challenged their convictions and sentences before this Court by way of filing above noted Criminal Appeals No. 1430, 1431 & 1113 of 2014 under section 48(1) of the Control of Narcotic Substances, Act, 1997, whereas, a Capital Sentence Reference No.25-N of 2014 sent by the learned trial Court under Section 374, Act V of 1898 is also under consideration, for confirmation or otherwise of the sentence of death awarded to the appellant Nusratullah Khan. We propose to decide all these matters together through this consolidated judgment.

3. Brief facts of the case, as can be culled from the FIR (Exh.PA) are that on 10.2.2011, Noman Ghous S.I./ANF complainant (PW-3) transmitted a complaint to the Police Station, wherein it has been purported that the high-ups of ANF received information that huge quantity of narcotics would be transported through car bearing registration No.AGP-813/Sindh Toyota corolla white colour by Nusratullah Khan, Sajjad Ahmad and Pervaiz residents of K.P.K. who are members of a smuggling-gang. In response to said information, a raiding party including Noman Ghous S.I. (PW-3), Khadim Hussain Subedar, Mazhar Havl., Abdul Majeed Tahir/HC, Zaheer ul Hassan, Bashir, Tariq, Quraish, Asif, Ismail, Shafqat Sepoys Hameed driver and Munawar driver under the supervision of Sahib Khan Assistant Director (PW-4) was constituted and at

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Station  
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about 11.40 p.m. the raiding party while boarding in official vehicles reached Motorway Ravi Toll Plaza Lahore and made a Naka Bandi there. At about 12.15 a.m. (night), the said car arrived at Motorway Ravi Toll Plaza and on the pointation of informer, the raiding party overpowered three persons sitting in the car. The driver of the car disclosed his name Pervaiz and the person who was sitting on the front seat disclosed his name Sajjad Ahmad whereas the person available on the rear seat disclosed his name Nusratullah. On inquiry about narcotics, Pervaiz accused brought out five packets of charas from underneath the driving seat and five packets of charas from the secret cavities of right front door of the car, each weighing 1200 grams and the total recovered charas became 12 kilograms. Ten grams charas was extracted from each packet as sample for chemical analysis. The samples and recovered narcotics was taken into possession vide recovery memo (Exh.PB). Accused Sajjad Ahmed handed over two packets of charas lying underneath his feet, each weighing 1200 grams total weighing 2400 grams. The complainant separated 10 grams charas from each packet for chemical analysis and sealed the same, which were taken into possession vide recovery memo (Exh.PC). Simultaneously, accused Nusratullah Khan got recovered 75 packets of charas and 20 packets of opium from the secret cavities installed in the back seat of the car. On weighing each packet of charas was of 1200 grams, as such, the total recovered charas become 90 kilograms. Each packet of opium was of 1200 grams, thus, the total recovered opium became 24 kilograms. 10 grams from each packet of charas and opium was separated for chemical analysis and taken into possession vide recovery memo (Exh.PD).

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4. After the investigation report under section 173, Cr.P.C. was submitted in the court. After codal formalities, under the relevant provisions of the Criminal Procedure Code, learned trial court framed the charge against the appellants to which they pleaded not guilty and claimed a trial. Thereafter, the prosecution in order to prove the guilt of the appellants ventured to produce as many as four witnesses besides tendering reports of Chemical Examiner Exh.PJ, Exh.PK, Exh.PL and Exh.PM in support of its case. In their statements recorded under section 342, Cr.P.C., the appellants had denied and controverted all the allegations levelled against them by the prosecution and they also professed their innocence. The appellants had not opted to make statements on oath under section 340(2), Cr.P.C. However, appellants Pervaiz and Sajjad Ahmad produced Ijaz ahmad (DW-1) and Mohsin Ali (DW-2) in their defence. Dr. Zaman Mehdi (R) Assistant Chemical Examiner as examined as (CW-1).

5. Upon culmination of the trial, learned trial court after finding the prosecution's case against the appellants to have been proved beyond reasonable doubt convicted and sentenced the appellants as mentioned and detailed above. Hence, all these matters before this Court.

6. Arguments heard and record has been scanned meticulously with the assistance of the learned counsel for the appellants and learned Special Prosecutor for ANF.

7. Allegedly the occurrence took place near Motorway Ravi Tool Plaza, Lahore. Noman Ghous S.I. (PW-3) while appearing before the learned trial Court stated that the chit of Tool Plaza has been recovered from Pervaiz Ahmed appellant. Whereas, Sahib Khan Assistant Director (PW-4) deposed that the chit of

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Tool Plaza has been recovered from Sajjad Ahmed appellant. Be that as it may, the said chit has not been taken into possession by the prosecution. The prosecution has also failed to associate any person relating to Tool Plaza in the investigation as recovery witness. The prosecution has also failed to make any inquiry with regard to the owner of the vehicle. Noman Ghous S.I. (PW-3) during his cross-examination has admitted it correct that no secret cavity has been found in the rear seat of said car when the same has been produced before the learned trial Court in the trial proceedings.

8. Besides, Sahib Khan Assistant Director (PW-4) in his cross-examination deposed that each packet of charas contains two slabs. Even when the case property was opened before the learned trial Court the same consisted upon certain pieces. The procedure of sampling adopted by the prosecution is in violation to the settled law on the subject.

9. As regards safe custody of sample parcels is concerned, it is noticed that Muhammad Shafique ASI-Moharrar (PW-2) deposed that on 10.2.2011 the Investigating Officer handed over to him 87 sample parcels said contain charas and 20 sample parcels of opium and on 12.2.2011 he handed over the same to Muhammad Saleem HC for their delivery in the office of Chemical Examiner alongwith relevant documents. Bare perusal of reports of Chemical Examiner speaks otherwise that the same were dispatched to the Office of Chemical Examiner on 11.2.2011. The testimony of Moharrar (PW-2) is silent with regard to the dispatch of samples, as such, the instant case on the dimension of safe transmission as well as custody of sample parcels from Police Station to the Laboratory cannot be proved. Needless to mention here that the chain of custody begins with the recovery of the seized drug by the Police and includes the

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separation of the representative sample(s) of the seized drug and their dispatch to the Narcotics Testing Laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspecting, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction. In this regard, guidance can be sought from the case of The State through Regional Director ANF versus Imam Bakhsh (2018 SCMR 2039).

10. The minute perusal of Chemical Examiner Reports (Exh.PJ, Exh.PK, Exh.PL & Exh.PM) established the fact that the above said reports are in composite and are not on prescribed Form-II provided in Rules, 2001. The law has provided scope for person throwing challenge to the expert's report to rebut the same and in this regard reference has been made to subsection (2) of section 36 of the Act. It is seriously observed by us in numerous cases the expert report being made in sheer violation of prescribed law without observing proper codal formalities, which either reflect gross negligence at the part of prosecuting agency, resulted acquittal of the accused persons or deliberately and intentionally violating the rules being in league with the culprits. Section 36 of the Act requires a Government Analyst to whom a sample of the recovered substance is sent for examination to deliver the person submitting the sample a signed report in quadruplicate in the prescribed form II as provided under Rule 6 of the Rules and if the report prepared by him has not been prepared in the prescribed manner, then it may not qualify to be a report in the

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Crl. Appeal No. 1113 of 2014.

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context of section 36 of the Act so as to be treated a "conclusive proof" of recovered narcotic substance from an accused person. Reliance in this regard is placed on the case of Ikrumullah v. State (2015 SCMR 1002). Relevant portion is reproduced herein below:-

"... We have particularly noticed that the report submitted by the Chemical Examiner (Exhibit-RW2/5) completely failed to mention the basis upon which the Chemical Examiner had come to a conclusion that the samples sent to him for examination contained charas. According to Rules 5 and 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 a complete mechanism is to be adopted by the Chemical Examiner upon receipt of samples and a report is then to be submitted by him referring to the necessary protocols and mentioning the tests applied and their results but in the case in hand we note that no protocol whatsoever was mentioned in the report submitted by the Chemical Examiner and no test was referred to on the basis of which the Chemical Examiner had concluded that the samples sent to him for examination contained charas. In the context of the present case Rule 6 is of paramount importance and the same is reproduced below:

6. Report of result of test or analysis. After test or analysis the result thereof together with full protocols of the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II"

11. Apart from above, it is noticed that while facing cross-examination Dr. Zaman Mehdi (R) Assistant Chemical Examiner (CW-1) stated as under:-

"-----The reports stated above have not been signed by Chief Chemical Examiner or Chemical Examiner. Dairy numbers of receipt of parcels are not mentioned on the reports of Chemical Examiner. I received the sample parcels on 12.2.2011. I cannot tell the exact date of examining the said parcels. I don't remember the date on which I completed examination of parcels. It is correct that I have not mentioned the date behind the signatures on the back side of above mentioned reports. It is correct that entire detail of test is not mentioned on the front page, while it is narrated on the backside of said reports without date."

According to settled principles of law the burden on prosecution to prove its case cannot be shifted to the accused in

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artificial manner when the law contemplates and provides a procedure for doing any act. When such procedure is not complied with, it amounts to violate the law. The signatures of two authorized officers on the chemical analyst report are mandatory under the Rules 2001. The report which is suffering from legal flaws cannot be considered as conclusive proof and would not be termed or considered as admissible in evidence. Thus, the non-conclusive and non-speaking laboratory report, which was not compiled according to mandate of law and rules framed thereunder, cannot be relied for sustaining the conviction. This view is further reiterated in the case of The STATE through Regional Director ANF v. Imam Bakhsh and others (2018 S C M R 2039) and Umar Shahzad and others v. State and another (PLJ 2019 Cr.C. 326 DB).

12. The Court has to examine the evidence from the starting point in order to reach to an inescapable conclusion on the basis of reasoning keeping in mind the legal principles and after satisfying the following constituents:-

- (i) Recovery of narcotics from the accused;
- (ii) Safe custody of recovered substance;
- (iii) Safe transmission of recovered substance to Government Analyst/Chemical Examiner and
- (iv) The proof that the recovered substance is narcotics/contraband substance within the purview at CNSA, 1997.

All these facts must be in line but the facts of the present case create doubt on the case of the prosecution and benefit of reasonable doubt always goes to the accused and not to the prosecution. It is also a well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof and for that a higher degree of assurance is necessary to convict the accused. In view of object of the Control of Narcotic Substances Act, 1997 the fundamental duty

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Crl. Appeal No. 1431 of 2014 &  
Crl. Appeal No. 1113 of 2014.

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of the prosecution is to prove beyond a shadow of reasonable doubt that the investigation conducted in the case is absolutely flawless especially with regard to the link evidence which is most significant aspect. The prosecution has failed to prove its case beyond reasonable doubt. As per dictates of law benefit of every doubt is to be extended in favour of the accused. Reliance is placed on "Muhammad Zaman versus The State" (2014 SCMR 749), and "Muhammad Akram versus The State" (2009 SCMR 230).

13. For what has been discussed above a conclusion is inescapable that the prosecution had failed to prove its case against the appellants beyond reasonable doubt. These appeals are, therefore, allowed, the conviction and sentence of the appellants recorded by the learned trial court are set aside and they are acquitted of the charge by extending the benefit of doubt to them. They shall be released from the jail forthwith if not required to be detained in connection with any other case.

14. Resultantly, death sentence awarded to Nusratullah Khan appellant is not confirmed and Capital Sentence Reference No.25-N of 2014 is answered in the negative.

(Aalia Neelum)  
JUDGE

(Sardar Multanmadd Sarfraz Dogar)  
JUDGE

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In Case No.....

Examiner, J.C.B (Copy Branch)  
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بخدمت جناب سسی سسی پی او صاحب پشاور

عنوان:- اپیل بمراد بحالی ملازمت مسائل

جناب عالی:- ایپلانٹ حسب ذیل عرض رساں ہے۔

1- یہ کہ ایپلانٹ ایک شریف اور باعزت خاندان سے تعلق رکھتا ہے اور قانون کی پاسداری کرنے والا شہری ہے اور صلح سوات کارہائشی و پیدائشی باشندہ ہے۔

2- یہ کہ ایپلانٹ محکمہ پولیس میں بحیثیت کنسٹیبل بمطابق نمبر 4327 بھرتی ہوا اور اپنی خدمات خوش اسلوبی سے سرانجام دی اور کبھی بھی افسران بالا شکایت کا موقع نہیں دیا۔

3- یہ کہ ایپلانٹ کو نشیات کے ایک جھوٹے مقدمہ در علت نمبر 10/2011 مورخہ 10 فروری 2011 زیر دفعہ 15 of CNSA (C) r/w Section 9 of ANF لاہور میں گرفتار کیا گیا جہاں پر ایپلانٹ کو مجاز عدالت سیشن جج لاہور نے بذریعہ حکم مورخہ 21 مئی 14-20 کو 05-سال 06 ماہ بمعدہ جرمانے 25 ہزار روپے کی سزا سنائی جس کے خلاف ایپلانٹ نے لاہور ہائیکورٹ لاہور میں اپیل دائر کی اور اس طرح لاہور ہائیکورٹ لاہور نے اپنے حکم مورخہ 12 ستمبر 2019 کو ایپلانٹ کے خلاف جرم ثابت نہ ہونے کے بناء پر بے گناہ قرار دیکر باعزت طور پر بری کیا۔ (نقل حکم مورخہ 12-09-2019 لف اپیل ہے)۔

4- یہ کہ سائل کے گرفتار ہونے کے بعد سائل کو بمطابق آرڈر نمبر 958 مورخہ 03-06-2013 کو مجاز اتھارٹی نے نوکری سے بوجہ غیر حاضری برخواست کیا گیا جو کہ سائل کو نوکری برخواست کرنا نا انصافی ہے۔ (نقل آرڈر لف اپیل ہے)۔

5- یہ کہ ایپلانٹ ایک غریب بندہ ہے اور سائل اپنے گھرانے کا واحد طور پر کفیل ہے اور سائل کا گزر بسر بمشکل ہو رہا ہے اور آبدلی کا کوئی ذریعہ نہ ہے۔

جاری ہے

6- یہ کہ اس ناامیدی کے حالت میں آپ جناب سے انصاف کی توقع رکھتے ہوئے سائل کو اپنی ملازمت پر بحالی کی پوزیشن فراہم کرنا ہے۔

لہذا استدعا ہے کہ منظور کی اپیل ہذا سائل کو اپنی ملازمت پر بحالی کے احکامات جاری فرمائیں اس امر کے لیے سائل دعا گو رہیگا۔

المرقوم:- 04-10-2019

ارض

سائل:-

سجاد احمد

کنسٹیبل ہیلت نمبر 4327

ساکن حال کوزچم ہٹ خیلہ تحصیل سوات رانیہ کی ضلع ملاکنڈ

قومی شناختی کارڈ نمبر 5-1416798-15402

رابطہ نمبر 0316-9780701



F 33

OFFICE OF THE  
CAPITAL CITY POLICE OFFICER  
PESHAWAR

Phone No. 091-9210989  
Fax No. 091-9212597

ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable Sajjad Ahmad No.4327 who was awarded the major punishment of "Dismissal from service" under Police Rules-1975 by SP/Cantt. Peshawar vide OB No.1958, dated 03-06-2013.

2- The allegations leveled against him were that he while posted at Police Station Gulberg absented himself from his lawful duty w.e f 02-02-2011 till the date of dismissal i.e 03-06-2013 without any leave or permission from his senior officers for a total period of 02 years 03 months and 21 days.

3- He was served charge sheet and summary of allegations by SP/Cantt Peshawar and SDPO Hayatabad was appointed as enquiry officer. The enquiry officer submitted his findings that the accused official was called time and again through summon/parwana to attend the enquiry proceedings but he failed to appear before the enquiry officer. On receipt of finding of the enquiry officer final show cause notice was served upon him to which his reply was also found unsatisfactory. Hence the competent authority i.e SP/Cantt Peshawar awarded him the above punishment.

4- He was heard in person in O.R. The relevant record perused along with his explanation. During personal hearing the appellant failed to produce any plausible explanation in his defense and stated that he was sentenced to 03 years Jail in a narcotics case and remain imprisoned in Lahore Jail. Therefore, keeping in view the above circumstances his appeal for reinstatement in service is hereby rejected being badly time barred for 06 years and 04 months.

*Muhammad Ali Khan*  
(MUHAMMAD ALI KHAN)PSP  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

No. 1718-23 /PA dated Peshawar the 08-12-2019

Copies for information and n/a to the:-

1. SSP/Cantt. Peshawar.
2. OASI/CRC/Pay officer
3. FMC along with complete Fouji Missil.
4. Official concerned.

G 34

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. \_\_\_\_\_/2020

Member Peshawar  
KPK Service Tribunal

Study No. 193

Date 3-1-2020

Sajjad Ahmad S/O Saeed Khan,

R/O Metahband Batkhela

Malakand Swat,

Ex - Constable No. 4327,

Police Line Peshawar ..... Appellant

Versus

1. Superintendent of Police

Hqr: Peshawar.

2. Capital City Police Officer,

Peshawar.

3. Provincial Police Officer,

KP, Peshawar ..... Respondents

⊕<=>⊕<=>⊕<=>⊕<=>⊕

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974

AGAINST OB NO. 1958 DATED 03-06-2013 OF R. NO.

1, WHEREBY APPELLANT WAS DISMISSED FROM

SERVICE FROM THE DATE OF HIS ABSENCE OR

OFFICE ORDER NO. 1718-23/PA, DATED 05-12-2019

OR R. NO. 2, WHEREBY DEPARTMENTAL APPEAL OF

APPELLANT WAS REJECTED:

⊕<=>⊕<=>⊕<=>⊕<=>⊕

Respectfully Sheweth:

1. That appellant was enlisted as Constable on 02-10-2002.

2. That FIR No. 10 dated 10-02-2011 Police Station ANF Lahore was lodged against appellant along with two others U/S 9 (C) CNSA. (Copy as annex "A")

Filed to-day

Registrar

3/1/2020

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3. That on the said date, 10-02-2011 appellant was arrested by the ANF staff and was remanded to Judicial Lockup at Lahore.
4. That after completion of the investigation and recording of evidence in pro & contra in the case, appellant was convicted by the Learned Session Judge / Judge Special Court CNS, Lahore vide judgment dated 21-05-2014 sentenced him to RI for five (05) years and six (06) months and with fine of Rs. Twenty five thousand or in default thereof to undergo 05 months and 15 days SI. (Copy as annex "B")
5. That on 03-06-2013, appellant was dismissed from service from the date of absence from duty by R. No. 01. (Copy as annex "C").
6. That on 24-05-2014, appellant filed appeal in the Lahore High Court, Lahore against the aforesaid judgment for setting aside the conviction and sentence which came up for hearing on 12-09-2019 and the hon'ble court was pleased to allow the appeal, the conviction and sentence of the appellant etc was set aside and they are acquitted from the baseless charges. (Copy as annex "D")
7. That on 04-10-2019, appellant submitted appeal before R. No. 02 for reinstatement in service which was rejected on 05-12-2019, but no copy of the same was served upon him. (Copies as annex "E" & "F")

Hence this appeals, inter alia, on the following grounds:

**GROUND S:**

- a. That on 08-02-2011, appellant was awarded with shahbashi leave for 03 days and then he left with one friend whose brother was also serving as Armyian at Lahore and to see him there, appellant also accompanied him for tour to visit Lahore.
- b. That appellant has no concern with the commission of offence as the vehicle was managed and brought by Pervez Ahmad, driver for the purpose of tour.

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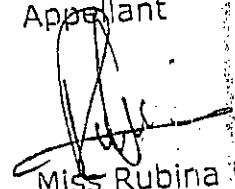
- c. That appellant was not in conscious possession of the contra-band item but the same was managed by the driver.
- d. That as and when appellant was released from Jail he reported for duty but was informed that he has been dismissed from service on 03-06-2013 which order was then received from the office on 20-11-2019 at personal level.
- e. That in fact the vehicle was intercepted by the ANF staff on 09-02-2011 and the search of the contra-band items was never carried out in presence of appellant, yet on 10-02-2011 the said FIR was registered in Police Station ANF Lahore by implicating appellant with the commission of the offence.
- f. That on 12-02-2011, appellant informed the Incharge of the Police Station on telephone by implicating him in the said case.
- g. That the department was well aware with the case as appellant was arrested by the ANF staff Lahore on 09-02-2011 but no Charge Sheet, Statement of Allegations, Show Cause Notice was served upon him at Lahore what to speak of holding of enquiry as per the mandate of law being mandatory.
- h. That even the impugned order dated 03-06-2013 was not served / addressed to appellant, despite the fact that respondents were well aware about the confinement of appellant at Central Jail Lahore.
- i. That as is evident from the impugned order the same was passed with retrospective effect, so is not only illegal but is also ab-initio-void.
- j. That appellant was acquitted from the baseless charges by the competent Court of Law i.e. hon'ble High Court Lahore, so he is legally entitled for reinstatement in service.
- k. That before issuing of the impugned order mandatory provision of law was not complied with, so the impugned order dated 03-06-2012 and 05-12-2019 becomes null and void and the same are based on malafide.

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It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 03-06-2012 or 05-12-2019 of the respondents be set aside and appellant be reinstated in service with all consequential, with such other relief as may be deemed proper and just in circumstances of the case.

Through

Appellant



Miss Rubina Naz  
Advocate

Dated: 02-01-2020



H 38



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Service Appeal No. 888/2020

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN  
MISS. FAREEHA PAUL, ... MEMBER(E)

Sajjad Ahmad S/O Saeed Khan, R/O Metahband Batkhela  
Malakand Swat, Ex- Constable No. 4327, Police Lines, Peshawar.

....(Appellant)

Versus

1. Superintendent of Police, Hqr; Peshawar.
2. Capital City Police Officer, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.

....(Respondents)

Mr. Arbab Saiful Kamal,  
Advocate

For appellant

Mr. Kabirullah Khattak,  
Addl. Advocate General

For respondents.

Date of Institution.....03.01.2020

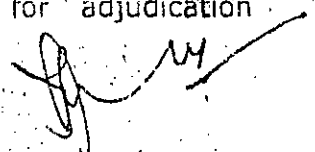
Date of Hearing.....25.04.2022

Date of Decision.....11.05.2022

**JUDGEMENT**

**FAREEHA PAUL MEMBER (E).** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 30.06.2012 whereby the appellant was dismissed from service from the date of his absence from duty i.e 12.02.2011 and appellate order dated 05.12.2019 whereby his departmental appeal for reinstatement was rejected on the grounds that it was badly barred by time by 06 years and 04 months. Both orders have been impugned and are under scrutiny for adjudication before us.

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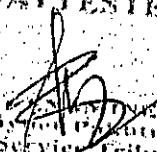
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

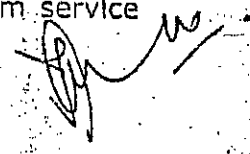
2. Brief facts, as per memorandum of appeal, are that the appellant was enlisted as constable on 02.10.2002 in the respondent department. He was nominated in FIR No. 10 dated 10.02.2011 for possessing/transporting opium under Section 9(C) CNSA by Anti Narcotics Force (ANF) Lahore, and was remanded to judicial lockup at Lahore. The appellant was convicted by the Special Court CNS, Lahore vide judgement dated 21.05.2014 and sentenced to RI for 05 years and 06 months with fine of Rs. 25000/- or in default thereof to undergo 05 months and 15 days SI. The appellant filed an appeal in the Lahore High Court against the aforesaid judgement which came up for hearing on 12.09.2019 wherein his conviction and sentence was set aside and he was acquitted of the charges levelled against him. During the time he remained absent from duty, he was issued charge sheet and statement of allegations on 05.10.2011 and resultantly dismissed from service. His departmental appeal dated 04.10.2019 was rejected on the ground that it was badly time barred. The appellant approached the Service Tribunal on 02.01.2020 for redressal of his grievance.

3. Respondents were put on notice who submitted their written replies/comments on contents of the appeal.

4. We have heard learned counsel for the appellant as well as the Addl. Advocate General and perused the case file alongwith connected documents thoroughly. Learned counsel for the appellant argued that the appellant was behind the bar serving his sentence at Lahore and that the charge sheet and statement of allegations did not reach him nor was he given an opportunity of personal hearing by the Inquiry Officer and was punished with major penalty of dismissal from service

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ATTESTING OFFICER  
Khyber Pakhtunkhwa  
Service Tribunal




on his back. By the time he was acquitted as a result of setting aside his conviction and sentence by the Lahore High Court, he appealed the competent authority for setting aside the penalty but it was rejected and the penalty was upheld on the ground that it was badly time barred by 6 years and 4 months.

5. Learned Addl. Advocate General contended that the appellant was issued charge sheet and statement of allegations and was called time and again by the Inquiry Officer but he failed to turn up. The inquiry was finalized and report thereof submitted to the authority. A final show cause notice was also issued to him at his home address through DCO Malakand and handed over to his father, after which he was awarded major penalty of dismissal from service. The appellant appealed at belated stage on 04.10.2019 which was rejected being badly time barred under the Limitation Act, 1908.

6. Khyber Pakhtunkhwa Police Rules 1975 clearly provide the procedure of Departmental Inquiry. Rule 6 (i) (a) provides that the authority shall frame a charge and communicate it to the accused together with statement of allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration. The same rule further provides in its part (b) that the accused is given 7 days from the day the charge has been communicated to him and required to put in a written defense and to state at the same time whether he desires to be heard in person. Record reveals that the departmental proceedings were conducted against the appellant in absentia without having him associated with the proceedings which is a glaring violation of Rule 6 of the Police Rules

ATTESTED

  
Khyber Pakhtunkhwa  
Service Commission



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1975 which provides that the charge sheet and statement of allegations is to be communicated to the accused. Record further reveals that the charge sheet and statement of allegations was issued to the appellant without taking into consideration whether he received it or not? This deprived the appellant of the right to fair trial and it is also a violation of Article 4 of the Constitution of Islamic Republic of Pakistan which provides that every individual has the right to be dealt with in accordance with law, etc. Before awarding major penalty the Inquiry Officer must have ensured whether the charge sheet was received by the appellant. Even when the final show cause notice was served which was received by father of the appellant, the respondent department might have ascertained the whereabouts of the appellant that he was behind the bar and would have made arrangements for his personal hearing even within the jail premises. The appellant upon his acquittal on 12.09.2019 submitted his departmental appeal on 04.10.2019 against the impugned order dated 30.06.2012 which was no doubt time barred. But it is also a fact that he was serving his sentence in Lahore and not in a position to present himself before Inquiry Officer at Peshawar.

7. As a sequel to the preceding paras, we have arrived at the conclusion that the appellant was not given fair chance to present his case before the Inquiry Officer. Before awarding major penalty of dismissal from service, the competent authority should have ensured that relevant clauses of laws/rules had been fully adhered to and the Inquiry Officer had given an opportunity of personal hearing to the appellant. The appeal in hand is therefore, allowed by setting aside the impugned order. The appellant is reinstated in service with the

ATTESTED

SENIOR JUDGE  
Sindh High Court  
Karachi



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directions to the respondents to conduct de-novo inquiry strictly in accordance with the Law & Rules within 60 days of the receipt of copy of this judgement failing which the appellant shall be considered to have been reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

8. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11<sup>th</sup> day of May, 2022.



*(Signature)*  
(KALIM ARSHAD KHAN)  
Chairman

*(Signature)*  
(FAREEH PAUL)  
Member (E)

Certified to be true copy  
*(Signature)*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 28/3/2023  
Number of Page 5  
Copying Fee \_\_\_\_\_  
Urgent 30/3/23  
Total \_\_\_\_\_  
Name \_\_\_\_\_  
Date of \_\_\_\_\_ 28/3/23  
Date of Delivery of Copy 29/3/23

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ORDER

Ex-Constable Sajjad Ahmad No.4327 was awarded major punishment of dismissal from service by the then SP-HQrs vide OB No.1958 dated 03.06.2013 on the charges of involvement in criminal case vide FIR No.10 dated 10.02.2021 u/s 9(C) CNSA PS ANF Lahaore & also absented from lawful duty w.e.f 12.02.2021 till the date of dismissal.

He was filed an appeal before CCPO, Peshawar against the above mentioned orders which was rejected/filed by the then CCPO, Peshawar vide order No.1718-23/PA dated 05.12.2019

Now, Ex-Constable Sajjad Ahmad No.4327 has submitted an application along-with court Judgment, wherein the Hon'able Service Tribunal ordered that "the appeal in hand therefore allowed by setting aside the impugned order. The appellant is re-instated in service with the direction to the respondents to conduct de-novo enquiry strictly in accordance with the law & Rules within 60-days of the receipt of copy of this judgment failing which the appellant shall be considered to have been re-instated in service with all back benefits."

In light of the Tribunal Judgment, DSP Legal opinion & kind approval of W/CCPO, Ex-Constable Sajjad Ahmad No.4327 is re-instated in service for the purpose of de-novo enquiry. Hence, the intervening period i.e period of absence & period out of service will be decided after receiving finding of the de-novo proceedings.

**SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR**

OB. NO. 1842 / Dated 21 / 7 / 2022

No. 2579-85 / PA/SP/dated Peshawar the 21 / 7 / 2022

Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. Pay Office,
4. OASI, CRC & FMC along-with complete departmental file.
5. Officials concerned.

18/6/22  
3672  
22-7-22

J 44

**FINAL SHOW CAUSE NOTICE**

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Sajjad Ahmad No.4327 the final show cause notice.

The Enquiry Officer, DPO Khyber, after completion of De-novo departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Sajjad Ahmad No.4327 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 3134/PA, SP/HQrs: dated Peshawar the 6-10-2022.

Copy to official concerned

K 45

To,

SP Headquarters,  
Peshawar.

Subject: FINAL SHOW CAUSE NOTICE AND ITS REPLY.

Respected Sir,

1. In reference to your notice No 3134/PA Dated 06/10/2022, Sir it is submitted that I have already submitted a reply to the show cause notice and I also rely on the same regarding the notice.
2. In this notice, it has been stated that the DNO inquiry is submitted and the allegations leveled have been proved, but with due respect, the DNO inquiry was also not conducted as per the mandate of law, because neither any statement of any concerned was recorded in my presence nor opportunity of cross-examination was ever afforded to me.
3. Apart from the aforesaid submission, the allegations leveled against me were discarded by the court of law, and when the allegations were not proven, on the same no punishment is required for imposition.
4. More so, the Hon'ble Tribunal had given sixty days of time for completion of the DNO inquiry but the same was not conducted in the target period, so, subsequent proceedings would be of no legal effect.
5. Since as directed reply to the final show cause notice is submitted well within time and the request for dropping of the same and exonerating me from the baseless charges.
6. It is therefore most humbly requested that the notice in hand be vacated and I will be exonerated from charges.

Thank you

Dated: 10/10/2022

Your Sincerely,  
Sajjad Ahmad,  
No.4327,



L 46

ORDER

This office order relates to the disposal of de-novo enquiry against Constable Sajjad No.4327 of Capital City Police Peshawar on the charges of involvement in criminal case vide FIR No.10 dated 10.02.2021 u/s 9(C) CNSA PS ANF Lahore & also absented from lawful duty w.e.f 12.02.2021 till i.e dismissal.

In light of the directions of Hon'ble Service Tribunal, Khyber Pakhtunkhwa vide service appeal No.889/2020 followed by Instructions of IGP, Khyber Pakhtunkhwa, Constable Sajjad No.4327 has been re-Instated in service for the purpose of denovo enquiry vide OB No.1842 dated 21.07.2022. The court judgment along with enquiry file has been forwarded to the Addl: IGP Internal Accountability Branch CPO Peshawar for denovo departmental enquiry.

Mr. Imran Khan, PSP, DPO Khyber was appointed as Enquiry Officer by the AIG Internal Accountability Khyber Pakhtunkhwa Peshawar & outcome of the denovo enquiry may be communicated before issuance of formal order for the perusal of IGP KPK. The DPO Khyber conducted the enquiry proceedings and submitted his finding/report that the defaulter official has been acquitted in the criminal case but he failed to provide any cogent evidence/reason of his presence in Lahore while he was on duty in Police Lines Khyber. The Enquiry Officer further recommended major punishment of dismissal from service for the defaulter official vide attached enquiry report.

Upon the finding of E.O, he was issued final show cause notice to which he received & replied. He was also called & heard in person in O.R i.e 03.11.2022 but his explanation found un-plausible.

In light of the recommendations of E.O and directions of AIG Enquiry, Internal Accountability Khyber Pakhtunkhwa, Constable Sajjad No.4327 is hereby awarded the major punishment of dismissal from service with immediate effect under Police & Disciplinary Rules, 1975. Hence, the intervening period i.e period of absence & out of service is treated as without pay.

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SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR

OB. NO. 2967 / Dated 9/11/2022

No. 3469-51/PA/SP / dated Peshawar the 10/11/2022

Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. The AIG Enquiry, Internal Accountability Khyber Pakhtunkhwa
3. PA to W/CCPO, Peshawar
4. DSP/HQrs, Peshawar.
5. Pay Office, OASI, CRC & FMC along with complete departmental file.
6. Official concerned.

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To

Capital City Police Officer,  
Peshawar.

**APPEAL AGAINST OB NO. 2967 DATED 09-11-2022 OF SUPERINTENDANT OF POLICE HEADQUARTERS PESHAWAR WHEREBY APPELLANT WAS DISMISSED FROM SERVICE AND THE INTERVENING PERIOD I.E. PERIOD OF ABSENCE & OUT OF SERVICE IS TREATED AS WITHOUT PAY:**

**Respected Sheweth:**

1. That appellant was enlisted as Constable on 02-10-2002.
2. That FIR No. 10 dated 10-02-2011 Police Station ANF Lahore was lodged against appellant along with two others U/S 9 (C) CNSA.
3. That on the said date, 10-02-2011 appellant was arrested by the ANF staff and was remanded to Judicial Lockup at Lahore.
4. That after completion of the investigation and recording of evidence in pro & contra in the case, appellant was convicted by the Learned Session Judge / Judge Special Court CNS, Lahore vide judgment dated 21-05-2014 sentenced him to RI for five years and six months and with fine of Rs. Twenty Five thousand or in default thereof to undergo 05 months and 15 days SI.
5. That on 03-06-2012, appellant was dismissed from service from the date of absence from duty by SP Hqr: Peshawar.
6. That on 24-05-2014, appellant filed appeal in the Lahore High Court, Lahore against the aforesaid judgment for setting aside the conviction and sentence which came up for hearing on 12-09-2019 and the hon'ble court was pleased to allow the appeal, the conviction and sentence of the appellant etc was set aside and they are acquitted from the baseless charges.

7. That on 21-11-2019, appellant submitted appeal before the authority for reinstatement in service which was rejected on 19-12-2019.

8. That against the said impugned orders, appellant file Service Appeal before the hon'ble Service Tribunal which came up for hearing on 11-05-2022 for disposal and then the hon'ble Tribunal was pleased to accept the same in the following manner:-

The appeal in had is, therefore, allowed by setting aside the impugned orders. The appellant is reinstated in service with directions to the respondents to conduct de-novo inquiry strictly in accordance with the Law & Rules within 60 days of the receipt of copy of this judgment failing which the appellant shall be considered to have been reinstated in service with all back benefits.

9. That the said judgment was remitted to respondents on 03-06-2022 for compliance but no heed was paid to the same to do the needful within the given time, so they extinguished their right of further probe into the matter and then made futile exercise in the case.

10. That on 21-07-2022, appellant was reinstated in service for the purpose of de-novo enquiry by SP Hqr: Peshawar and reported for duty on the said date i.e. 21-07-2022.

11. That on 06-10-2022, appellant was straight away served with Final Show Cause Notice by R. No. 01 which was replied on 10-10-2022 and denied the allegations with cogent reasons.

12. That on 09-10/11/2022, appellant was again dismissed from service with immediate effect and period of absence and out of service was treated as without pay by SP Hqr: Peshawar.

Hence, this departmental appeal, inter alia on the following grounds:

GROUNDS.

- a. That in the earlier round too, the matter was not dealt with by the authority as per the mandate of law and then for the reason the appeal was accepted by the hon'ble Tribunal.
- b. That the authority was given opportunity of de-novo enquiry but the same was again not conducted as per the mandate of law because neither any statement of any concerned was recorded nor appellant was afforded opportunity of cross examination.
- c. That in the judgment, 60 days was given to the authority to conduct the enquiry as per the law and rules but no such efforts were made and the enquiry was not conducted within the prescribed time, so authority extinguished her right and the subsequent exercise was of no legal effect.
- d. That in the impugned order dated 09-11-2022, double punishments were awarded to appellant, i.e. dismissal from service and intervening period as well as out of service period was treated as without pay.
- e. That the impugned order is not per the mandate of law and is based on malafide.

It is, therefore, most humbly requested that the impugned order dated 09-11-2022 of SP Hqr: Peshawar be set aside and appellant be reinstated in service with all back benefits.

Appellant



**Sajjad S/O Saeed Khan**

Ex- Constable No.4327

Police Line, Peshawar

Cell No. 0316-9780701

Dated 06-12-2022

بعد الت جاب سرس طرہ برقیہ منل صوبہ سرحد لہذا اور

مستجاب ایڈوائس

سجاد احمد ایڈوائس

دعویٰ اپیل

باعتبار شہادت کے

©

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مستجاب سرحدی عہد نامہ بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکیل کارروائی مستغنا نماں مقام اپنا اور  
 کیسٹ میں اس کے خلاف حکام سے ورنہ ایڈوائس ہائی کورٹ کو وکیل مستجاب کے اقرار کیا جائے کہ صاحب  
 آمدنی کو مستجاب کیل کارروائی کا مکمل اختیار ہوگا نیز وکیل صاحب کو کرنے والی نامہ و تقریر تیار و تیار ہوا ہوا ہوا  
 یہ جواب دہی اور اپیل دعویٰ اور بھرتی کرنے اور ایڈوائس اور پیروی اور دعویٰ در در خواست  
 ہر قسم کی تقدیر اور اس پر کو نظر کرنے کا اختیار ہوگا نیز بھرتی عدم پیروی یا دیگر کیسٹ فی اپیل کی برآمدگی  
 اور پیروی یا نہ کرنے اپیل نگرانہ و پیروی کرنے کا اختیار ہوگا اور بھرتی و بھرتی مقدمہ بن کر  
 کے کہ یا پیروی کارروائی سے واسطے اور وکیل یا پھر قانونی کو اپنے ہمراہ یا اپنی بجائے تیار کا اختیار ہوگا  
 اور فی جواب مقدمہ کو بھی وہی حوالہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پروا ختم منظور  
 قبول ہوگا اور دوران مقدمہ میں جو شرطیں و ہر جائزہ التوا مقدمہ کے سبب سے ہوگا اس کے مستوجب وکیل صاحب  
 کو ہونا ہوں گے نیز بقایا و شرطیں کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام روید  
 پر ہو یا نہ ہو باہر ہوا وکیل صاحب یا ہر نہ ہوں گے کہ پیروی مذکور کریں۔  
 لہذا رکالت نامہ دیکھ دیا کہ مستجاب ہے۔

الرقوم 23-03-24

التبید

التبید

التبید

محمد رفیق

محمد رفیق  
 سید اللہ خان صاحب  
 ایڈوائس

ارباب سید اہمال  
 ایڈوائس

محمد رفیق  
 احمد کواز  
 ایڈوائس