

04.04.2023

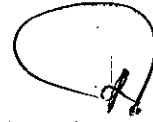
Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Former requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 14.06.2023 before D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Rozina Rehman)
Member (J)

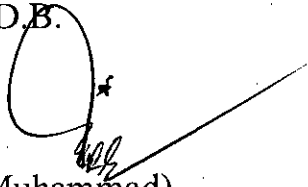
SCANNED
KPST
Peshawar


19.12.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought time for preparation of arguments. Adjourned. To come up for arguments on 02.02.2023 before the D.B.

SCANNED
K. S. T.
Peshawar


(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

02.02.2023

Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his learned counsel is not available today due to strike of lawyers. Adjourned. To come up for arguments on 04.04.2023 before the D.B.

SCANNED
K. S. T.
Peshawar


(FAREEHA PAUL)
Member(E)


(SALAH-UD-DIN)
Member (J)

08.09.2022

Appellant along with counsel present.

Kabir Ullah Khattak, learned Additional Advocate General along with Muhammad Yaqoob HC for respondents present.

Record is incomplete. Representative of respondents is directed to make sure the availability of entire record from January, 2012 till arrest of present appellant in FIR No.219 dated 07.09.2013. To come up for record and arguments on 16.11.2022 before D.B.



(Fareeha Paul)
Member(E)



(Rozina Rehman)
Member(J)

10.11.2022

Junior to counsel for the appellant present.

Muhammad Jan, District Attorney along with Yaqub Khan, HC for respondents present.

Representative of the respondents submitted copies of departmental record which are placed on file. Request for adjournment was made due to non-availability of learned senior counsel for the appellant. Adjourned. To come up for arguments on 19.12.2022 before D.B.



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

SCANNED
KPSST
Peshawar

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Arachan along with his counsel ~~has been~~ Mr. Afif Saleem

along with Mr. Naseeruddin Shah, Assistant

[Redacted]

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the D.B.

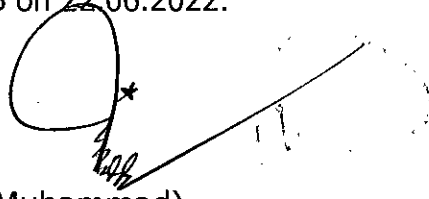
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11.04.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

Vide order dated 13.09.2021, learned DDA was asked to make sure the production of record regarding case FIR No. 20 U/S 365/34 PPC registered at Police Station Domail District Bannu. However, learned Asst: AG requested that as representative of the respondents is not in attendance today, therefore, an opportunity of production of the said record may be granted. Granted. To come up for production of aforementioned record as well as arguments before the D.B on 22.06.2022.



(Mian Muhammad)
Member(E)



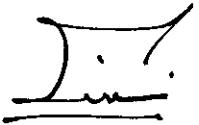
(Salah Ud Din)
Member(J)

22.06.2022

Learned counsel for the appellant present. Mr. Zeeshan, LHC alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present and requested that time may be granted for production of record of case FIR No. 20 dated 27.01.2012 under Sections 365/34 PPC registered at Police Station Domail District Bannu. Last opportunity given. To come up for production of aforementioned record as well as arguments on 08.09.2022 before the D.B.



(Mian Muhammad)
Member (E)



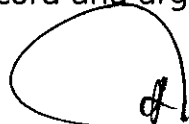
(Salah-ud-Din)
Member (J)

13.09.2021

Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

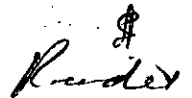
Partial arguments heard. Perusal of record would reveal that record in respect of F.I.R No.219 dated 07.09.2013 is available on file, however, record in respect of F.I.R No.20 dated 27.01.2012 registered at Police Station Domail District Bannu U/S 365/35 PPC is not available on file, therefore, the learned D.D.A is directed to make sure the production of relevant record. To come up on 13.12.2021 for production of record and arguments, before D.B.


(Rozina Rehman)
Member (J)


Chairman

13-12-21

DB is on Tard case to come up
For the same on Dated. 11-4-22

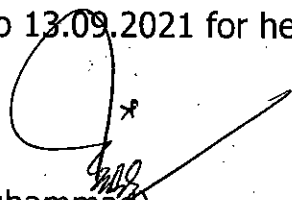

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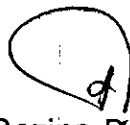
31.05.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Issue involved in the instant case is pending before Larger Bench of this Tribunal, therefore, case is adjourned to 13.09.2021 for hearing before D.B.



(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

28.01.2021

Appellant with counsel present. Mr. Kabirullah Khattak learned Addl. AG alongwith Muhammad Farooq Khan Inspector for respondents present.

On 03.09.2020, proceedings in the instant matter were adjourned on the ground that proposition regarding retrospectivity of penalty was pending before a Larger Bench of this Tribunal. Similar is the case today, the Larger Bench is due to hear the appeal(s) in the second week of February, 2021 therefore, hearing in this case is adjourned to 22.02.2021 before D.B.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

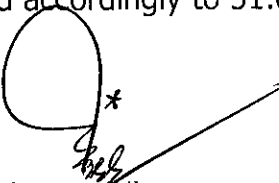

(HAMID FAROOQ DURRANI)
CHAIRMAN

22.02.2021

Counsel for the appellant and Addl. AG alongwith Muhammad Farooq, Inspector (Legal) for the respondents present.

Learned counsel states that the Larger Bench to settle down the proposition regarding the retrospectivity has not delivered its decision as yet. Instant proceedings may, therefore, be adjourned to a date after 09.03.2021.

Adjourned accordingly to 31.05.2021 before the D.B.


(Mian Muhammad)
Member(E)

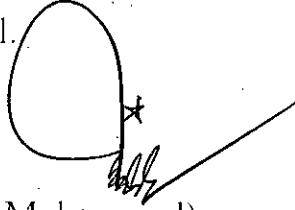

Chairman

27.07.2020

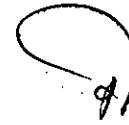
Counsel for appellant present.

Mr. Muhammad Jan learned Deputy District Attorney for respondents present.

Counsel for appellant requested for adjournment. Adjourned to 03.09.2020 before D.B, in order to avail the outcome of cases pending before Larger Bench of this Tribunal.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

03.09.2020

Appellant present through counsel.

Mr. Muhammad Jan learned Deputy District Attorney for respondents present.

Learned counsel for appellant seeks adjournment as issue involved in the present case is pending before Larger Bench of this Tribunal.

Adjourned to 23.11.2020 for arguments, before D.B.



(Attiq ur Rehman)
Member (E)

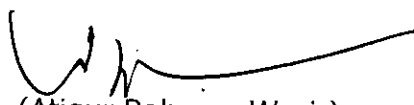


(Rozina Rehman)
Member (J)

13.11.2020

Junior to counsel for the appellant and Zara Tajwar, DDA for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 28.01.2021 for hearing before the D.B.



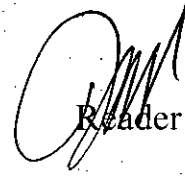
(Atiqur Rahman Wazir)
Member



Chairman

24.03.2020

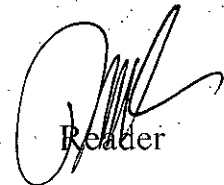
Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 10.06.2020 before D.B.



Reader

10.06.2020

Bench is incomplete as one learned Member (J) is on leave. Therefore the case is adjourned. To come up for the same on 17.07.2020 before D.B.



Reader

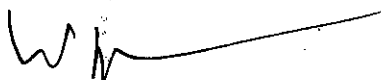
17.07.2020

Junior counsel for appellant present.


Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

Former requests for adjournment as senior learned counsel is not in attendance.

Adjourned to 27.07.2020 before D.B.



(Attiq ur Rehman)
Member (E)



(Rozina Rehman)
Member (J)

29.10.2019

Appellant absent. Respondents also absent. Written reply not submitted. Fresh notices be issued to the respondents for reply. Adjourn. To come up for written reply/comments on 03.12.2019 before S.B. Appellant be also put to notice for the date fixed.


Member

03.12.2019

Junior to counsel for the appellant and Addl. AG alongwith Yaqub Khan, H.C for the respondents present.

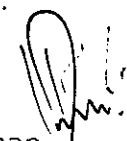
Representative of respondents seeks time. To come up for written reply/comments on 15.01.2020 before S.B.


Chairman

15.01.2020

Junior to counsel for the appellant and Addl. AG alongwith Muhammad Farooq, Inspector for the respondents present.

Representative of the respondents has furnished parawise comments/reply on behalf of respondents No. 1, 2 and 3. Placed on record. The matter is assigned to D.B for arguments on 25.03.2020. The appellant may furnish rejoinder, within one month, if so advised.


Chairman

12.09.2019

Counsel for the appellant present.

Contends that the appellant was enroped in a criminal case recorded through FIR dated 07.09.2013 and was subsequently arrested. The trial of the case was concluded on 20.05.2019 which resulted in acquittal of the appellant while till the pronouncement of judgment by the competent court, he remained in custody. In the meanwhile, on 08.09.2016 the impugned order of dismissal from service was passed against the appellant. Upon acquittal the appellant submitted departmental appeal which was rejected on 24.07.2019 solely on the ground of being barred by time. In the said manner, the departmental appellate authority failed to appreciate the incidence of acquittal of the appellant from the criminal charge and its effects on the merits of the case.

In view of the available record and arguments of learned counsel, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 29.10.2019 before S.B.

Appellant Deposited
Security & Process Fee

13/9/19


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1106/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 29/08/2019 | <p>The appeal of Mr. Muhammad Tariq resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 29/8/2019</p> |
| 2- | 02/09/19. | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/09/2019.</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p> <p><i>Admit note on page.</i></p> |

The appeal of Mr. Muhammad Tariq Ex-Constable No. 710, Police Line, Bannu received today i.e. on 20.08.2019 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellatant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1473 /S.T,

Dt. 23/8 /2019.

ew 23/8/19
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Sir,

*All objections have been removed,
hence re-submitted today dated 29/8/2019.*

[Signature]
29/8/2019.

IN THE KHYBER PAKHUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1106 /2019

MUHAMMAD TARIQ

VS

POLICE DEPTT:

INDEX

| S.NO. | DOCUMENTS | ANNEXURE | PAGE |
|--------------|---------------------|-----------------|-------------|
| 1 | Memo of appeal | | 1- 3. |
| 2 | FIR | A | 4. |
| 3. | Inquiry | B | 5- 6. |
| 4. | Impugned order | C | 7. |
| 5. | Judgment | D | 8- 31. |
| 6. | Departmental appeal | E | 32. |
| 7. | Mercy petition | F | 33. |
| 8. | Letters | G | 34- 35. |
| 9. | Rejection | H | 36. |
| 10. | Vakalat nama | | 37. |

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. _____/2019

Case No. 1181

Dated 20/8/2019

Mr. Muhammad Tariq, Ex-Constable No. 710,
Police Lines, Bannu.....

APPELLANT

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer, Bannu Region at Bannu.
- 3- The District Police Officer, District Bannu.

.....**RESPONDENTS**

APPEAL UNDER SECTION- 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 08.09.2016
WHEREBY MAJOR PENALTY OF DISMISSAL FROM
SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND
AGAINST THE APPELLATE ORDER DATED 24.07.2019
WHEREBY THE DEPARTMENTAL APPEAL OF THE
APPELLANT HAS BEEN REJECTED ON NO GOOD
GROUND

PRAYER:

That on acceptance of this appeal the impugned orders dated 08.09.2016 and 24.07.2019 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant was the employee of the respondent Department and had served the respondent Department as constable No.710 quite efficiently and up to the entire satisfaction of his superiors.
- 2- That during service the appellant was falsely charged in case FIR No. 20 dated 27.01.2012 under section 365/34 PPC registered in Police Station Domel, Bannu and due to of that reason the appellant informed about the FIR and also requested for leave but no response

Registered by
Registrar
20/8/19

was given by the respondents. That later on the appellant reported his arrival on 10.03.2012 and started his duty quite efficiently.

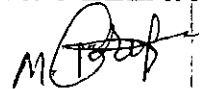
- 3- That after arrival of appellant started his duty regularly and with all zeal zest. That unfortunately the appellant was charged in another criminal case vide FIR No. 219, under section 302/324 PPC, dated 7/09/2013 in police station Domel Bannu. That due to the involvement in the aforementioned criminal case and due to life threat the appellant absented himself from lawful duty. Copy of the FIR is attached as annexure.....**A.**
- 4- That during absence period of appellant the respondent Department conducted one sided Departmental inquiry and in the said inquiry it was recommended/observed by the inquiry officer that the inquiry may be kept pending till decision of the Trial Court but the respondents without waiting of the outcome of trial Court straight away issued the impugned order dated 08.09.2016 whereby the appellant was dismissed from service w.e.f 23.01.2012. Copies of the inquiry and impugned order is attached as annexure.....**B & C.**
- 5- That appellant has honorably been acquitted by the trial Court in the aforementioned criminal case vide its judgment dated 20.05.2019. That after acquittal the appellant filed Departmental appeal on 19.06.2019 as well as filed mercy petition before the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar which was forwarded to the Regional police Officer, Bannu vide letter dated 27.06.2019. (Copies of the Judgment, Departmental appeal, Mercy petition and letters are attached as annexure.....**D, E, F & G.**
- 6- That the departmental appeal of the appellant which was filed before the respondent no.2 has been rejected vide appellate order dated 24.07.2019 on no good grounds. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others. Copy of the rejection order is attached as annexure.....**H.**

GROUND:

- A- That the impugned orders dated 08.09.2016 and 24.07.2019 are against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That the respondent acted in arbitrary and mala fide manner while issuing the impugned dismissal order dated 08.09.2016.
- D- That the respondent dismissed the appellant in a hasty manner without waiting the outcome of the trial which was pending before the Sessions Court at that relevant time.
- E- That no charge sheet and statement of allegation has been issued to the appellant before issuance of the impugned order dated 8.9.2016.
- F- That no show cause notice has been served on the appellant before issuing the impugned order dated 08.06.2016.
- G- That no chance of Personal Hearing / Defense been provided to the appellant before issuance of the impugned order dated 08.09.2016.
- H- That no regular inquiry has been conducted against the appellant which is as per Supreme Court judgments is necessary in punitive actions against the civil servant.
- I- That appellant has been discriminated on the subject noted above and as such the impugned order dated 08.09.2016 is not tenable in the eye of law.
- J- That appellant has been dismissed from service w.e.f. 23.01.2012 which is a past and closed transaction and not tenable in the eye of law, hence is liable to be set aside.
- K- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

APPELLANT



MUHAMMAD TARIQ

THROUGH:



NOOR MOHAMMAD KHATTAK

&



**MIR ZAMAN SAFI
ADVOCATES**

(4) - A

ایسٹرن جرنل پولیس - ڈیپارٹمنٹ آف ایمرس

ایجنسی ایڈمنسٹریشن ریپورٹ

کوئٹہ (فائل) ابتدائی اطلاع نسبت جرم قابل دست ان ایزی پولیس رپورٹ شدہ در رقم 154 مجموعہ ضابطہ فوجداری

| | |
|--|------------------|
| تاریخ و وقت رپورٹ | 7/9/55 |
| ناؤ و کنوینٹ اطلاع دہندہ و مستقیف | سید محمد علی |
| تفصیر کیفیت جرم (مذکورہ ذیلہ) حال اگر کچھ لیا گیا ہو | کچھ نہیں لیا گیا |
| جائے وقوعہ یا جگہ جتان سے اور سمت | کچھ نہیں لیا گیا |
| نام و کنوینٹ ملزم | ملزم محمد علی |
| کارروائی جو تفتیش کے محتاج کی تھی اگر اطلاع درج کرنے میں توقف ہو اور توجہ لیا جان کر | کچھ نہیں لیا گیا |
| تجانبہ سے روانگی کی تاریخ و وقت | کچھ نہیں لیا گیا |

ابتدائی اطلاع کے درج کر کے...
 ایسٹرن جرنل پولیس...
 کوئٹہ...

①
No. 347-HQ

INGS.

B - 5

DEPARTMENTAL ENQUIRY AGAINST CONSTABLE TARIQ KHAN NO.710

Constable Tariq Khan No.710 was charge sheeted on the following grounds. That he while posted as constable in Police Lines, Bannu involved in case FIR No. dated 07.09.2013 u/s 302/324 PPC P.S. Domel.

The enquiry was marked to the undersigned to probe into the allegations. The copy of the charge sheet was served upon the said constable through DFC P.S. Domel Imran. The DFC Imran / SHO P.S. Domel reported that the said constable is proclaimed offender in the above case and is not present in his house. Report of SHO Domel is enclosed for perusal.

The undersigned recorded the statements of SHO Domel Nabi Shah, SI Zahidullah Khan Investigation Officer, ASI Zabib-ur- Rehman, DFC Imran and Complainant Bakhta Baz alias Dabozi s/o Mohammad Yaqoob r/o Landi Jalander dtail is as under :-

STATEMENT OF SHO NABI SHAH P.S. DOMEL.

Stated that the above case has been registered before his arrival at P.S. Domel. The accused is absconding and challan u/s 512 CrPC has been submitted by him. Efforts are being continue for his arrest

STATEMENTSS OF SI/I.O. ZAHIDULLAH KHAN P.S. DOMEL.

Stated that after receiving the copy of FIR No.219 dated 07.09.013 u/s 302/324 PPC P.S.Domel, he conducted the investigation of the case. During the course of investigation the accused was not arrested. After completion of investigation/ absconding proceedings the case file was handed over to SHO Domel for submitting of challan u/s 512 CrPC .

STATEMENT OF ASI ZABIB-UR-REHMAN P.S.DOMEL.

Stated that complainant Bakhta Baz alias Dabozi s/o Mohammad Yaqoob r/o Landi - Jalander brought the dead body of his son Mohammad Irshad to P.S. Domel and reported Tariq Khan s/o Mohammad Haleem of the village fired him and his son with his Klashin Kove. Resultantly his son was hit and expired while he was saved luckily. He charged accused Constable Tariq No.710 for the murder of his son Mohammad Irshad, his report was lodged and the copy of FIR was handed over to BBI staff P.S. Domel.

STATEMENT OF DFC IMRAN P.S. DOMEL.

Stated that copy of charge sheet with summary of allegations was marked to him for served upon the said constable. He went to village Lander where the said constable was not found present. He recorded the statement of one Anwarullah, he stated the said constable is P.O. in the above case and not present in his house.

**STATEMENT OF COMPLAINANT BAKHTA BAZ ALIAS DABOZI S/O
Mohammad YAQOOB R/O LANDI JALANDER P.S. DOMLE.**

Stated that on 07.09.013 constable Mohammad Tariq No.710 fired with his Klashin Kove over him & his son Mohammad Irshad. His son was hit and expired while he was saved luckily and the accused decamped after the commission of the offence. He charged the above accused for the offence. He requested to take departmental action against him. He has informed SHO Domel Nabi Shah for the arrest of accused constable but he did not take action against him.

22

6

CONCLUSION.

After conducting the enquiry and perusal of the record, the undersigned reached to the conclusion that the said constable has been directly charged for the murder of Mohammad Irshad. During the investigation, the accused officer constable was searched out at possible places but he intentionally absconded. The Investigation Officer completed the absconding proceedings and after completion of investigation, the SHO submitted challan u/s 512 CrPC against the accused constable Tariq Khan No.710.

It is worth mentioning that there is no chance about the appearance of the accused constable in near future.

Submitted for further order please.

(SANAULLAH KHAN)
D.S.P.HQBS, BANNU.

The enquiry is kept pending till decision of the court. Pay however stopped from the period of absence.

ATTENDED

[Signature]

ORDER.

C - (7)

My this order will dispose off the Departmental proceedings in respect of Constable Tariq No. 710 of Bannu District Police under Police Rules 1975 for committing the following omissions:-

1. That he, while posted to Police Lines, Bannu absented himself w.e.from 23.1.2012 vide DD No. 59 dated 23.1.2012. During his absence period he involved in case FIR No. 20 dated 27.1.2012 u/s 365/34 PPC PS: Domel, District Bannu. Later on, he reported his arrival on 10.3.2012.
2. That he, while posted in Police Lines, Bannu involved in case FIR No. 219 dated 7.9.2013 u/s 302/324 PPC PS: Domel, District Bannu.

The said delinquent Police official had/was charged sheeted on the above mentioned allegations and DSP/HQrs: Bannu and DSP/Rural, Bannu were appointed as Enquiry Officers. The Enquiry Officers conducted proper departmental enquiry proceedings and submitted their findings, wherein the aforementioned allegations were proved against him.

Therefore, I, Qasim Ali Khan, PSP, District Police Officer, Bannu in exercise of the powers vested in me, after thoroughly perusal the enquiry proceedings, am agreed with the findings of the Enquiry Officers. Therefore, the official concerned (Constable Tariq No. 710) is hereby dismissed from the date of absence (23.1.2012) and his absence period from 23.1.2012 to 10.3.2012 is treated as leave without pay.

(Qasim Ali Khan)PSP
District Police Officer,
Bannu

OB No. 727
Dated 08/09/16

No. 15226-29/1, dated. 07/8/2016.

Copy to :-

- The Regional Police Officer, Bannu Region.
- The Dy: Supdt: of Police, HQrs: Bannu.
- The PO, OASI and SRC DPO-Office, Bannu.

(Qasim Ali Khan)PSP
District Police Officer,
Bannu.

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10/6/19

IN THE COURT OF SAIMA ASIM
ADDITIONAL SESSIONS JUDGE-II, BANNU

D-8

Sessions Case No. 221/SC of 2017

Date of Institution: 15.08.2017
Date of Decision: 20.05.2019
Place: Bannu
FIR No. 219
Dated: 07.09.2013
U/Sec: 302/324 PPC
Police Station: Domel District, Bannu

STATE REPRESENTED BY:-

Mr. Atta Ullah Khan
Deputy Public Prosecutor
&
Mr. IRekhar Durrani Advocate
Counsel for the Complainant

VERSUS

Muhammad Tariq Khan s/o Muhammad Halim Khan
r/o Landhi Jalandhar, Tehsil & District Bannu (Accused facing trial)

REPRESENTED BY:

Mr. Syed Fakhar ud Din Shah Advocate
Mr. Rashid Khan Dhirma Khel Advocate

10/6/19

JUDGMENT:-

1. Accused Muhammad Tariq faced trial in the instant case, for committing Qatl-e-Amad of deceased Muhammad Irshad Khan and ineffective firing on complainant and his nephew with intention to kill them U/Sec: 302/324 PPC vide FIR # 219, dated 07.09.2013 registered at Police Station Domel, Bannu.

District & Sessions Judge
Bannu

2. Facts narrated in the FIR are that; the complainant reported the matter to the police station by stating that he alongwith his son deceased Muhammad Irshad Khan and nephew Khalid Khan went for buying

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groceries, to link road chowk on a motorcycle. After buying the groceries, they were on their way towards their village on their motorbike, which was being driven by Muhammad Irshad Khan. When they reached near Kacha path near old Azim Kalla, Tariq Khan s/o Halim Khan their co-villager, duly armed with Kalashnikov was already standing there and when they reached near him he signalled them to stop and they complied and dismounted the bike. Tariq Khan said to deceased Muhammad Irshad that he won't be spared today and instantly started firing at the complainant and his companions with which Muhammad Irshad Khan son of the complainant was hit and fell to the ground whereas the others luckily escaped unhurt. It was around about 17:00 hours. The accused decamped from the spot. The Datsun was hardly arranged for shifting the injured Muhammad Irshad for treatment, however he succumbed to the injuries. Motive is cited to be political rivalry. Hence the instant case FIR.

After registration of the case, copy of the FIR was handed over to the investigating officer for investigation. On completion of investigation, complete challan against the accused facing trial was put in court for proceedings U/S 512 Cr.PC and vide order dated 09.04.2014, accused facing trial was declared proclaimed offender. On 13.07.2017, the accused facing trial was arrested, supplementary challan against him was put in court and on observing the legal formalities U/Sec:265-C Cr.PC, accused facing trial was charge sheeted but he did not plead *guilty* and claimed trial.

4. Prosecution in support of the charge, examined as many as 12 witnesses and closed its evidence, where-after statements of the accused.

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he denied the allegations levelled against him by Prosecution and pleaded innocence and false implication. He neither wished to be examined on oath as his own witness nor desired to produce defence evidence. The gist of Prosecution evidence is as under:-

5. **Saddullah Khan SHO Basia Khel**, the then SHO PS Domel, Bannu recorded his statement as PW-1 and stated that, "on 13-07-2017 I arrested accused on trial Tariq Khan and issued his card of arrest. After completion of necessary investigation, I have submitted supplementary challan against him on 16-07-2017. Both the referred documents correctly bear my signatures".
6. **Habib Ullah Khan Reader DSP Saddar**, the then Muharrir of PS Domel, Bannu, recorded his statement as PW-2 and stated that, "I am marginal witness to recovery memo Ex PW 2/1 vide which the I.O took into his possession one motorcycle bearing Registration No. DGM 4763, Yamaha Model 2000 along with registration copy in the name of Siffat Ullah Khan, produced by PW Khalid Wascem and stated that at the time of occurrence they were riding on the said motorcycle. The recovery memo correctly bear my signature".
7. **Jamshed Khan No. 1686 Police Line Bannu** the then PS Domel, Bannu, recorded his statement as PW-3 and stated that, "I had escorted dead body of deceased Muhammad Arshad along with relevant documents to the doctor. The doctor after doing the needful handed over to me P.M report along with blood stained garments which I handed over to the I.O on the spot. I was examined by the I.O U/S 161CrPC".

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8. **Abdul Majeed Khan ASI**, the then IHC No. 62 PS Domel, Bannu, recorded his statement as PW-4 and stated that, "I am marginal witness to the recovery memo Ex PW 4/1 vide which the I.O took into his possession blood stained sand from the place of deceased Muhammad Arshad. Similarly vide the same memo the I.O also took into his possession three empty shells of 7.62 bore from the place of accused. I am also marginal witness to the recovery memo Ex PW 4/2 vide which the I.O took into possession one blood stained Qamis and Bunyan belonging to deceased sent by the doctor through constable Jamshed Khan. The above-mentioned articles were packed and sealed by the I.O in my presence in different parcels. Both the memos correctly bear my signatures. The house search of the accused also conducted by the I.O in my presence but in vain. I was examined by the I.O U/S 161CrPC".

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9. **Taj Ali Khan No. 37/DFC presently at Judicial Complex**, the then PS Domel Bannu, recorded his statement as PW-5 and stated that, "I was entrusted with warrants U/S 204 Cr.PC against the accused namely Tariq Khan son of Muhammad Haleem resident Landi Jalander, Bannu. I proceeded to his village for the execution of the above-mentioned warrant where I was informed by the co-villagers of the accused that accused have gone to the unknown place after the commission of the offence. Warrant is EX.PW-5/1 and my reports and the statements of the co-villagers on the back of the warrant is Ex PW 5/2. Similarly I was also entrusted to execute proclamation U/S 87 Cr.PC against the above named accused. I affixed one copy of the proclamation on the notice board of the concerned court. I then

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where I was informed the co-villagers of the accused that accused have gone to unknown places. I affixed the other copy of the proclamation on the main village chowk of the accused while the third copy of the proclamation notices is returned to the court and Ex PW 5/3 while my reports and the statements of the co-villagers on the back of the proclamation is EX.PW 5/4".

10. Zabib ur Rehman S.I Investigation PS Bassia Khel, the then SI PS Domel, Bannu recorded his statement as PW-6 and stated that, "On 07-09-2013 at 19.30 hours I recorded the report of the complainant Bakhta Baz son of Muhammad Yaqoob who brought the dead body of his son Muhammad Arshad Khan in a private Datson to the P.S Domel, Bannu. The report of the complainant was read over to him who signed the same as token of its correctness, the same is Ex PW 6/1. The report of complainant was also signed by PW Khalid Khan as rider. I also prepared injury sheet Ex PW 6/2 and inquest report Ex PW 6/3 of the deceased Muhammad Arshad. The dead body was handed over to constable Jamsheed for escorting it to the doctor for P.M examination. The above-mentioned documents correctly bear my signature".

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11. Nabi Shah Khan DSP Lakki Marwat, the then SHO PS Domel, recorded his statement as PW-7 and stated that, "on 18-19-2013, I have submitted complete challan against the accused for U/S 512 Cr.PC against the accused."

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12. Hazrat Umer s/o Qader Janan r/o Landi Jalander, Bannu recorded his statement as PW-8 and stated that, "I had correctly identified

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the dead body of Muhammad Arshad before the police as well as before the doctor at the time of PM examination”.

13. Dr. Muhammad Yaqoob RHC Domel Bannu, recorded his statement as PW-9 and stated that, “on 07-09-2013 at about 09.00PM, I had conducted autopsy on the dead body of Muhammad Rashid aged about 37/38 years son of Bakhta Baz resident of Landi Jalander Bannu, identified by Hizrati Umer and Saif Ullah brought by constable Jamshid No.1686 and found the following:-

Condition of Subject: Body healthy and clothed.

Wounds:

- 1) FA entry wound size 1/4 x 1/4 inch on lateral aspect of right upper arm.
- 2) FA exit wound size 1/4 x 1/4 inch on medial aspect of right upper arm.
- 3) FA entry wound size 1/4 x 1/4 inch lateral aspect of right upper arm above wound No.1.
- 4) FA exit wound size 1/2 x 1/2 inch on posterolateral aspect of left upper chest.
- 5) FA entry wound size 1/4 x 1/4 inch on right upper front of chest above right nipple.
- 6) FA exit wound size 1/4 x 1/4 inch on right back of chest.
- 7) FA entry wound size 1/4 x 1/4 inch on left upper front of chest.
- 8) FA exit wound size 1/2 x 1/2 inch on left back of chest.
- 9) FA entry wound size 1/4 x 1/4 inch to the left of vertebral column at D5.
- 10) FA exit wound size 1/2 x 1/2 inch on front of chest at right nipple.

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Cranium and Spinal cord: Healthy.

Thorax: Pericardium and heart healthy rest injured.

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Abdomen: All healthy.

Muscles Bones Joints: Injured at the injury site right humerus, let scapula and lateral process of D5 fractured while disease or deformity or dislocation nil.

Remarks:

In my opinion the deceased died due to FA injury to lung and major blood vessels leading to profuse hemorrhage, shock and death.

Probable Duration between injuries and death: 10 to 20 hours.

Probable Duration between death and P.M.:- 03 to 05 hours.

The PM report Ex PW 9/1 consisting of six sheets is in my hand writing and the same correctly bear my signature. I also endorsed injury sheet and inquest report of the deceased".

14. Bakhta Baz (complainant) s/o Muhammad Yaqoob r/o Landi Jalander, Bannu, recorded his statement as PW-10 and stated that, "Deceased Muhammad Arshad was my son while accused facing trial is my co-villager. On the day of occurrence at Pasheen Vela time I along with my son Irshad Khan, my nephew Khalid Khan came to link road on motorbike for purchasing of household articles. After purchasing house hold articles we were proceedings to our village on motorbike. The motorcycle was driven by my deceased son, when we reached a Kacha path near Purana Azim Kela. We would have covered some distance on Kacha path to Azim Kela there I saw the accused Tariq Khan duly armed with Kalashnikov standing in the road/Kacha path and when we reached near him, the accused signaled to stop upon which we came down from the our motorbike. The accused Tariq told to my son that he will not be spared today and the

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accused started firing at us, from his firing my son Arshad was hit and fell down while we remained luckily unhurt. It was about 5pm. The accused after the commission of the offence decamped from the spot. Then we arranged a Dotson for the shifting of my son to hospital for treatment and put him into the Dotson but he succumbed to his injury. Motive for the offence was political rivalry between the accused and my deceased son. The dead body was shifted to P.S Domel, Bannu where I made a report to the local police regarding the occurrence. My report was reduced into black and white and was read over to me which I accepted correct and signed the same as a token of its correctness. The report was also signed by my nephew Khalid Waseem as a rider. The report is Ex. PW 10/1 which is correctly bear my signature. I also pointed out the place of occurrence to the I.O. During spot inspection, the I.O secured a blood stained sand from the place of deceased Arshad Khan, three empties of 7.62 bore Ex. P-1 near the place of accused Tariq Khan was also recovered by the I.O, which were packed and sealed accordingly, the recovery memo already Ex. PW 4/1 in presence of me and other marginal witness. The recovery memo correctly bears my signature. I was present with the I.O on the spot when the constable brought a blood stained Qamees Ex. P-2, Bunyan Ex. P-3 of deceased Arshad sent by the doctor, the same was also sealed and packed into parcel, to this effect the I.O prepared recovery memo already Ex. PW 4/2 which is also correctly bear my signature. I was also examined by the I.O under section 161CrPC. I charged the accused for the murder of my son as well as for the attempt at our lives.”.

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District & Sessions Judge
Bannu
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15. Khalid Waseem s/o Shah Daraz Khan, recorded his statement as PW-11 and stated that, "On the day of occurrence, I along with PW Bakhta Baz (my uncle) and deceased Arshad was proceeding on motorbike from link road chowk to our village and when reached Kacha path situated in the limit of Puran Azim Kela, there I saw the accused Tariq Khan standing in the Kacha path, duly armed with Kalashnikov, he signaled us to stop, upon we stopped the motorbike and got down from it. The motorcycle was driven by deceased Arshad Khan. The accused shouted at the deceased that he will not be spared. Upon which we started proceedings when in the meanwhile the accused started firing at us. As a result of which the deceased Arshad Khan received injuries and fell to the ground while I and PW Bakhta Baz luckily escaped unhurt. The occurrence took place at 5.00pm. The accused decamped from the spot. After arranging the Dotson, the dead body was shifted to P.S Domel where Bakhta Baz Khan made a report to the local police and I signed the same a rider. Thereafter the deceased was shifted to RHC Domel for P.M examination. The I.O prepared the site plan at the instance of complainant as well as me. I also produced one motorbike bearing No. DGM 4763 Yamaha made model 2002 along with registration copy to the I.O in the P.S on which we were riding at the time of occurrence. The same was taken into possession by the I.O vide recovery memo already Ex. PW 2/1. The recovery memo correctly bears my signature as well as signature of co-attesting witness. My statement was also recorded by the I.O under section 161 CrPc"

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16. Zahid Ullah Khan Retired SI Investigation PS Domel Bannu, recorded his statement as PW-11 and stated that, "I had investigated the

present case, prepared the site plan at the instance of the complainant Bakhta Baz and eye witness Khalid Waseem which is Ex. PW 12/1, duly signed by me, the sketch and foot notes are correctly bear my signature. During the spot inspection I secured blood stained sand from the place of deceased Muhammad Arshad Khan packed and sealed accordingly. 03 empties of 7.62 bore which giving fresh small of discharge which are Ex. P-1, taken into possession from the place of accused Tariq Khan duly signed by me and the marginal witnesses through recovery memo already Ex. PW 4/1. Recovery memo already Ex. PW 4/2 was also prepared by me in presence of marginal witnesses through which I took into my possession the garments of the deceased i.e. Qamees P-2 and Bunyan P-3 blood stained, sent by the doctor through constable Jamshid of P.S. Domel, the same was packed and sealed according and memo was signed by me and marginal witnesses. The recovery memo already Ex. PW 2/1 is meant for the recoveries and taking into possession the motorcycle model 2000 registration No. DGM4763 Yamaha 100cc chassis No. 3A118-027388K Ex. P-4 which is signed by me and attesting witness. I searched for the accused and his house but, he was not available there. The list of the legal heirs of the deceased prepared by me which is Ex. PW 12/2. The concerned witnesses were also examined by me and their statements were recorded. I have obtained the copy of Naqel Mad No.56 dated 07-09-2013 of the daily diary of police line Bannu wherein the accused was marked absent which is Ex. PW 12/3. The articles recovered from the spot including blood stained sand were handed over to the Muharrir of the P.S to be sent to FSL which copies were received by me and the serologist is Ex. PW 12/4 and FSL of arms

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exerts is Ex. PW 12/5. As the accused was avoiding his lawful arrest, so proceedings Under section 204 CrPC was initiated through my application Ex. PW 12/6 and my application for proceedings under section 87 and 88 CrPC against the accused are Ex. PW 12/7 on which the compliance and reports are also placed on file and the statements of the concerned DFC was also recorded. I have placed on file a letter bearing No.2577 dated 11-09-2013 of the S.P Investigation addressed to DPO, Bannu for departmental action against the accused Tariq Khan. On 14-07-2017 I produced the accused before the Illaqa Judicial Magistrate, sought his one-day police custody and after its expiry the accused was remanded to judicial lock up by the order of the court. I examined the accused under section 161 CrPC. After completion of investigation I handed over the case file to the SHO for onward proceedings".

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17. Thereafter, Prosecution closed its evidence. Statements of the accused was recorded U/Sec: 342 Cr.PC, wherein he denied all the allegations levelled against him and pleaded innocence and false implication. He neither wished to be examined on oath as his own witness nor wished to produce defence evidence.

18. I have heard the arguments of both the learned counsel for the complainant, Deputy Public Prosecutor for the State and learned defence counsel and have gone through the case file carefully.

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19. Learned Deputy Public Prosecutor assisted by learned private counsel for complainant argued, that, the accused facing trial has directly been charged in the FIR for the brutal murder of deceased namely Irshad Khan [Name] and his nephew with intention to kill

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them. That; the place of occurrence is a deserted and faraway area and vehicles are not easily available, so question of delay is not attracted. That; the blood secured by the investigating officer from the place of deceased Irshad Khan and his blood-stained garments alongwith empties recovered from the spot were sent to the office of Chemical Examiner and the serologist, yet reports of the concerned quarters are positive which fully coincide with the prosecution's version. That; the medical evidence is in line with the ocular account regarding the time of occurrence and the weapons used etc. That; there was no reason with the complainant to have falsely substituted the accused in the instant case in place of real culprits in such a heinous occurrence and neither during the course of investigation nor in the course of trial, any piece of evidence in this regard was adduced by the defense. That in view of overwhelming evidence of the prosecution beyond any shadow of doubt, the accused facing trial is entitled to be awarded an exemplary punishment.

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20. To the contrary, learned counsel for the defense argued that; the accused facing trial has falsely been implicated in the instant case. That; the occurrence has not taken place in the mode and manner as alleged by the complainant in his report and evidence. That; the medical evidence does not support the ocular account. That; there are grave contradictions between the statements of the PWs. He argued that story of Prosecution is doubtful and the accused facing trial deserves the benefit of doubt.

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21. "The complainant reported the matter to the police station by stating that, he alongwith his son deceased Muhammad Irshad Khan and nephew Khalid Khan went for groceries to link road chowk on their motorcycle.

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21. "The complainant reported the matter to the police station by stating that, he alongwith his son deceased Muhammad Irshad Khan and nephew Khalid Khan went for groceries to link road chowk on their motorcycle.

After buying the groceries, they were on their way towards their village on their motorbike, which was being driven by Muhammad Irshad Khan. When they reached near Kacha path old Azim Kalla, Tariq Khan s/o Halim Khan their co-villager, duly armed with Kalashnikov was already standing there and on getting nearer, he signaled them to stop so they complied and dismounted the bike. The accused Tariq Khan said to deceased Muhammad Irshad, that, "he won't be spared today" and saying that, he opened fire from his weapon at the complainant and his companions, with which Muhammad Irshad Khan, son of the complainant was hit and fell to the ground whereas the others luckily escaped unhurt. It was around about 17:00 hours. The accused decamped from the spot. The Datsun was hardly arranged for shifting the injured Muhammad Irshad for treatment, however he succumbed to the injuries. Motive is cited to be political rivalry".

22. Unlike the civil cases where the evidence is weighed on strength of preponderance of proof, in criminal cases, the prosecution has to prove the case against the accused and the accused does not have to prove himself to be innocent. The hon'ble superior courts have held in numerous judgments that, the prosecution has to prove the case against the accused beyond doubts. (Reliance; 2005 YLR 2779, 1993 SCMR 417).

23. The case of the prosecution is mainly based on the ocular account furnished by the complainant, Bakhta Baz who has recorded his statement presently as PW-10 and earlier in proceedings U/S 512 Cr.PC as PW-2. In the ocular account there are two conditions sine-qua-non which have to be proved on record and they are; the presence on the spot and the truthfulness. (Reliance: PLD 1973 Supreme Court 321 & 2011 SCMR 116). So far as

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presence of the complainant on the spot is concerned, it is to be proved from the fact that, the complainant witnessed the occurrence and has taken the deceased to the police station and for the post mortem. In this regard, The inquest report and the post-mortem report of the deceased produced as Ex. PW 6/3 and Ex. PW 9/1 show the names of Hazrat Umer s/o Qadar Janan and Saif ur Rehman s/o Taj Muhammad as the identifiers of the dead body whereas the names of the complainant and the other eye witness are nowhere to be seen in these important documents. The complainant also admitted in his cross examination by stating that, "I and PW Khalid Waseem are not identifiers of the dead body of the deceased". In case titled "Mst: Sughra Begum & another v/s Qaiser Pervaiz" reported in 2015 SCMR 1142, august the Supreme Court of Pakistan has held that, "*it was a glaring omission that the name of the purported eye witness is not mentioned in the inquest report and cast serious doubt about the presence of eye witnesses.*" The Hon'ble Peshawar High Court has taken the same view in Cr. Appeal No. 306-B of Barani Beach that, "*possibility of complainant that he was not present at the spot cannot be ruled out as had he been present at the spot, his name would have been mentioned by the concerned official/officer in the post mortem & inquest report.*"

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It is important to quote in the very beginning, that, according to the complainant he alongwith his son and his nephew went to purchase groceries on a motorbike to link road showk. In his cross examination as PW-10 the witness stated that, "*they purchased chicken, tomatoes etc from the shop situated at link road*", however he admitted that, "*it is correct that*

shops are situated in local bazar and house hold articles are

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available and despite the fact they had gone to link road for purchase of the household articles. It does not appeal to mind, that, despite the items being available nearby, why would three men (including the elderly complainant aged about 67/68 years) mount a single motorbike and take the pain of going to purchase chicken and tomatoes from a far off place, when the same is admittedly available nearby. This fact is also admitted by the eye witness in his cross examination who stated that, "It is correct that the Landi Jalander is a big village and chicken and household articles are available at the shops situated at village Landi Jalander".

25. There are several contradictions and improvements in the statement of the complainant;

◦ In his cross examination, the witness stated that, "at the time of occurrence, a little boy had accompanied his son Arshad Khan". This admission on part of the complainant is either suggestive of the fact that, the complainant and the alleged eye witness were not present at the spot and the deceased was only accompanied by the young boy or that there were four persons riding a motorbike including the young chap, whose presence is admitted by PW-10. Whatever the case may be, this admission of the complainant contradicts his stance as held in the FIR.

◦ Likewise, the complainant further admitted that, "the deceased succumbed to the injuries on the spot but we were taking him to the house as if he was alive but after covering one-furlong distance the companion confirmed his death". This is a deviation and improvement of facts from the one narrated in the FIR.

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District & Sessions Judge

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◦ Similarly, the eye witness Khalid Wasim as PW-11 stated that, "he has not stated at the time of report that, when they started proceeding after getting down from the motorbike then the accused started firing at them". The witness volunteered that, "the accused started firing at them when they wanted to disperse". this stance of the eye witness has not been mentioned in the FIR and is an improvement from the facts narrated in the FIR.

In this respect I would like to refer the reported case, 2014 P. Cr.L.J 1559 Peshawar that, "improvement made by eye witness in his statement to strengthen the prosecution case would lose its credibility and evidentiary value. If improvement was deliberate and dishonest, it would cast serious doubt on its veracity and make the case suspicious". (Reliance is also placed on 2013 YLR 230).

26. The complainant and the eye witness in their respective statements have held that, they did not touch the body of the deceased from the time he was hit, till shifting him to the hospital through the Datsun etc, though blood was oozing from his body and his clothes were besmeared with blood and the co-villagers shifted the dead body. It is surprising to note that, despite such near and dear one of the complainant being critically injured and inching towards death, yet it did not get them emotional enough to have touched him, taken him in their lap to console but they were just on lookers from afar, seeing the co-villagers handle the situation. It does not appeal to a prudent mind that in such a situation, any man or even an animal would not get emotional and have an urge to comfort and console its offspring and thus this stance of the complainant and the eye witness seems hard to believe and

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lead to the inference that they were not present at the spot. (Reliance Gul Faraz alias Palay Khan vs The State 2015 YLR 925 Peshawar).

27. According to the complainant as admitted by him in his cross examination, the relation between the parties are strained and he is confined in central jail Bannu in a case registered against him for the murder of paternal uncle (Chacha) of the accused facing trial. "if this be the situation it is astonishing to note that, the accused targeted only the son of the complainant and left the complainant and eye witness unhurt so that they could depose evidence against him".

28. From the statement of the complainant it is clear that, the deceased had a vast criminal record. Complainant stated in his cross examination that, his father was done to death and revenged. He was charged for the murder of his two paternal cousins (Chachazad) and the same was compromised. His brother Shah Daraz was also charged for the murder of one Marwat belonging to village Sarkai. Nowadays, he is confined in a case of murder of paternal uncle (Chacha). The deceased was also charged for Iqdam-e-Qatl by one Wajid. Keeping in view the criminal history of deceased and the complainant himself, there is a possibility that, the accused has been charged only to counter blast the case of murder of the uncle of the accused against the complainant and the deceased has been murdered by some other enemy of the complainant.

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29. The recovery of empties seems extremely doubtful since according to the I.O in his cross examination and the other PWs, "on first visit to the site, the blood and empties were not taken into possession but when they returned back to the spot then they collected those articles". Meaning,

thereby that, if the blood and the empties were available on the spot on the first visit of the site, it should have been taken into possession vide the recovery memo rather than waiting for it to be manipulated for the time being and instead to rush to the house of the accused in order to arrest him and later on come back to the spot to take the same into possession. Thus, there is a strong possibility, that, the empties etc were planted and the recovery of these articles is skeptical.

30. The site plan when taken into juxta position with the statement of the complainant and that of the eye witness, shows that the two were standing in close proximity to the deceased, yet, they managed to escape unhurt without a single scratch, which seems a little hazy.

Saif
20.5.19

31. Likewise, the complainant, the eye witness and the site plan all mention that, at the time of occurrence all of them were facing the accused, however, all the inlet wounds are from the back or from the side and none is from the front which also weakens the stance of complainant.

32. In order to establish the criminal culpability of accused on the basis of circumstantial evidence, it was required to be of conclusive nature and tendency and should exclude every possible hypothesis except the one to be proved. Chain of evidence had to be complete as not to leave any reasonable doubt for the conclusion consistent with the innocence of the violator. The circumstantial evidence, if considered worthwhile for recording conviction, each piece of evidence was linked in the chain and if one link is broken, the chain would fail and every link had to be proved by cogent evidence and if not then no conviction could be maintained or awarded to the accused. (Rel: Saif Ullah vs The State 2013 MLD 751,

ATTESTED

District Judge

1-6-19

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Rizwan Ali vs Commissioner S&CP, Islamabad, 2018 CLD 346, Shah Nawaz v State 2014 YLR 724). In order to establish the criminal liability of accused, circumstances should give the complete chain, one corner of which should touch the body of the deceased and the other, to the neck of the accused. Missing of one link would destroy the entire chain. (Reference: Javed v The State 2018 P Cr. LJ 177).

33. To sum up, the case of the prosecution is entirely based on suspicion, presumption and probabilities which cannot be termed as a proof for recording conviction against the accused. There must be strong and legally acceptable evidence leading a court to a definite conclusion about his guilt. (Reliance; Ghulam Akbar vs State 2003 SCMR 1064).

34. No doubt the deceased met unnatural death, sustaining firearm injuries duly supported by medical evidence but medical evidence alone cannot establish the criminal liability of accused, when not corroborated by ocular account and circumstantial evidence. It is celebrated principle of law that medical evidence is a type of supporting evidence which could confirm the ocular account and though guilt or innocence of accused was not determinable through medical evidence but it could corroborate such aspect of ocular account. (Rel: 2015 P Cr.LJ 820 & 2014 P Cr.LJ 611). In the present case, the medical evidence alone, not corroborated by circumstantial and direct evidence, is not sufficient to record the conviction of the accused.

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35. Taking view of above highlighted facts, the occurrence had neither taken place at the time shown in the FIR nor in the manner and mode set up by the prosecution and once a witness was found telling lie on one material

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to other aspect of the case, unless the testimony was corroborated by strong independent evidence. The story of prosecution is not supported by ocular account nor circumstantial evidence and in the reported case Mst. Shamim v The State 2003 SCMR 1466, the Hon'ble Supreme Court of Pakistan was pleased to observe that prosecution's story being the foundation on which edifice of the prosecution case was raised occupied a pivotal position in a case, it should, therefore, stand to reason and must be natural, convincing and free from any inherent improbability. In the instant case, no convincing and confidence inspiring evidence was forwarded to establish the criminal culpability of accused rather it was based on suspicion, surmises and conjectures which in no way record conviction of the accused.

36. So far as absconson is concerned, it could not be taken into consideration to record conviction of the accused, nor can be made the sole ground for conviction. (Reliance is placed on "Shoukat Ali Vs Jamshed" 2018-YLR-144-Peshawar High Court, 2018-PCrLJ-889-Peshawar High Court).

11/3/18
10/5/18
10/5/18

37. It is well entrenched principle of law that once doubt about the genuineness of prosecution story lurked into the mind of a judge, the only permissible course would be to acquit the accused. (Rel: Mst. Nazia Anwar v State 2018 SCMR 911 Supreme Court). It is not the bounden duty of the defense to create a series of doubt and if a single doubt is created, the accused was entitled to its benefit not as a matter of grace and concession but as a matter of right. (Rel: 2018 YLR 110, 2018 P Cr.LJ 954). It is not incumbent that there should be a series of doubts, calling for acquittal of accused but single circumstance creating reasonable doubt in a prudent mind

1-6-18

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about the guilt of accused, would make him entitled to its benefit not as a matter of grace or concession but as a matter of right. (Rel: Muhammad Akram v State 2009 SCMR 230, Abdul Rehman v State 2018 YLR 1629 Peshawar).

38. In accordance with Article 11 (1) of the Universal Declaration of Human Rights, every one charged with penal offences has a right to be presumed innocent until proved guilty according to law in a public trial. Further Article 14 (2) ibid also states that everyone charged in criminal offence has a right to be presumed innocent until proved guilty according to law. Article 9 and Article 16 of the Constitution of Pakistan, 1973 provide the same mandate and it is also the basic essence of Islamic jurisprudence that no innocent person should be convicted.

39. Indeed, wrongful conviction devastates the whole society and it is the basic essence and bedrock of Islamic jurisprudence that it would be better to acquit 100 (hundred) culprits than convicting 01 (one) innocent sole; which had been transformed into the form of principle that acquitting by error, would be better than convicting by error. The said principle had instilled and evolved into the theory of benefit of doubt. (Reference: 2015 P Cr.LJ 81, 2014 YLR 381, 2016 P Cr.LJ 30 (52)). It mandates that mistake of Qazi/Judge in releasing a criminal is better than his mistake in punishing an innocent (Rel: PLJ 2013 Cr-C, Peshawar 535 D. I. Khan Bench, 2014 PLR 1268 Bannu and 2015 YLR).

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40. Accordingly, for the reasons, recorded here in above, the court reached the inescapable conclusion that, Prosecution has not succeeded to bring home the charge leveled against the accused facing trial Muhammad

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Tariq and he is hereby acquitted by extending him benefit of doubt. Accused is in custody, be released forthwith, if not required in any other case. Case property be disposed off in accordance with law after the expiry of period of appeal/revision. File be consigned to record room after necessary completion.

ANNOUNCED
20.05.2019

Saimu Asim
Saimu Asim,
Additional Sessions Judge-II, Bannu

CERTIFICATE

It is certified that this judgment consists of Twenty-Two (22) pages, each page has been read, corrected and signed by me.

Saimu Asim
Saimu Asim,
Additional Sessions Judge-II, Bannu

1-6-19

| | |
|--|---------|
| 1- Registration No: | 5458 |
| 2- Date of Presentation of Application | 31-5-19 |
| 3- Date of receipt of the file | 1-6-19 |
| 4- Date of completion of work | 1-6-19 |
| 5- Date of delivery of copy | 1-6-19 |
| 6- Date of receipt of copy | 22-7-19 |
| 7- Ordinary Fee | |
| 8- Request Fee | |
| 9- Total Charges | |
| Signature of Copyist | |

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بھخور جناب ڈپٹی انسپکٹر جنرل بنوں ریجن بنوں

اپیل بابت حکم صادر کرنے بحالی ملازمت

عنوان: (37) F
جناب عالی!

گزارش ہے کہ سائل محکمہ پولیس میں بطور کنسٹیبل بھرتی ہو۔ اور دوران ملازمت اپنی ڈیوٹی نہایت ہی جانثانی کیساتھ ادا کرتا رہا۔ سال 2013 میں فیڈرل سینیٹر اکرم خان درانی یعنی 07-09-2013 سائل پر بحوالہ مقدمہ علت نمبر 219 بجرم 34/302 ناحق دعویداری کی گئی۔ چونکہ فیڈرل سینیٹر کیساتھ سرکاری خدمات دے رہا تھا۔ بعدہ من سائل کو معلوم ہوا کہ اس کے خلاف قتل کا مقدمہ درج ہو چکا ہے سائل نے اندریں بارہ مختلف لوگوں سے رابطہ کیا مگر اپنی جان بچانے کی خاطر کوئی شنوائی نہیں ہوئی۔ بالآخر سائل گرفتار ہو کر جیل چلا گیا اور سائل کے خلاف حکمانہ انکوائری شروع ہوئی اور انکوائری ایفسر نے اپنے ختمی رپورٹ میں لکھا کہ ”چونکہ کریمینل کیس عدالت میں چل رہا ہے۔ لہذا فائنڈنگ رپورٹ تا تصفیہ مقدمہ پنڈنگ رکھا جائے اس وقت کے ڈی پی او بنوں (محمد اقبال خان) نے انکوائری رپورٹ پر واضح طور پر لکھ دیا تھا کہ انکوائری رپورٹ کو پنڈنگ رکھا جاوے اور تنخواہ بندش کے بارہ میں بھی واضح حکم صادر فرمایا تھا۔ بعدہ قاسم علی خان بطور ڈسٹرکٹ پولیس ایفسر بنوں تعینات ہوا اور من سائل نے بھی اپنے آپ کو قانون کے حوالہ کر کے ڈسٹرکٹ جیل بنوں چلا گیا جبکہ اس وقت کے DPO بنوں (قاسم علی صاحب) نے سابقہ ڈی پی او بنوں محمد اقبال جنہوں نے حکمانہ انکوائری پر تحریری اڈر بابت پنڈنگ رکھنے انکوائری کاغذات تا تصفیہ مقدمہ صادر کیا تھا کی پرواہ نہ کرتے ہوئے یکطرفہ طور پر انکوائری پر میراڈ سسل اڈر بحوالہ نمبر 727-OB مورخہ 08/09/2016 صادر کیا۔ حالانکہ من سائل پر کوئی چارج شیٹ وغیرہ بھی تقسیم نہیں کیے گئے اور نہ ہی من سائل کو انکوائری افیمہ کرنے رو رو پیش کیا نہ ہی جرح کا موقع دیا گیا اور نہ ہی ذاتی شنوائی کی گئی۔ سائل کے مقدمہ کی باقاعدہ سماعت شروع ہوئی اور سماعت کے دوران مدعی اور پراسیکوشن گواہان کے بیانات میں کافی تضادات پائے گئے۔ اور سائل کو عدالت مجاز نے رہا کرنے کا حکم صادر فرمایا۔ (فیصلہ عدالت ہمراہ لف ہے) لہذا استدعا ہے کہ سائل کے اہل و عیال پر رحم فرما کر من سائل کو تارتخ برخاستگی سے دوبارہ سروس پر بحال کرنے کا حکم صادر فرمایا جائے تاکہ اپنے بال بچوں کا پیٹ پال سکوں۔

العارض:

سائل

Ex کنسٹیبل محمد طارق نمبر 710 سکنہ لنڈی جالندھر ضلع بنوں

To:

The Provincial Police officer, Khyber Pakhtunkhwa Peshawar.

Subject:

APPEAL/MERCY PETITION

F-33

Respected Sir,

- 1) It is humbly submitted that I was enlisted as Constable in Police force in the year 2006, since then, I performed my official duties with zeal & zest. With the passage of time, I was charged /involved in a murder case vide FIR No.219, dated 07.09.2013 u/s 302/324PPC PS Domel. After wards departmental proceedings were initiated against me and upon the finding report of enquiry officer, the then DPO Bannu (Muhammad Iqbal) clearly passed order that the enquiry papers be kept pending till the decision of criminal case by the courts. Since then, the enquiry papers were lying pending for want of court judgment. However in the year 2016, the then DPO Bannu (Qasim Ali Khan) straightaway dismissed me without awaiting to the court decision. neither any charge sheet/show cause notice was served upon me nor an opportunity of personal hearing was extended and the punishment was awarded in a hap-hazard manner being bad in law and against the norms of justice.
- 2) During the trial process in the subject case, so many contradictions were observed by the trial court both from the complainant and prosecution sides and after hearing the arguments of learned counsel for the defense passed the judgment order of acquittal of the accused on dated 20.05.2019.
- 3) Consequently upon my acquittal, I went for appeal to 1st appellate authority (RPO Bannu) but my appeal was not acceded to and as such the applicant being aggrieved remained dis-satisfied. Lastly the petitioner approached to Provincial Police Officer Khyber Pakhtunkhwa for filing an appeal/mercy petition for redressal of my grievances. The CPO directed RPO Bannu to process my appeal as per rules.
- 4) The RPO Bannu, being first appellate authority endorsed the said letter to DPO Bannu for necessary action/process instead getting comments from the reporting officer. The DPO Bannu in response to the said letter returned the case to RPO Bannu with the request to apprise his office as to whether the instant appeal was accepted or otherwise. However, the RPO Bannu has submitted his report to CPO with the remarks that the subject appeal is grossly time barred and there is a gap of about 33 months since my dismissed and at this stage my appeal is not maintainable.
- 5) It is strange to note that at the first instant, the then DPO Bannu (Muhammad Iqbal) being a well known Police officer and batch mate of the sitting DIG has clearly ordered that "Enquiry papers be kept pending till the decision of criminal case by the competent court". Moreover, as per the existing rules, DPO Bannu (Qasim Ali) was bound either to wait for court decision or to consult legal branch. before passing any decision on the departmental file, but the same has been ignored. It is worth mentioning that competent court has announced his judgment on dated 20.05.2019, while the orders/remarks of DPO Bannu had been recorded on 06.11.2013 which clearly indicates that the enquiry papers were tied with the court decision. Therefore the question of grossly time barred is not appealable to mind.
- 6) In view of the above facts and circumstances, it is therefore earnestly prayed that my appeal/mercy petition may kindly be accepted and I may kindly be re-instated into service with back benefits so that I may be able to afford my large family.

I shall remain thankful for your this act of kindness

Your,s obediently

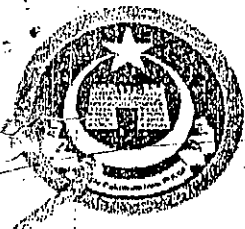


Ex-Constable Tariq No.710

District Police Bannu

R/O Landi Jalander Teh: District Bannu

Mobile No.



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

G-34

No. S/2242-43 /19, dated Peshawar the 27/06/2019.

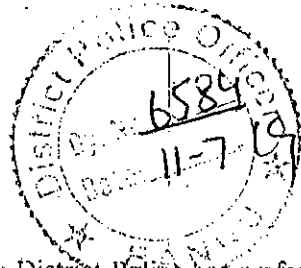
The Regional Police Officer,
Bannu.

Subject:- DEPARTMENTAL APPEAL.

Memo:

Ex-Constable Muhammad Tariq No. 710 of Bannu District Police has preferred appeal to the Worthy IGP/Khyber Pakhtunkhwa for re-instatement in service in CPO. He was dismissed from service by DPO, Bannu vide OB No. 727, dated 08.09.2016. As per applicant he has not preferred appeal to first Appellate Authority i.e. Regional Police Officer, Bannu.

Therefore, his appeal is sent herewith to process it as per Rules, please.



(SYED ANIS-UL-HASSAN)
Registrar.

For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

26-06-2019

No 2569 / EC
dt 09/7/19

Cc:-

Ex-FC Muhammad Tariq No. 710 of Bannu District Police (0333-5347118).

EC / DPO / Bannu

For intimation as
per rules please

[Handwritten signature]

A.P.O Bannu Region

9/7/19

SRC
For intimation
as per rules

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دو ذراعت کنستبل محمد طارق نمبر 710
کو نو در ایستادہ عدالت پشاور
03335347118
دائرتہ اولیٰ

[Handwritten signature]
11-07-19



35

**OFFICE OF THE
DISTRICT POLICE OFFICER
BANNU**

Ph: No. 0928 - 9270038

Fax # 0928 - 9270045

No. _____ /dated Bannu, the _____ / _____ /2019.

The Regional Police Officer,
Bannu Region, Bannu.

DEPARTMENTAL APPEAL.

Kindly refer to your office Endst: No. 2569/EC dated 09.07.2019 on the subject cited above.

Ex-Constable Tariq No. 71 was enlisted in District Police in the year, 2006. He remained in service for about 07 years. Later on, he was involved/charged in a criminal case, registered vide FIR NO. 219 dated 07.09.2013 u/s 302/324 PPC PS Domel, Bannu.

Departmental Proceedings were initiated against the defaulter constable. The Enquiry Officer submitted his finding report and recommended for further appropriate action. However, the then DPO, Bannu (Mohammad Iqbal) had recorded the following remarks which are reproduced below:

"The enquiry is kept pending till the decision of court. Pay however is stopped from the period of absence".

Since then, the enquiry papers were lying pending in DPO Office, Bannu till the decision of Court as the Trial of the criminal case was going on/under process in the competent court, however with the passage of time the defaulter constable was dismissed from Police Force by Qasim Ali Khan (the then DPO, Bannu) vide OB No. 727 dated 03.09.2016.

Now as per the Court Judgment announced on 20.05.2019, the accused constable was acquitted from the subject murder case by the Court of Adll: District & Session Judge, No. II, Bannu.

Presently, the applicant Ex-Constable has filed an appeal to Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar but his appeal has been returned vide letter No. 5/2242-43/19, dated 27.06.2019 received with your office Endst: No. as quoted above with the remarks that "the applicant should prefer appeal to first appellate authority i.e. Regional Police Officer, Bannu Region, Bannu".

It is therefore, requested that this office may please be apprised as to whether the instant appeal is accepted by your good office or otherwise, so that this office could be able to offer para wise comments on appeal well in time, please.

District Police Officer,
Bannu.

4602

From: The Regional Police Officer,
Bannu, Region, Bannu
To: The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar

No. 2817 /EC, dated Bannu, the 24 /07/2019

Subject: DEPARTMENTAL APPEAL

H - (36)

Memo:
Kindly refer to CPO Peshawar letter No.S/2242-43/19 dated 27.06.2019.

In this connection, it is submitted that the appellant/Ex-Constable Muhammad Tariq No.710 was charged in a criminal case vide FIR No.219 dated 07.09.2013 u/s 302/324PPC PS Domel and departmental proceeding, initiated to this effect, was kept pending by Mr. Muhammad Iqbal Khan, the then DPO Bannu but subsequently, Mr. Qasim Ali Khan, the then DPO Bannu dismissed the appellant from service vide OB No.727 dated 08.09.2016.

As per Rule-11 of KP Police Rule 1975 (with amendment 2014), an accused who has been awarded any penalty under these rules, except the penalty of confinement of constable and head constable for 15 days to quarter guard, may within 30 days, prefer an appeal to the appellate authority.

As evident from the above, the appellant has been dismissed from service on 08.09.2016 and submitted the instant appeal after lapse of 33 months which is grossly time barred and not maintainable under the rules please.

Abdullah Khan
(ABDULLAH KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

No. /EC,

Copy to District Police Officer, Bannu for information w/r to his office letter No.11538 dated 19.07.2019.

Abdullah Khan
(ABDULLAH KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

af



VAKALATNAMA

Before the KP Service Tribunal Peshawar

_____ OF 2019

Muhammad Tariq

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Department

(RESPONDENT)
(DEFENDANT)

I/We Muhammad Tariq

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2019

M. Tariq

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK

Shahzullah Yousafzai
SHAHZULLAH YOUSAFZAI

&
Mir Zaman Safi
MIR ZAMAN SAFI
ADVOCATES

OFFICE:
Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Mobile No.0345-9383141

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.1106/2019

Muhammad Tariq Ex-Constable, No.710,

District Police Bannu,

..... Appellant

Versus

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

..... Respondents

INDEX

| S/No | Description of Documents | Annexure | Page |
|------|--------------------------|----------|------|
| 1 | Comments/Reply | | 1-3 |
| 2 | Affidavit | | 4 |
| 3 | Authority letter | | 5 |

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.1106/2019

Muhammad Tariq Ex-Constable, No.710,

District Police Bannu,

..... Appellant

Versus

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

..... Respondents

PARA WISE COMMENTS/REPLY ON BEHALF OF RESPONDENTS NO.1,2& 3.

Preliminary Objections

1. That the appeal of the appellant is badly time-barred.
2. That the appeal is not maintainable in its present form.
3. That the appellant has concealed the actual facts from this Honorable Tribunal.
4. That the appeal is bad in law due to mis-joinder and non-joinder of necessary parties.
5. That the appellant has approached the Honourable Tribunal with unclean hands.
6. That the appellant has got no cause of action and locus-standi to file the instant appeal.
7. That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS:

Respectfully Sheweth

1. Correct to the extent that the appellant was appointed/ enlisted as constable but rest of the para is incorrect. The appellant having a tainted reputation in department.
2. Incorrect. The present appellant was serving in police line Bannu the duty assigned to him as Foot Constable. He was willfully absented himself from Government duty from 22.01.2012 vide DD No.59. During the absence, the appellant was charged in a criminal case vide FIR No.20 dated 27.01.2012 u/s 365/34 PPC PS Domel, Bannu. During that period, he was also charged in another case vide FIR No.219 dated 07.09.2013 u/s 302/324 PPC PS Domel. After commission of crime, appellant avoided his lawful arrest and declared absconding after legal procedure therefore, challan u/s 512 Cr.P.C has been submitted in the court.

3. Incorrect. Detail reply has already been given in the above para-2.
4. Incorrect. Proper departmental inquiry has been initiated against the appellant by deputing I.O. Copy of the charge sheet and summary of allegations were handed over by the inquiry officer to DFC PS Domel to serve upon the appellant but he willfully hidden himself, and intentionally did not join the inquiry proceedings. Similarly his family members also avoided to receive the charge sheet issued to the appellant. Appellant was provided ample opportunity to defend himself but he intentionally vaoided. On the conclusion of the inquiry proceedings, the competent authority issued dismissal order of the appellant.
5. First portion of this para pertains to record. The appellant submitted an appeal to the worthy PPO Khyber Pakhtunkhwa Peshawar which was forwarded to the DIG Bannu vide letter No.2242-43 dated 27.06.2019. After perusal of the record, the RPO Bannu (Respondent No.2) recorded the following remarks.
 "the appellant has been dismissed from service on 08.09.2016 and submitted the instant appeal after lapse of 33 months, which is badly time barred and not maintainable under the law section 11 of KP Police Rules 1975 (with amended 2014).
6. Incorrect. Reply has already been given in para No.5.
 The respondent department also submit their reply on the following grounds.

OBJECTIONS ON GROUNDS

- A. The impugned orders issued on 08.09.2016 and 24.07.2019 are quite legal and according to law/rules.
- B. Incorrect. The appellant was treated according to law/rules. The Respondent department did not violate Article-4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C. Incorrect. The respondent department issued the impugned order according to law/rules after conducting proper departmental inquiry.
- D. Incorrect. The respondent department issued order of dismissal of the appellant according to law/rules. During departmental inquiry, the appellant intentionally avoided to join the inquiry proceedings and was absconding from the trial court as well as the inquiry proceedings. The charge sheet and statement of allegations issued to the appellant through DFC PS Domel but the appellant was not present at his home to receive the same being absconding in the criminal case.
- E. Incorrect. Reply has already been given in the above para.
- F. Incorrect. Reply has already been given in the above para-E.

- H. Incorrect. Proper departmental proceedings were initiated with hope to provide all legal/codal opportunities of self-defense to the appellant but he did not appear before inquiry officer being absconding in the criminal case.
- I. Incorrect. The impugned order issued by the respondent department is according to law/rules.
- J. Incorrect. Before committing of offense, vide case FIR No.219 dated 07.09.2013 u/s 302/324 PPC PS Domel, the appellant was posted at Police Lines Bannu, absented himself from Government duty w/e from 23.01.2012 to 10.03.2012 vide DD No.59 dated 23.01.2012. During his absence the appellant was involved in other case vide FIR No.20 dated 27.01.2012 u/s 365/34 PPC PS Domel. After completion of departmental proceedings, the competent authority awarded the punishment of dismissal from service to the appellant.
- K. The Respondents department may kindly be allowed to advance any other grounds & material as evidence at the time of arguments.

PRAYER:

In view of the above replies, it is most humbly prayed that the appeal of the appellant may kindly be dismissed with cost please.

20 ✓
District Police Officer,
Bannu
(Respondent No.3)

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

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

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

Appeal No.1106/2019

Muhammad Tariq Ex-Constable, No.710,

District Police Bannu,

..... Appellant

Versus

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

..... Respondents

AFFIDAVIT

I, **Muhammad Farooq Khan**, Inspector Legal representative for Respondent Nos. 1,2 & 3, do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by me are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.



DEPONENT

11101-1483421-1

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No.1106/2019

Muhammad Tariq Ex-Constable, No.710,

District Police Bannu,

..... Appellant

Versus

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

..... Respondents

AUTHORITY LETTER.

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

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

2. ✓
District Police Officer,
Bannu
(Respondent No.3)

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

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

انڈیکس فوجداری مقدمہ جز "الف"

عدالت جناب عبدالباسط ایڈیشنل ڈسٹرکٹ اینڈ سیشن جج اول ضلع بنوں

| نمبر مقدمہ | رجوعہ | فیصلہ | علت نمبر | تاریخ آئی آر | جرم | تھانہ |
|------------|---------|---------|----------|--------------|-------|-------|
| 25/5c | 29-3-22 | 29-6-22 | 20 | 27-1-12 | 365 A | ڈوہل |

سرکار بنام طارق سلیم

تفصیل دستاویزات

| نمبر شمار | نوعیت کاغذات | تعداد | صفحات | نمبر شمار | نوعیت کاغذات | تعداد | صفحات |
|-----------|--------------------------------------|-------|-------|-----------|--------------|-------|-------|
| 1 | انڈیکس - آرڈر شیٹ سامنے - فرد جرم | 1 | 6 | 16 | | | |
| 2 | بیان دروغی 24/5/22 | 8 | 6-9 | 17 | | | |
| 3 | پروٹا کٹ | 3 | 9-12 | 18 | | | |
| 4 | نقل ATK نقل حکم | 4 | 12-16 | 19 | | | |
| 5 | 757 نمبر الیزبتہ دیپور سٹیشن 26/5/22 | 3 | 16-19 | 20 | | | |
| 6 | | | 19-19 | | | | |
| 7 | | | | | | | |
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ATTESTED

05 JUL 2022

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Lower Court Benoni

16 جناب عالی اٹل ہذا جز "الف" نقل (19) صفحات پر مشتمل ہے جبکہ جز "ب" برہت انڈیکس تحریر شدہ ہے۔
تصدیق کی جاتی ہے کہ من محرر عدالت ہذا نے ریکارڈ برطانوی انڈیکس ہذا درست ترتیب و تکمیل کر کے تیار کیا ہے۔ جانچ پڑتال فرمائی جائے۔

مسل الف کی تفصیل

جزل نمبر

حکومت شوارہ / عام نمبر

تاریخ موصولہ

جوایں دستخط افسر جلیس

Nogher
دستخط سر عدالت

Contd. 08

29.06.2022

Page 2

Arguments heard and record perused.

Perusal of record reveals that accused facing trial along with co-accused Anwaulah alias Anwari, Faheemullah alias Pan, Faridullah were directly charged by the complainant in the case, whereas, co-accused Baitullah was charged by Imam Hussain, the abductee, in his statement recorded on 01.02.2021 u/s 164 CrPC. It is evident from available record that co-accused Muhammad Anwar was minor/juvenile at the time of commission of offence; thus, on 10.01.2013 the then learned Addl. Sessions Judge-II, Bannu directed prosecution for submission of separate challan against him under the Juvenile Justice System Ordinance, 2000, whereas, rests of the co-accused including the accused facing trial were charge sheeted, to which they did not plead their guilt and claimed trial. This is noted that during trial proceedings, accused facing trial absconded; thus, prosecution was allowed to record evidence against him in absentia. On conclusion of trial, co-accused Faheemullah alias Pan, Faridullah and Baitullah were acquitted by the then learned Addl. Sessions Judge-II, Bannu on 18.02.2015, whereas, perpetual warrants of arrest was issued against the accused facing trial. Now he has surrendered before the court and was charge sheeted afresh, to which he pleaded not his guilt and claimed trial. Prosecution was allowed to lead the evidence. Consequently, statement of Fida Hussain, complainant, and Imam Hussain, the abductee, recorded as PW-1 and PW-2, whereat, accused facing trial submitted the instant application for

Amir Khan
29/06/2022
Abdul Basit
Addl. District Sessions Judge-I
Bannu

5
Contd. 08

29.06.2022

Page 4

complainant and abductee, however, statements of both these witnesses discussed above do not earn conviction of the accused facing trial; therefore, leading of remaining evidence would be wastage of time of court and the parties, hence, the application of accused facing trial Tariq Saleem is allowed and he is acquitted from the charges levelled against him. He is on bail; therefore, his sureties are relieved from the burden of bail bonds subject to expiry of period of appeal/revision. Case property, if any, be disposed of in accordance with law and that too after expiry of period of appeal/revision.

The requisitioned record be returned to the head-quarter concerned and case file consigned to record room after necessary completion and compilation.

Announced
29.06.2022

7
ay/ll
(Abdul Basit)
Addl. Sessions Judge-I, Bannu

29/5
5/7/22
5/7/22
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Signature of Copyist

TESTED

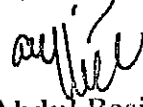
05 JUL 2022

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Copy Court

In the court of Abdul Basit
Addl. Sessions Judge-I, Bannu
The State versus Tariq Saleem

Order---07
13.06.2022

Accused on bail with counsel present.
APP for the State present.
Arguments heard.
Put up for order/prosecution evidence on 29.06.2022.


Abdul Basit
Addl. Sessions Judge-i,
Bannu

4060 file
22

**IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-I, BANNU**

Sessions Case no. 25 of 2022

State versus Tariq Saleem

Order--08

29.06.2022

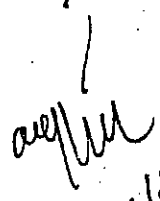
Page 1

Accused on bail present.

APP, Israr Ahmed, for the State is present.

Through this order I intend to dispose of application filed by Tariq Saleem, accused facing trial, under section 265-K CrPC for his acquittal in case FIR no. 20 dated: 27.01.2012 u/s 365-A PPC Police Station Domel, Bannu.

Complainant Fida Hussain, reported that he along with his brother Imam Hussain was present at the shop of Kaseer Khan; that at about 1415 hours, motorcar registration no. 9876/LOB driven by Faridullah approached there in which Tariq, Anwari and Pan were sitting; that Tariq armed with Kalashnikov whereas Anwari and Pan empty handed got alighted from the motorcar, caught hold of his brother Imam Hussain and pushed him inside the car forcibly and kidnapped him; that the motive behind the offence was dispute of Tariq over women folks; hence, the FIR.


29/06/2022
Abdul Basit
Addl. District Sessions Judge-I
Bannu

ATTESTED:

05 JUN 2022

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