


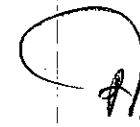
20.03.2023

Junior to counsel for appellant present.

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

Former made a request for adjournment as senior counsel is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 05.06.2023 before D.B. Parcha.Peshi given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Rozina Rehman)
Member (J)

20th Oct, 2022

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

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


(Fareeha Paul)
Member(Executive)



(Kalim Arshad Khan)
Chairman

20th Dec. 2022

Junior to counsel for the appellant present.

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

Former requested for adjournment due to engagement of learned senior counsel for the appellant in the Hon'ble Peshawar High Court, Peshawar. Last opportunity is granted. To come up for arguments on 20.03.2023 before the D.B.


(FAREEHA PAUL)
Member(E)


(ROZINA REHMAN)
Member (J)

SCANNED
KPST
Peshawar

19.07.2022

Junior to counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Former made a request for adjournment as senior counsel is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 15.09.2022 before D.B.



(Fareeha Paul)
Member(E)

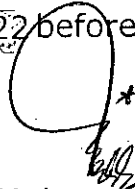


(Rozina Rehman)
Member (J)

13.09.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on ~~20.10.2022~~ before the D.B.



(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

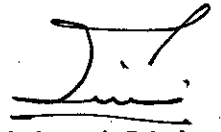
01.02.2022

Learned counsel for the appellant present. Mr. Asif Ali Khan, Inspector (legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

After hearing arguments at certain length, learned Additional Advocate General stated that the appellant has already been involved in case FIR No. 377/2021 Police Station Khyber and has not surrendered before law. In this scenario, learned counsel for the appellant sought adjournment to seek instructions of his client. Adjourned. To come up for arguments on 12.05.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

12th May, 2022

Junior to counsel for the appellant present. Mr. Naseer-ud-din Shah, Asstt. AG for the respondents present.

Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not available today. To come up for order before the D.B on 19.07.2022. Parties may argue the case before the announcement.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

11139/20

16.06.2021

Junior to counsel for the appellant and Mr. Muhammad Rashid, DDA for the respondents present.

Respondents have not furnish reply/comments. Learned DDA is required to contact the respondents for submission of written reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 21.10.2021 before the D.B.

Stipulated period has passed and reply has not been submitted.


Chairman

P.S

29.06.2021


Learned Addl. A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.



Chairman


21.10.2021

Counsel for the appellant present.

Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Sher Badshah ASI for respondents present and submitted reply/comments.

 Learned counsel for the appellant requested for adjournment; adjourned. To come up for rejoinder if any, and arguments on 01.02.2022 before D.B.


(ATIQ UR REHMAN WAZIR)
MEMBER (E)


(ROZINA REHMAN)
MEMBER (J)

26.01.2021

Appellant is present alongwith his counsel Mr. Amin-ur-Rehman Yousafzai, Advocate.

According to the version put forth by the learned counsel representing appellant, that in consequence of lodging FIR bearing No. 29 dated 05.02.2020 under Sections 9 CNSA and 11-B CNSA at P.S Jamrood which is still pending adjudication in the competent court of law, a unilateral disciplinary proceedings were initiated which converged on his dismissal without allegiance to the extant principles envisaged by the law on the subject. The departmental appeal moved for the purpose ended in failure necessitating the institution of service appeal.

The point so agitated at the bar needs consideration. The appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 23.04.2021 before S.B.

Appellant Deposited
Security Process Fee

28/1/21

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

23.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 16.06.2021 for the same as before.

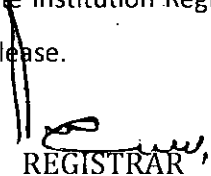
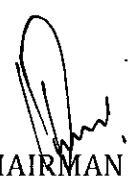

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 11139 /2020

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|------------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 21/09/2020 | <p>The appeal of M. Hussain Akbar presented today by Mr. Amin-ur-Rehman Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2- | | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>09/11/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| 09.11.2020 | | <p>Nemo for the appellant.</p> <p>Since the Members of the High Court as well as of the District Bar Associations, Peshawar, are observing strike today, therefore, learned counsel for appellant is not available today. Adjourned to 26.01.2021 on which date to come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Muhammad Jamal Khan) Member (Judicial)</p> |

SCANNED
KPST
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No.____/2020

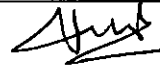
Hussain Akbar..... **Appellant**

....**VERSUS**....

Government of Khyber Pakhtunkhwa & 3 others **Respondents**

I N D E X

| S.No. | Description of documents | Annex | Pages |
|-------|---|----------|-------|
| 1. | Grounds of Appeal | | 1-3 |
| 2. | Affidavit | | 4 |
| 3. | Addresses of the parties | | 5 |
| 4. | Copy of order dated: 29.09.2016 | A | 6 |
| 5. | Copy of Rules of Service for Khyber Khassadars, 1950 with better copy | B | 7-10 |
| 6. | Copy of The Constitution (25 th Amendment) Act, 2018 (Act No. XXXVII of 2018) | C | 11-14 |
| 7. | Copy of KP Khassadar Act, 2019 (KP Act No. XXXIV of 2019) | D | 15-19 |
| 8. | Copy of The Khassadar Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019 | E | 20-24 |
| 9. | Copy of Notification dated: 13.02.2020 | F | 25-27 |
| 10. | Copy of order dated: 16.04.2020 | G | 28 |
| 11. | Copy of FIR No.29, dated: 05.02.2020 | H | 29-30 |
| 12. | Copy of bail granting order dated: 08.06.2020 of the learned Additional Sessions Judge-I, Khyber alongwith bail application | I | 31-37 |
| 13. | Copy of Departmental Appeal dated: 12.06.2020 | J | 38 |
| 14. | Copy of order dated: 27.08.2020 | K | 39 |
| 15. | Wakalatnama | | 40 |



Appellant

Through

Amin ur Rehman Yusufzai

Sajjad Mehsud

&

Khalid Khan

Advocates, Peshawar
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar
Cell No.0321-9022964, 0333-9981464

Dated: 18.09.2020

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

11139
Khyber Pakhtunkhwa
Service Appeal No. Serv/2020 Tribunal

Diary No. 10491

Dated 21-9-2020

Hussain Akbar S/O Khan Akbar
Ex-Sepoy, Wazir Dand, Kuki Khel, Tehsil Jamrud
Tribal District Khyber.

Appellant

.... **V E R S U S**

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Civil Secretariat, Peshawar.
2. Inspector General of Police (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar.
3. Chief Capital Police Officer (CCPO), Police Lines, Peshawar.
4. District Police Officer (DPO), Shahkas Jamrud, District Khyber. **Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974, READ WITH ALL ENABLING PROVISIONS OF LAW, GOVERNING THE SUBJECT, AGAINST:

ORDER DATED: 16.04.2020 OF RESPONDENT NO.4, VIDE WHICH APPELLANT HAS BEEN AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE AND ORDER DATED: 27.08.2020 OF RESPONDENT NO.3, VIDE WHICH DEPARTMENTAL APPEAL DATED: 12.06.2020 OF APPELLANT HAS BEEN DISMISSED AND ORDER DATED: 27.08.2020 IBID OF RESPONDENT NO.3 HAS BEEN UPHELD.

Filed today
21/9/2020
Registrar

PRAYER-IN-APPEAL:

On acceptance of instant appeal, impugned orders dated: 27.08.2020 (of Respondent No.3) and 16.04.2020 (of Respondent No.4) may be set aside and appellant may be re-instated in service with all consequential benefits.

=====

Respectfully Sheweth:

1. That appellant has been enlisted as Sepoy, in Khyber Khassadar Force (Now merged in Khyber Pakhtunkhwa Police), vide order dated: 29.09.2016, by the Competent Authority and since then till issuance of impugned order dated: 16.04.2020, performed duties with zeal/devotion and utmost satisfaction of the superiors, evident from absorption of his services in the Khyber Pakhtunkhwa Police Department, vide Notification dated: 13.02.2020 (reflected his name from Serial No.2337), needless to add that services of all those employees, having spotless career and outstanding performance, have been absorbed in the Khyber Pakhtunkhwa Police Department.
(Copies of order dated: 29.09.2016, Rules of Service for Khyber Khassadars, 1950, the Constitution (25th Amendment) Act, 2018 (Act No. XXXVII of 2018), KP Khassadar Act, 2019 (KP Act No. XXXIV of 2019), The Khassadar Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019 & Notification dated: 13.02.2020 are attached as Annexures A, B, C, D, E & F respectively).

2. That Appellant has unilaterally been dismissed from service by Respondent No.4, vide Order dated: 16.04.2020, communicated on 15.05.2020, without fulfillment legal/codal formalities i.e. Charge Sheet, Regular Inquiry, Show Cause Notice and Personal Hearing, on the sole basis of registration of FIR No.29, dated: 05.02.2020, Under Section 9-C & 11-B CNSA, Police Station Jamrud.
(Copies of order dated: 16.04.2020, FIR No.29, dated: 05.02.2020 and bail granting order dated: 08.06.2020 of the learned Additional Sessions Judge-I, Khyber alongwith bail application are attached as Annexures G, H & I respectively).
3. That Appellant preferred Departmental Appeal dated: 12.06.2020, before the Appellate Authority/Respondent No.3, against order dated: 16.04.2020 supra of Respondent No.4, however, met the same fate and was rejected / dismissed, vide order dated: 27.08.2020.
(Copies of Departmental Appeal dated: 12.06.2020 & order dated: 27.08.2020 are attached as Annexures J & K respectively).
4. That Appellant being aggrieved of orders dated: 16.04.2020 (of Respondent No.4) & 27.08.2020 (of Respondent No.3), approaches this Hon'ble Tribunal for re-instatement in service with all consequential benefits, inter-alia, on the following grounds:

G R O U N D S:

- A. That impugned orders dated: 16.04.2020 & 27.08.2020 of Respondents No.4 & 3 respectively are against the law and peculiar facts of the case of appellant, hence carry no legal weight.
- B. That the local Police of Police Station Jamrud has incarcerated the Appellant in case FIR No.29, dated: 05.02.2020, registered under section 9-C & 11-B CNSA, by allegedly recovering about 3 KG contraband from personal possession of accused Wakeel Ahmad S/O Shakeel Ahmad, however, the Appellant has also been nominated as accused, being owner of the premises, where the principle accused i.e. Wakeel Ahmad, was allegedly busy in selling the contraband, on the strength whereof the impugned order of dismissal from service of Appellant has been issued, without either affording opportunity of hearing or conducting regular inquiry into his guilt, hence has been condemned unheard which attracts the doctrine of audi alteram partem.
- C. That Respondent Department has no lawful authority to punish Appellant for no wrong, rather they are duty bound to treat him in accordance with law and to provide him equal protection of law, but the Respondent Department, instead to follow the law/rules on the subject, issued the impugned orders in a clandestine and surreptitious manner, which has caused grave miscarriage of justice.
- D. That major penalty of dismissal from service has been imposed upon Appellant, more on the basis of presumptions, that too, without adopting proper mode and manner for substantiating the alleged charges, moreover, the Appellate Authority did not appreciate the available record of the case of Appellant in its true perspective, hence erred in jurisdiction.

E. That any other ground, with the permission of this Hon'ble Tribunal, will be taken at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant appeal, impugned orders dated: 27.08.2020 (of Respondent No.3) and 16.04.2020 (of Respondent No.4) may be set aside and appellants may be re-instated in service with all consequential benefits.

Any other relief, not specifically prayed for and deemed appropriate by this Hon'ble Tribunal in circumstances of the case, may also be granted.

[Handwritten Signature]

Appellant
Through

Amin ur Rehman Yusufzai

Sajjad Mehsud

&

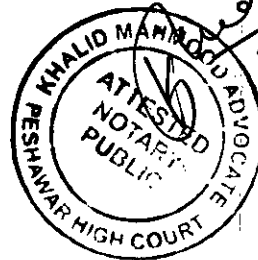
Khalid Khan

Advocates, Peshawar,
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar
Cell No.0321-9022964, 0333-9981464

Dated: 18.09.2020

VERIFICATION:

Verified on oath that the content of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.



[Handwritten Signature]
Deponent

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. ____/2020

Hussain Akbar..... **Appellant**

....**VERSUS**....

Government of Khyber Pakhtunkhwa & 3 others..... **Respondents**

AFFIDAVIT

I, Hussain Akbar S/O Khan Akbar Ex-Sepoy, Wazir Dand, Kuki Khel, Tehsil Jamrud Tribal District Khyber, do hereby solemnly affirm declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief, and that nothing has been kept concealed from this Hon'ble Tribunal.

Identified By:

[Signature]

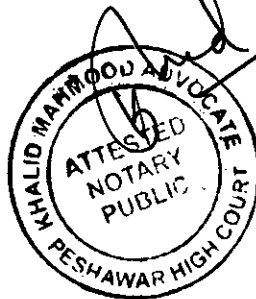
DEPONENT

CNIC #: 21909-2665378-3

Mobil: - 03003000604

Amin-ur-Rehman Yusufzai
Advocate, Peshawar

[Signature]



5

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No.____/2020

Hussain Akbar..... **Appellant**

....**VERSUS**....

Government of Khyber Pakhtunkhwa & 3 others **Respondents**

ADDRESSES OF THE PARTIES

APPELLANT:

Hussain Akbar S/O Khan Akbar
Ex-Sepoy, Wazir Dand, Kuki Khel, Tehsil Jamrud
Tribal District Khyber

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Civil Secretariat, Peshawar.
2. Inspector General of Police (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar.
3. Chief Capital Police Officer (CCPO), Police Lines, Peshawar.
4. District Police Officer (DPO), Shahkas Jamrud, District Khyber.



Appellant
Through

Amin ur Rehman Yusufzai

Sajjad Mehsud

&

Khalid Khan

Advocates, Peshawar
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar
Cell No.0321-9022964, 0333-9981464

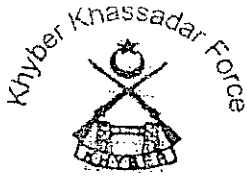
Dated: 18.09.2020

Annex A

(A)

(B)

OFFICE OF THE POLITICAL AGENT, KHYBER



No. 4759-62 /SKC.

Dated 29/9 /2016.

OFFICE ORDER

Hussain Akbar s/o Khan Akbar is hereby enlisted as Khassadar in Khyber Khassadar Force Kuki Khel Company with immediate effect against the vacancy caused due to the retirement of his cousin Naik Atta Muhammad, on the terms and conditions laid down in Khassadar's Service Rules, 2011, subject to medical fitness. As per CNIC No. 21202-2665378-3, his date of birth is 24.12.1978.

Commandant K.K.F.
Political Agent, Khyber.

Copy forwarded to:

1. The Assistant Political Agent, Jamrud w/r to his endst: No. 3283/APA-Jamrud, dated 16.08.2016.
2. The Agency Accounts Officer Khyber at Jamrud.
3. The Political Tehsildar, Jamrud.
4. The Subedar Major, K.K.F., at Landikotal.

For information and necessary action.


Political Agent, Khyber.

D
6/9/16

Attested



Ministry State and Frontier Regions, Karachi
Government of West Pakistan

Terms of service for Khyber Khosodars
Reference your memo dated No. 3501/1/255-37

Dated: 27th January, 1949

The Governor General is pleased to send you the enclosed rules of service which shall regulate, with immediate effect, the terms of service of the Khyber Khosodars. Provisions should be made in duplicate for payment of the expenditure involved in the year 1950-51, on account of the grant of retiring gratuities under rule 9 of the proposed

ENCLOSURE TO GOVERNMENT OF PAKISTAN, MINISTRY OF STATE AND FRONTIER REGIONS MEMORANDUM No. F-4(2B)-F/49, dated 27th August

RULES OF SERVICE FOR KHYBER KHOSODARS

- 1. Enlistment will ordinarily be made in the rank of Khosodar, but the Political Agent may make a direct promotion to a higher rank for special reasons.
- 2. All promotions to a higher rank shall be made on the basis of seniority, efficiency, previous work and political considerations.
- 3. All Khosodars and non-commissioned officers (T. Khaks, Haks and Baidars, including pay, allowances, etc.) shall be entitled to a pension of 50 years or 50 years of service, whichever is earlier.
- 4. Jemadar and Subjadar will retire on attaining the age of 55 years or on completion of 30 years of service, whichever is earlier.
- 5. All promotions to Jemadar will be for 5 years only and to Subjadar will be for three years only, except in special cases in which the Local Administration may permit a further extension and provided they are not able to retire in accordance with the provision of rule (4).
- 6. The terms of service of the Jemadar and Subjadar shall be provided that the Local Administration may extend the period of a Jemadar in special cases.
- 7. At the point of F.C.O. will be provided to the Jemadar, Haks, or Baidar when they have completed 15 years of service and will be provided to the Subjadar when they have completed 10 years of service.

Attested
A

8

Copy of Memorandum No. F-4(28-F/49, dated the 5th September 1950 from the Assistant Secretary to the Government of Pakistan Ministry State and Frontier Regions, Karachi to the Chief Secretary to Government N.W.F.P. Province

Subject: TERMS OF SERVICE FOR KHYBER KHASSADARS

Reference your Memorandum No. 350/17/238-TBI dated 27th January, 1949

The Governor General is pleased to sanction the enclosed rules of service which shall regulate, with immediate effect, the terms of service of the Khyber Khassadars.

Province should be made in due course of the expenditure involved in the year 1950-51, on account of grant of retiring gratuities under rule 8 of the enclosed rules.

ENCLOSURE TO GOVERNMENT OF PAKISTAN, MINISTRY
OF STATE AND FRONTIER REGIONS MEMORANDUM
NO. F-4(28)-F/49, DATED 28TH AUGUST, 1950

RULES OF SERVICE FOR KHYBER KHASSADARS

1. Enlistment will ordinarily be made in the rank of a Khassadar, but the Political Agent may make a direct appointment to a higher rank for special reasons.
2. All promotions to a higher rank will be made on seniority, efficiency, personal merit and Political consideration.
3. All Khassadars and non-Commissioned Officers (L/Naiks, Naiks and Hawaldars, including pay-Hawaldars) will retire on attaining the age of 50 years or on completion of 25 years' service, whichever is earlier.
4. Jamadars and Subedars will retire on attaining the age of 55 years or on completion of 30 years' service, whichever is earlier.
5. All promotions
 - (1) To Jamadar will be for 5 years only and
 - (2) To Subedars will be for three years only, except in special cases in which the local administration may permit a Subedar to exceed this limit.Provided they are not liable to retire earlier in accordance with the provision of rule (4).
6. The terms of office of the Sub. Major is limited to 5 years provided that the Local Administration may exceed the period on a yearly basis in special cases.
7. No Khassadar or N.O.C. will be promoted to the rank of L/Naik, Naik, or Hawaldar after he has obtained the age of 49 years or after he has completed 24 years' service.

M. Aslam

[Signature]

- i) For every year of service as a Khudgudat or L/M... Rs 7/0/- Annam
- ii) For every year of service as Peik... Rs 8/0/- Annam
- iii) For every year of service as a Havildar... Rs 10/5/-
- iv) For every year of service as a Jemadar or a Subadar or a Subedar Major... Rs 50/-

The term "every year of service" as used in Rule (B) means every completed or service.

10. The fraction of a year in any rank will be taken towards service in the next lower rank to which a completed year of service in that rank and if any fraction of a year is taken over into a lower rank it will be taken to the next lower rank to which...

Ma
ATTESTED

Attested

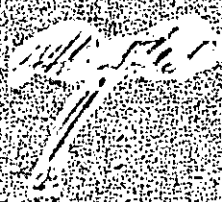
M. J. Lal

- i) For every year of service as a Khassadar of L/Naik Rs. 7/8/- P. Annum
- ii) For every year of service as Naik Rs. 8/8/- P. Annum
- iii) For every year of service as Hawaldar Rs. 10/- P. Annum
- iv) For every year of service as Jamadar or a Subedar or a Subedar major Rs. 30/- P. Annum

9. The term of "every year of service" as used in rule (8) means "every completed of service"

10. The fraction of a year in any higher rank would be taken towards service in the most lower rank to make a competed year of service in that rank and if any fraction of a year is still left over in the lower rank it will be taken to the next lower rank and so on.

Attested



Annex "C"

25th Constn
Amendment
2019

REGISTERED No. M - 302
L - 7646

The Gazette  **of Pakistan**

(11)

04-6-2018

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

ISLAMABAD, TUESDAY, JUNE 5, 2018

PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 4th June, 2018

No. F. 9 (30)/2018-Legis.—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on 31st May, 2018 and is hereby published for general information:—

ACT No. XXXVII OF 2018

An Act further to amend the Constitution of the Islamic Republic of Pakistan

WHEREAS it is expedient further to amend the Constitution of the Islamic Republic of Pakistan for the purposes hereinafter appearing;

It is hereby enacted as follows:—


Short title and commencement.—(1) This Act may be called the Constitution (Twenty-fifth Amendment) Act, 2018.

(2). Except as provided in this Act, it shall come into force at once.

(713)

Price: Rs. 3.00

[5996(2018) Ex.Gaz.]

Attested


(12)

2. **Amendment of Article 1 of the Constitution.**—In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 1, in clause (2),—

- (i) in paragraph (b), after semi-colon the word “and” shall be inserted;
- (ii) paragraph (c) shall be omitted; and
- (iii) paragraph (d) shall be renumbered as paragraph (c).

3. **Amendment of Article 51 of the Constitution.**—In the Constitution, in Article 51,—

- (i) in clause (1), for the expression “three hundred and forty-two” the expression “three hundred and thirty-six” shall be substituted;
- (ii) for clause (3) and the Table thereunder, the following shall be substituted, namely:—

“(3) The seats in the National Assembly referred to in clause (1), except the seats mentioned in clause (4), shall be allocated to each Province and the Federal Capital as under:—

| | General Seats | Women Seats | Total Seats |
|--------------------|---------------|-------------|-------------|
| Balochistan | 16 | 4 | 20 |
| Khyber Pakhtunkhwa | 45 | 10 | 55 |
| Punjab | 141 | 32 | 173 |
| Sindh | 61 | 14 | 75 |
| Federal Capital | 3 | — | 3 |
| Total: | 266 | 60 | 326 |

- (iii) after clause (3), substituted as aforesaid, the following new clause shall be inserted, namely:—

“(3A) Notwithstanding anything contained in clause (3) or any other law for the time being in force, the members of the National Assembly from the Federally Administered Tribal Areas to be elected in the general elections, 2018 shall continue till dissolution of the National Assembly and thereafter this clause shall stand omitted.”; and

- (iv) in clause 5, the words, brackets, figure and comma “Save as provided in clause (3) in respect of the Federally Administered Tribal Areas,” shall be omitted and for the word “the”, occurring for the first time, the word “The” shall be substituted.

Attested


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4. **Amendment of Article 59 of the Constitution.**—In the Constitution, in Article 59,—

(1) in clause (1), —

(a) for the words “one hundred and four” the word “ninety-six” shall be substituted; and

(b) paragraph (b) shall be omitted;

(2) in clause (3), paragraph (b) shall be omitted; and

(3) after clause (3), amended as aforesaid, the following new clause shall be inserted, namely:—

“(3A) Notwithstanding the omission of paragraph (b) of clause (1) and the omission of paragraph (b) of clause (3), the existing members of the Senate from the Federally Administered Tribal Areas shall continue till expiry of their respective terms of office and on the expiry of the aforesaid terms this clause shall stand omitted.”.

5. **Amendment of Article 62 of the Constitution.**—In the Constitution, in Article 62, in clause (1), in paragraph (c), the words “or the Federally Administered Tribal Areas” shall be omitted.

6. **Amendment of Article 106 of the Constitution.**—In the Constitution, in Article 106,—

(I) in clause (1), in the Table, for the expression “Khyber Pakhtunkhwa”, in the first column and the entries relating thereto in the second, third, fourth and fifth columns, the following shall be substituted, namely:—

“Khyber Pakhtunkhwa 115 26 4 145”; and

(II) after clause (1), amended as aforesaid, the following new clauses shall be inserted, namely:—

“(1A) The seats for the Province of Khyber Pakhtunkhwa, referred to in clause (1), include sixteen general seats, four seats for women and one seat for non-Muslims in respect of the Federally Administered Tribal Areas:

Provided that elections to the aforesaid seats shall be held within one year after the general elections, 2018.

Attested
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(14)

(1B) After elections to seats referred to in clause (1A), both clause (1A) and this clause shall stand omitted."

7. **Amendment of Article 155 of the Constitution.**—In the Constitution, in Article 155, in clause (1), the words and comma "or the Federally Administered Tribal Areas," shall be omitted.

8. **Amendment of Article 246 of the Constitution.**—In the Constitution, in Article 246,—

- (i) in paragraph (b), the word "and", at the end, shall be omitted;
- (ii) in paragraph (c), for the full stop at the end, a semi colon and the word "and" shall be substituted; and
- (iii) after paragraph (c), as amended herein above, the following new paragraph shall be added, namely:—

"(d) On the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018, the areas mentioned in—

- (i) paragraph (b),—
 - (a) in sub-paragraph (i), shall stand merged in the Province of Khyber Pakhtunkhwa; and
 - (b) in sub-paragraph (ii), shall stand merged in the Province of Balochistan; and
- (ii) paragraph (c), shall stand merged in the Province of Khyber Pakhtunkhwa."

9. **Omission of Article 247 of the Constitution.**—In the Constitution, Article 247 shall be omitted.

AMJED PERVEZ,
Secretary.

Attested


EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P.III
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 16th SEPTEMBER, 2019.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 16th September, 2019.

No. PA/Khyber Pakhtunkhwa/Bills-67/2019/7004.— The Khyber Pakhtunkhwa Khasadar Force Bill, 2019 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 12th September, 2019 and assented to by the Governor of the Khyber Pakhtunkhwa on 12th September, 2019 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA KHASADAR FORCE ACT, 2019.
(KHYBER PAKHTUNKHWA ACT NO. XXXIV OF 2019)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 16th September, 2019).

AN
ACT

to regulate and maintain the Khasadar Force previously working in the erstwhile Federally Administered Tribal Areas and now in the merged districts of the Province of the Khyber Pakhtunkhwa.

WHEREAS after Constitution (Twenty-fifth Amendment) Act, 2018 (Act No. XXXVII of 2018), the erstwhile Federally Administered Tribal Areas were merged in the Province of the Khyber Pakhtunkhwa, and the special provisions for the governance system in the said areas were omitted through said amendment, leading to the extension of the executive authority of the Province of the Khyber Pakhtunkhwa to the said areas;

AND WHEREAS the Khasadar Force, which was established in the erstwhile Federally Administered Tribal Areas through Executive Orders and instructions, for management of the said areas within the framework of territorial and collective responsibility, has now lost their legal status, for working in the merged districts and sub-divisions;

Attested

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AND WHEREAS it is in public interest to allow the Khasadar Force to continue their functions for better public order, peace and security in the merged districts and sub-divisions and to achieve the objectives, it is expedient to give legal status to the Khasadar Force in the merged districts and sub-divisions, and to revisit their institutional structure and functional assignment for effective discipline, better performance and optimal utility;

It is hereby enacted as follows:

1. Short title, application, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Khasadar Force Act, 2019.

(2) It shall apply to all the members of the Khasadar Force.

(3) It shall extend to the districts and sub-divisions of the Province of Khyber Pakhtunkhwa as enlisted in the Schedule.

(4) It shall come into force at once.

2. Definitions.---In this Act, unless the context otherwise requires,-

(a) "Commandant" means the District Police Officer, as defined in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017);

(b) "Department" means the Home and Tribal Affairs Department the Government of the Khyber Pakhtunkhwa;

(c) "District Administration" means the Deputy Commissioner, Additional Deputy Commissioner, Assistant Commissioner, Additional Assistant Commissioner and their subordinate staff in the district;

(d) "District Police Officer" means Head of the Police, under section 21 of the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017);

(e) "Government" means the Government of the Khyber Pakhtunkhwa;

(f) "Khasadar Force" means the Khasadar Force, constituted through executive orders, for the erstwhile Federally Administered Tribal Areas and now re-constituted and maintained by Government under section 3 of this Act;

(g) "prescribed" means prescribed by rules;

(h) "public agency" means any department of Government, attached department, public authority, commission or autonomous body, setup under any statutory instrument, or public sector company or body corporate, owned, controlled or financed by Government;

(i) "rules" mean rules made under this Act; and

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(j) "Schedule" means Schedule appended to this Act.

3. Re-constitution, regulation and maintenance of the Khasadar Force.---(1) On commencement of this Act, the Khasadar Force, shall be re-constituted, regulated and maintained by Government in accordance with the provisions of this Act and shall be known as the Khyber Pakhtunkhwa Khasadar Force, consisting of all existing strength of its members.

(2) The Khasadar Force shall be organized in senior ranks and junior ranks officers and officials.

(3) The senior rank officer shall consist of Commandant, who shall be District Police Officer, having additional charge of the Commandant in the district, while the junior ranks shall consist of the following:

- (a) Subedar Major;
- (b) Subedar;
- (c) Naib Subedar;
- (d) Havaldar; and
- (e) Khasadar.

4. Superintendence, administration and control of the Khasadar Force.---(1) The overall power of superintendence of the Khasadar Force shall vest in Government.

(2) The general administration and operational control of the Khasadar Force shall vest with the Commandant in the district.

5. Method of recruitment.---Subject to other provisions of this Act, recruitment in the Khasadar Force shall be made in the prescribed manner:

Provided that initial recruitment shall be made only in the rank of Khasadar:

Provided further that Government shall specify committee for recruitment and promotion of members of the Khasadar Force:

Provided also that members of the Khasadar Force may be absorbed in the Khyber Pakhtunkhwa Police in accordance with prescribed procedure.

6. Powers and duties of the Khasadar Force.---(1) Notwithstanding anything contained in any other law for the time being in force, the Khasadar Force shall have parallel policing powers as are assigned to the police under the Code.

(2) Without prejudice to the generality of the forgoing policing powers under subsection (1), the Khasadar Force shall perform such institutional or organizational functions and duties as are provided in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. 11 of 2017).

7. Postings, transfers and distribution of the Khasadar Force.---(1) The Commandant shall be the authority for posting and transfer of members of the Khasadar Force within the district.

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[Signature]

(2) Subject to the decision of the Department, a sufficient number of members of the Force shall be placed at the disposal of the District Administration for performing its legally mandated functions.

8. **Liability of Khasadar Force.**---It shall be the duty of every member of the Khasadar Force to obey and execute all lawful orders and instructions, issued to him by the Commandant.

9. **Assistance and support to Government functionaries.**---On the requisition of the District Administration, the Commandant shall provide assistance and support to the District Administration and Heads of all public agencies in the district, required for performing their official duties.

10. **Power to make rules.**---Government may make rules for carrying out the purposes of this Act.

11. **Act to override other laws.**---The provisions of this Act shall have overriding effect, notwithstanding anything contained in any other law, on the subject, for the time being in force.

12. **Actions taken in good faith.**---No suit, prosecution or other legal proceedings shall lie against Government, any authority exercising powers under this Act or any member of the Khasadar Force for anything done in good faith under this Act or any rule made thereunder or matters specified in pursuance of this Act.

Explanation: The phrase "good faith" shall have the same meaning as given to it in section 52 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. **Removal of difficulty.**---(1) If any difficulty arises in giving effect to any of the provisions of this Act, the Department may notify a committee to take a decision, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

(2) Save as otherwise specifically provided, nothing in this Act, or any repeal effected thereby shall affect or be deemed to affect-

- (a) the existing terms and conditions of service of the Khasadar Force unless amended through a substitute rule or instrument;
- (b) the validity of anything done, action taken, investigations or proceedings commenced, orders issued, appointments made, directions given, proceedings taken or instruments executed or issued, under or in pursuance of any rule or regulatory instrument repealed or amended by this Act and any such thing, action, investigation, proceeding, order, appointment, direction, or instrument suit, right or claims shall, if in force at the time of commencement of this Act and not inconsistent with any of the provisions of this Act, shall continue to be in force, and have effect as if it were respectively done, taken, commenced, issued, made, directed, given, executed or issued under this Act; and
- (c) anything done, action taken, rule made or notification or orders issued under the Khyber Pakhtunkhwa Khasadar Force Ordinance, 2019 (Khyber Pakhtunkhwa Ord. No. IV of 2019) shall be deemed valid and the same shall not be called in question in any Court of law.

Attested

14. **Repeal**,--- the Khyber Pakhtunkhwa Khasadar Force Ordinance, 2019 (KP Ord. No. IV of 2019) is hereby repealed.

SCHEDULE
[see section 1(3)]

Part-A

| S No. | District. |
|-------|------------------|
| 1. | Bajaur |
| 2. | Mohmand |
| 3. | Khyber |
| 4. | Orakzai |
| 5. | Kurrum |
| 6. | South Waziristan |
| 7. | North Waziristan |

Part-B

| S No. | Sub-Division. |
|-------|---|
| 1. | Hasan Khel in district Peshawar. |
| 2. | Darra Adam Khel in district Kohat. |
| 3. | Bettani in district Lakki Marwat. |
| 4. | Wazir in district Bannu. |
| 5. | Jandola in district Tank. |
| 6. | Darazinda in district Dera Ismail Khan. |

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMJAD ALI)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

Attested
[Signature]

Annex "E"

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

20

NOTIFICATION

Peshawar, dated the 24th September 2019.

No. SO(Judicial)/HD/K.Rs/2019:- In exercise of the powers conferred by section 10 of the Khyber Pakhtunkhwa Khasadar Force Act, 2019 (Khyber Pakhtunkhwa Act. No. XXXIV of 2019), read with section 5 thereof, the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

The Khasadar Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019.

1. Short title, application and commencement:---(1) These rules may be called the Khasadar Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019.

- (2) These rules shall apply to all members of the Khasadar Force.
- (3) These rules shall come into force at once.

2. Definitions:---(1) In these rules, unless there is anything repugnant in the subject or context, the following expressions shall have the meanings hereby respectively assigned to them, that is to say,-

(a) "absorption" means the process of permanent induction of the members of the Khasadar Force in the Police, in accordance with these rules;

(b) "Act" means the Khyber Pakhtunkhwa Khasadar Force Act, 2019 (Khyber Pakhtunkhwa Act. No. XXXIV of 2019);

(c) "Provincial Police Officer" means the head of the Provincial Police, who is appointed under section - 15

7/10
Series Officer (Judicial)
Home & Tribal Affairs Department
Government of Khyber Pakhtunkhwa

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(2)

of the Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017); and

(d) "Schedule" means the Schedule, appended to these rules;

(2) Words and expressions used, but not defined in these rules shall have the same meanings as are respectively assigned to them in the Act.

3. Absorption.---The members of the Khasadar Force shall be permanently absorbed in the Police, against vacancies to be newly created in the Police Department for the purpose, in the following manner:

(a) A Scrutiny Committee, headed by the Commandant, and having one member each from District Administration and District Account Officer of the district concern, shall prepare the lists of all the members of the Khasadar Force after personal appearance and scrutiny of record for submission to the Provincial Police Officer;

(b) the lists, submitted to the Provincial Police Officer, under sub-rule (1), after proper sifting, shall be forwarded to Home and Tribal Affairs Department of Government with the recommendations for permanent absorption of members of the Khasadar Force in the Police into the respective ranks or cadres as per the Schedule; and

(c) the Home and Tribal Affairs Department of Government, after receiving the lists of all the members of Khasadar Force, shall issue notification of absorption of the Khasadar Force in the Police after approval of the Cabinet.

*Section Officer (Judicial)
Home & Tribal Affairs Department
Government of Khyber Pakhtunkhwa*

ATTESTED

Attested

4. Remuneration or incentives.--The Khasadar Force after absorption in the Police shall be entitled to the same benefits, remuneration and other incentives as are enjoyed by other members of the Police.

5. Training.--Special training modules shall be designed by the Training Wing of the Police for imparting requisite police training so that the members of the Khasadar Force are fully sensitized with all Police functions.

6. Seniority.--Members of the Khasadar Force, who are absorbed in the Police, in accordance with Government orders and instructions, shall take seniority in the Police from the date of the initial appointment upon recruitment in the Khasadar Force:

Provided that the officer inducted in one batch, upon induction, shall retain their inter se seniority as in the Khasadar Force:

Section Officer (Judicial)
Home & Tribal Affairs Department
Government of Jharkhand

7. Repeal and savings.--(1) All rules, orders or instructions, including the Federal Khasadar Force Service Rules, in force in respect of the Khasadar Force, immediately before the commencement of these rules, shall be deemed as repealed in so far those rules, orders or instructions are inconsistent with these rules.

(2) Notwithstanding the repeal of all rules, orders or instructions, including the Federal Khasadar Force Service Rules, mentioned in sub-rule

(1)-

(a) affecting the seniority and promotion, all promotions done seniority determined and orders made shall be deemed to have been done, determined and made in accordance with law. The repeal, shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed rules, orders and instructions;

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(b) shall not affect any investigation or legal proceedings in any Court of Law and shall be continued in the same manner as if the laws and rules have not been repealed.

8. Removing of difficulties.--(1) If any difficulty arises in giving effect to any provisions of these rules and notifications made thereunder, a Technical Committee, comprising of three members of the Police Department, to be notified by the Provincial Police Officer, headed by an Officer of Police, who shall not be below the rank of Deputy Inspector General of Police and two other members of Police Department, whose ranks shall not be less than Senior Superintendent of Police, may recommend to Government for giving effects to the provisions of these rules.

(2) Government, after considering such recommendations, submitted by the Technical Committee, under sub-rule (1), may, by notification, make such orders, not inconsistent with the provisions of the Act or these rules, as may appear to it to be necessary for the purpose of removing such difficulty.

Section Officer (Judicial)
Home & Tribal Affairs Department
Government of Khyber Pakhtunkhwa

ATTESTED

Attested

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[see rule 3(b)]

| 1. S.No. | 2. From rank in Khasadar. | 3. To rank in Police. |
|-------------|---------------------------------|-------------------------------------|
| 1. | Sepoy. | Constable (BPS-07) |
| 2. | Lance Naik. | Constable A-I (BPS-07) |
| 3. | Naik. | Constable B-I (BPS-07) |
| 4. | Hawaldar. | Head Constable (BPS-09) |
| 5. | NaibSubedar. | Assistant Sub-inspector (BPS-11) |
| 6. | Subedar. | Sub-Inspector (BPS-14) |
| 7. | Subedar Major. | Inspector (BPS-16) |

[Signature]
Section Officer (Judicial)
Home & Tribal Affairs Department
Government of Khyber Pakhtunkhwa

Secretary to Government of the Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Ends No & date even:

Copy of the above is forwarded for information to the:

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
3. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. The Registrar, Peshawar High Court, Peshawar.
5. The Secretary to Government of Khyber Pakhtunkhwa, Law Parliamentary Affairs & Human Rights Department, Peshawar.
6. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
7. P.S to Secretary Home, Khyber Pakhtunkhwa, Peshawar.
8. The Manager, Government Printing Press, Peshawar with the request that it may be published in the official gazette and 50 copies be furnished to this office.

ATTESTED

[Signature]
Section Officer (Judicial)
Ph: 091-9211217
Fax: 091-9210201

Section Officer (Judicial)
Home & Tribal Affairs Department
Government of Khyber Pakhtunkhwa

[Signature]
Attested

Annex "F"

**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT.**

25

NOTIFICATION

Peshawar dated the, 13/2/2020

No.SO(Police)HD/SMY 2019 Merged Area/ 373-83 In pursuance of the provisions contained in section 5 of the Khyber Pakhtunkhwa Khasadars Force Act, 2019 (Khyber Pakhtunkhwa Act No.XXXIV of 2019) read with rule 3 of the Khasadar Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019, the Home and Tribal Affairs Department, with the prior approval of the Cabinet and on the recommendation of the Provincial Police Officer, hereby orders absorption of the following members of Khasadars Force of Khyber Tribal District in the Khyber Pakhtunkhwa Police with effect from the date of the initial appointment of the said members:

| S.# | Name | Father's Name | Previous Rank | Rank in which Absorbed |
|-----|---------------------|------------------|----------------------|------------------------|
| 1. | Muhammad Nawaz | Khial Akbar | Subedar Major (BS-7) | Inspector (BS-16) |
| 2. | Hikmat Khan | Bati Khan | Subedar (BS-5) | SI (BS-14) |
| 3. | Javed Khan | Arbab Knan | Subedar (BS-5) | SI (BS-14) |
| 4. | Said Khan | HabiburRehman | Subedar (BS-5) | SI (BS-14) |
| 5. | Muhammad Azeem | Muhraban Shah | Subedar (BS-5) | SI (BS-14) |
| 6. | Lawar Khan | Widan Shah | Subedar (BS-5) | SI (BS-14) |
| 7. | Taza Khan | Juma Gul | Subedar (BS-5) | SI (BS-14) |
| 8. | Lal Jan | Muhammad Ayub | Subedar (BS-5) | SI (BS-14) |
| 9. | Mazhar Khan | Malik Waris Khan | Subedar (BS-5) | SI (BS-14) |
| 10. | Amjad Khan | H.M.Arif | Subedar (BS-5) | SI (BS-14) |
| 11. | Saeed Khan No. 01 | Arsala Khan | Subedar (BS-5) | SI (BS-14) |
| 12. | Muhammad Younis | M/Z Inayat Khan | Subedar (BS-5) | SI (BS-14) |
| 13. | Shamshad Khan | Sultan Khel | Subedar (BS-5) | SI (BS-14) |
| 14. | Sabirullah | Lal Afzal | Subedar (BS-5) | SI (BS-14) |
| 15. | Gul Mat Khan No. 01 | Rehmat Gul | Subedar (BS-5) | SI (BS-14) |
| 16. | Andaz Gul | Sarwar Jan | Subedar (BS-5) | SI (BS-14) |
| 17. | Abdul Hussain | Mir Hussain | N/Subedar (BS-4) | ASI (BS-11) |
| 18. | Tariq Mehmood | Khadim Khan | N/Subedar (BS-4) | ASI (BS-11) |
| 19. | Ikram Shah | Aurang Zeb | N/Subedar (BS-4) | ASI (BS-11) |
| 20. | Hardam Gul | Sahar Gul | N/Subedar (BS-4) | ASI (BS-11) |
| 21. | Naushad Ali | Abdul Qayum | N/Subedar (BS-4) | ASI (BS-11) |
| 22. | Muhammad Atif | Muhammad Akbar | N/Subedar (BS-4) | ASI (BS-11) |

Attested
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| S.# | Name | Father's Name | Previous Rank | Rank in which Absorbed |
|-------|-----------------------|-----------------|---------------|------------------------------|
| 2334. | Misal Khan | Yousaf Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2335. | Ijaz Ahmad | Abdul Jabbar | Sepoy (BS-01) | Constable (BS-07) |
| 2336. | Gul Sher | Qismat Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2337. | Hussain Akbar | Khan Akbar | Sepoy (BS-01) | Constable (BS-07) |
| 2338. | Hameed Ullah | Wali Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2339. | Arshad Khan | Meetaz Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2340. | Raees Khan | Arman Shah | Sepoy (BS-01) | Constable (BS-07) |
| 2341. | Abid Khan | Yousaf Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2342. | Masaud Khan | Abdul Muhammad | Sepoy (BS-01) | Constable (BS-07) |
| 2343. | Muhammad Shakur | Mamak Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2344. | Aavid Ullah | Khan Alam | Sepoy (BS-01) | Constable (BS-07) |
| 2345. | Sharif Ullah | Awal Jan | Sepoy (BS-01) | Constable (BS-07) |
| 2346. | Wajid Khan | Zaheer Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2347. | Gran Wali | Zari Jan | Sepoy (BS-01) | Constable (BS-07) |
| 2348. | Ali Gul | Sawab Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2349. | Aftab Ahmad | Mamoor Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2350. | Sareer Khan | Muhammad Aman | Sepoy (BS-01) | Constable (BS-07) |
| 2351. | Hassan Jan | Mehtab Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2352. | Mujahid Khan | Lal Muhammad | Sepoy (BS-01) | Constable (BS-07) |
| 2353. | Sheikh Kamal | Yar Zaman | Sepoy (BS-01) | Constable (BS-07) |
| 2354. | Irfanullah | Said Ghulam | Sepoy (BS-01) | Constable (BS-07) |
| 2355. | Jalil Afridi | Muhammad Farooq | Sepoy (BS-01) | Constable (BS-07) |
| 2356. | Abad Khan | Shinzar Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2357. | Ajar Hussain | Said Rahim | Sepoy (BS-01) | Constable (BS-07) |
| 2358. | Tilawat Khan | Dilawar Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2359. | Noor Said | Malik Din Khel | Sepoy (BS-01) | Constable (BS-07) |
| 2360. | Shahid Khan | Zer Haider | Sepoy (BS-01) | Constable (BS-07) |
| 2361. | Shabir Ahmad | Anwar Shah | Sepoy (BS-01) | Constable (BS-07) |
| 2362. | Umar Jan | Awal Jan | Sepoy (BS-01) | Constable (BS-07) |
| 2363. | Muhammad Shahid | Muhammad Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2364. | Gul Saif | Alif Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2365. | Muhammad Noor | Safi Jan | Sepoy (BS-01) | Constable (BS-07) |
| 2366. | Inayat Ullah | Wilayat Shah | Sepoy (BS-01) | Constable (BS-07) |
| 2367. | Nadeem | Yousaf Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2368. | Rehmatullah | Khyber Shah | Sepoy (BS-01) | Constable (BS-07) |
| 2369. | Shahid Khan | Bangali Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2370. | Muhammad Nawaz | Mayub Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2371. | Jawad Khan | Arshad Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2372. | Rustam | Malang Shah | Sepoy (BS-01) | Constable (BS-07) |
| 2373. | Hazrat Amin | Murad Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2374. | Qudrat Ullah | Hijat Ullah | Sepoy (BS-01) | Constable (BS-07) |
| 2375. | Muhammad Ullah | Razi Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2376. | Hazrat Bilal | Hukamran | Sepoy (BS-01) | Constable (BS-07) |
| 2377. | Muhammad Bilal Afridi | Hayat Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2378. | Muhammad Manzoor | Mohabat Khan | Sepoy (BS-01) | Constable (BS-07) |
| 2379. | Zar Mula | Sher Alam | Sepoy (BS-01) | Constable (BS-07) |

Attested
[Signature]

(27)

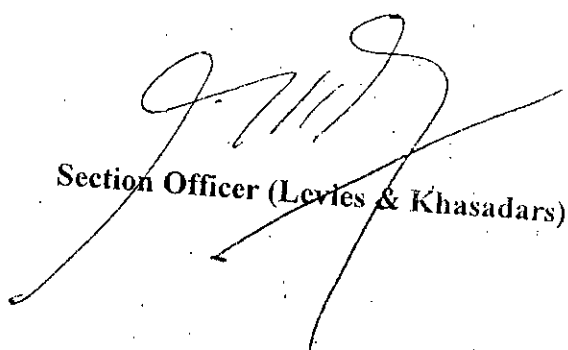
- Rules 2013, before commencement of the Khyber Pakhtunkhwa Levies Force Act, 2019 (Khyber Pakhtunkhwa Act No. XXXV of 2019).
- (iii) Their services shall be considered regular and they shall be eligible for pension and deduction of General Provident fund in terms of the Khyber Pakhtunkhwa Civil Servant Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).
- (iv) Their seniority shall be determined in accordance with rule 6 of the Levies Force (Absorption in Khyber Pakhtunkhwa Police) Rules 2019.
- (v) They shall undergo training as provided in rule 5 of Levies Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019.


Secretary
to Government of the Khyber Pakhtunkhwa
Home and Tribal Affairs Department

No. & date even.

CC to:

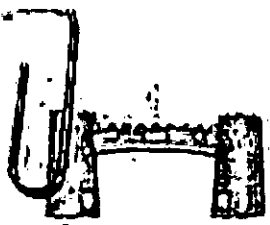
1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. Regional Police Officer, Peshawar
4. District Police Officer Khyber Tribal District.
5. Deputy Commissioner Khyber Tribal District
6. PS to Chief Secretary Government of Khyber Pakhtunkhwa
7. PS to Secretary, Home & TAs Department, Khyber Pakhtunkhwa.
8. PS to Special Secretary-II, Home & TAs Department, Khyber Pakhtunkhwa
9. PS to Secretary, Establishment Department, Khyber Pakhtunkhwa
10. Manager Printing Press for notifying the same in the official gazette.
11. Office record file.


Section Officer (Levies & Khasadars)

Attested


Amma "G" 28

28



**OFFICE OF THE
DISTRICT POLICE OFFICER
KHYBER**



ORDER

Constable Hussain Akbar of PS Jamrud have been nominated as accused in FIR registered vide No. 29, dated 05/02/2020, u/s 9CCNSA/11BCNSA PPC at Police Stations Jamrud and proved to be involved in drugs peddling consequent upon which the undersigned being a competent authority under Govt. Servants Service & Efficiency Rules 1975 issued a Show Cause Notice vide this office No. 654-B/Showcause/PSO-Khyber, dated 06/02/2020 with the opportunity to be heard in person which the defaulter official did not availed.

In reply of the Show Cause notice the defaulter constable failed to submit any cogent reason regarding the allegations leveled against him consequently a Charge Sheet with Summary of Allegations was issued & Acting SDPO Hqrs Khyber was appointed as Enquiry Officer vide this office No. 733-B/Order/PSO-Khyber, dated 14/02/2020.

The Enquiry Officer in his finding report stated that the defaulter Constable is not interested in submitting any reply in his defense and not appeared before the enquiry officer. It was also learned during the course of enquiry that the defaulter constable is habitual absentee and not interested in official duty having ill reputation. The Enquiry Officer recommended for major punishment. After which the defaulter constable was issued a Final Show Cause Notice by the undersigned with an opportunity to be heard in person. In reply of the Final Show Cause Notice issued vide this office No. 879-FGN/PSO-Khyber, dated 03/03/2020, the defaulter constable failed to submit neither any reply, nor he appeared before this office against the allegations leveled against him.

Keeping in view the recommendations of the Enquiry Officer & available record and taking an ex-parte action, the Constable Hussain Akbar is hereby awarded a major punishment of Dismissal from service with immediate effect.

**DISTRICT POLICE OFFICER
KHYBER**

No. 1142-Order/PSO Khyber, dated Khyber 16/04/2020.

Copies to all concerned for further necessary action.

Handwritten signature

میں نے اس بار میں اس کے لئے اس کے لئے اس کے لئے
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AS: 05 Jan 2010
 09-2-2010

Accepted

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Annex "I"

IN THE COURT OF
DISTRICT & SESSIONS JUDGE, KHYBER

at

Federal Judicial Complex, Phase-VII, Hayatabad, Peshawar

37

Bail Petition No. _____/2020

HUSSAIN AKBAR VS STATE

Presented through _____ of counsel. Checked. Found correct. Placed before
the Court accordingly.

(OFFICE)

ORDER...01

05/06/2020

Counsel of the accused/petitioner present. Entered in relevant
register accordingly. Notice to State & record for

8/6/2020

(LIAQAT ALI)
District & Sessions Judge,
Khyber

ORDER—02

08/06/2020

Petitioner, through counsel & DPP for state present. Perusal of
records shows that BBA Petition of the accused has been disposed of
by learned ASJ-I, Khyber, therefore, the instant bail petition is
entrusted to the court of ASJ-I, Khyber for disposal in accordance with
law. Counsel for the petitioner shall put his appearance before the said
court for today and office shall do the needful at earliest.

ATTESTED

08 SEP 2020

(Examiner)
Session Court Khyber

(LIAQAT ALI)
District & Sessions Judge,
Khyber

Attested
[Signature]

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-I, KHYBER.
(Presided over by Asif Rashid, Additional Sessions Judge)

Order No. 03
08.06.2020

Post arrest bail petition received from the court of learned Sessions Judge, Khyber. It be registered.

Mian Afrasyab Gul Kakakhel Advocate present for the accused/petitioner. Asfandyar A.P.P for state present. Record received.

Accused/petitioner Hussain Akbar S/o Khan Akbar R/o Wazir Dhand Jamrud, District Khyber has filed this petition for his release on bail in Crime No. 29 dated; 05.02.2020 under sections 9-(c)/11-(B) Khyber Pakhtunkhwa Control of Narcotics Substances (amended) Act, 2019 registered at Police Station Jamrud. Notice of the bail petition was issued to the state/complainant and record of the case was requisitioned.

Accused/petitioner has been implicated in the instant case on the basis of his involvement with co-accused Wakeel Ahmad who had been apprehended while having in his possession Heroin weighing 200-grams and ICE weighing 110-grams in the Hujra of accused/petitioner Hussain Akbar. On cursory interrogation, co-accused Wakeel Ahmad disclosed the name of accused/petitioner Hussain Akbar hence, the present case was registered against the accused.

I have heard learned counsel for the accused/petitioner, A.P.P for state at length, considered their rival arguments and also perused the case record.

Perusal of record transpires that the contraband/Heroin and ICE have neither been recovered from the direct or indirect possession of the accused/petitioners nor accused/petitioner was apprehended on the spot. The accused/petitioner was

08.06.2020
Addl. District & Sessions Judge I
Khyber

ATTESTED

08 SEP 2020

(Examiner)
Session Court: Khyber

Attested
Asif Rashid

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implicated in present case by co-accused in his statement before police/law enforcement agencies which is not admissible in evidence against the present accused/petitioner in view of Art. 38 of Qanun-e-Shahadat Order, 1984 which is yet to connect the accused/petitioner by the prosecution by way of evidence at the time of trial, therefore, it brings case of the accused/petitioner within the scope of further inquiry u/s 497(2) Cr.P.C. No doubt, the offence for which the accused/petitioner is charged attract sub clause (c) of S.9 and clause (b) of S.11 of Khyber Paktunkhwa Control of Narcotics Substances Act, 2019, however, as per the dictums of the august Superior Courts that mere heinousness of the offence cannot be made hurdle in the way of grant of bail to an accused if otherwise his case is fit for grant of bail like the present one. In these circumstances, petition of the accused/petitioner is fit for grant of bail.

Resultantly, for the aforesaid discussion, this petition for bail is allowed whereby the accused/petitioner is admitted to bail and he be released if not required in any other case provided he furnishes bail bonds in the sum of Rs:1,00,000/- (One lac) with two sureties each in the like amount to the satisfaction of this court. The sureties are, however, must be local, reliable and men of means.

File of this court be consigned to record room after its completion whereas requisitioned record be returned.

Announced in open court:
Today, on 8th day of June, 2020



Asif Rashid,
Additional Sessions Judge-I,
Khyber
Addl: District & Sessions Judge I
Khyber

| | |
|-----------------------------|--------------|
| No. | 8791 |
| Dated of Application | 8/9/20 |
| Name of Applicant | S. J. Khan |
| Word / Pages | 2600 / 6 1/2 |
| Fee | X Urgent Fee |
| Signature of Copyist & Date | [Signature] |
| Dated of Preparation | 8/9/20 |
| Date of Delivery | 8/9/20 |

CERTIFIED TO BE TRUE COPY

(Examiner)
Copying Agency Session Court
Khyber

8/9/20

ADP-2 of the Jamrud District Khyber
BEFORE THE HONOURABLE SESSION JUDGE

KHYBER.

8/6/2020 Jail 8/6/2020 → 9.1, 129/BA
In Re: Bail Application No. _____/2020

Hussain Akbar S/O Khan Akbar Rozi Khan

R/O Wazir Dhand Jamrud District Khyber, presently at Jamrud jail, Khyber.

.....Petitioner/Accused

Versus

The State

.....Respondent

5/6/2020
Case FIR No. 29, Dated: 05-02-2020, U/S

9 C CNSA- 11BCNSA, Police Station

Jamrud, Khyber.

Bail Application u/s 497 Cr. P. C.

Respectfully Sheweth,

The Petitioner humbly submits as under:-

1. That the Petitioner belongs to a respectable family of Jamrud District Khyber.
2. That Petitioner, though having clean record and has never been incriminated in any offence, was arrested by the Police station Jamrud.
3. That the Petitioner is aggrieved from the act being based on false presumption and assumptions having nothing to connect the Petitioner with the above FIR, hence approached this Honourable court on the following grounds inter-alia;

ATTESTED

08 SEP 2020

(Examiner)

Session Court Khyber

Grounds for Bail:

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- I. That Petitioner has been falsely incriminated in the case with *mala fide* intention.
- II. That the prosecution yet failed to mention his specific role, further the section of law does not falls under the prohibitory clause.
- III. That no admissible incriminating evidence is present against him, therefore the Petitioner detention behind the bar is not justified.
- IV. That even, otherwise such a feeble, flimsy and unfounded charge cannot be sustained in view of the law as there is nothing which could suggest the dishonest intention of the accused/Petitioner.
- V. That there is no solid ground against accused/petitioner.
- VI. That otherwise proceedings against the Petitioner is *void ab initio* and nullity in the eyes of law for having been baseless.
- VII. That Petitioner is innocent and has unduly been en-roped in the alleged offence.
- VIII. That Petitioner is ready to furnish any surety as this honorable court deemed appropriate.
- IX. That this honorable court has ample jurisdiction to entertain this application.

ATTESTED

08 SEP 2020

(Examiner)

Session Court Khyber

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Prayer: Considering the above submissions, it is, therefore, humbly
prayed that accused/Petitioner may kindly be granted bail till decision of the case.

Or any other relief deemed appropriate to this honorable Court may
also be granted to the Petitioner.

Accused /Petitioner

Through


Mian Afrasiab Gul Kakakhel
AHC

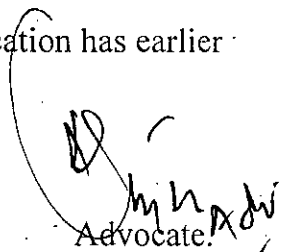
Mian Ijaz Gul Kakakhel

&
Mehreen Gul
Advocates
MAK

Law offices
Liberty Mall, University Road, Peshawar
Mobile: 0333 9215562
Email: afrasyab.advocate@gmail.com

Note:

As per information furnished by my client no such application has earlier
been filed before this court.


Advocate.

ATTESTED

08 SEP 2020

(Examiner)

Session Court Khyber

(37)

(14)

IN THE COURT OF ASIF RASHID,
ADDITIONAL SESSIONS JUDGE-I, KHYBER.

RELEASE WARRANT OF ACCUSED

Hussain Akbar Vs State

Case F.I.R No. 29

Dated: 05.02.2020

Under Sections 9C CNSA/11B CNSA

Police Station Jamrud

To:-


The Incharge Lockup Jamrud,
District, Khyber.

Whereas accused Hussain Akbar S/o Khan Akbar R/o Wazir Dhand Jamrud, District Khyber has been ordered to be released on bail vide order of this court dated 08.06.2020. The accused has furnished the requisite bail bonds, in this court, which were attested/approved, which is attached herewith.

This is to authorize and require you to release accused Hussain Akbar S/o Khan Akbar on bail if not required in any other case.

Given under my hand seal of the court.

This 08th day of June, 2020.


(ASIF RASHID)
Additional Sessions Judge-I
Khyber
Addl: District & Sessions Judge I
Khyber


No. 43 dated, Khyber the 08-6-20

The original, bail bond is enclosed herewith. The same shall be returned to this court after obtaining the signature or thumb impression, of the accused on it.

ATTESTED

08 SEP 2020

(Examiner)
Session Court Khyber


(ASIF RASHID)
Additional Sessions Judge-I
Khyber.
Addl: District & Sessions Judge I
Khyber

Amir "J"

**BEFORE THE WORTHY INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA AT PESHAWAR**

(38)

Subject: DEPARTMENTAL APPEAL/REPRESENTATION AGAINST ORDER DATED: 16.04.2020 OF DISTRICT POLICE OFFICER, KHYBER, VIDE WHICH APPELLANT/PETITIONER HAS UNILATERALLY BEEN DISMISSED FROM SERVICE.

Prayer: On acceptance of instant appeal, impugned order dated: 16.04.2020 of the District Police Officer, Khyber may be set aside and appellant/petitioner may be re-instated in service with all consequential benefits.

Respected Sir,

1. That appellant has been enlisted as Sepoy in Khyber Khassadar Force (Now merged in Khyber Pakhtunkhwa Police), on 01.01.2016 and since then till issuance of impugned order dated: 16.04.2020, performed duties with zeal/devotion and utmost satisfaction of the superiors, evident from absorption of his services in the Khyber Pakhtunkhwa Police Department, vide notification dated: 13.02.2020 (Serial No.2337), needless to add that all those employees, having spotless career and outstanding performance, have been merged in the Khyber Pakhtunkhwa Police Department.
2. That appellant has unilaterally been dismissed from service by the District Police Officer Khyber, vide order dated: 16.04.2020, without fulfillment of legal/codal formalities i.e. charge sheet, regular inquiry, show cause notice and personal hearing, which has caused grave miscarriage of justice.
3. That the local police of Police Station Jamrud has incarcerated the appellant in case FIR No.29, dated: 05.02.2020, registered under section 9-C & 11-B CNSA, by allegedly recovering about 3 KG contraband from accused Wakeel Ahmad S/O Shakeel Ahmad, however, the appellant has also been nominated as accused, being owner of the premises where the principle accused i.e. Wakeel Ahmad, was allegedly busy in selling the contraband, on the strength whereof the impugned order of dismissal from service of appellant has been issued, without either affording opportunity of hearing or conducting regular inquiry into his guilt, rather trial of the criminal case ibid has not so far been conducted, needless to add that appellant has been granted ad-interim pre-arrest bail by the competent court of jurisdiction, i.e. learned Sessions Judge/Special Court, Khyber, vide order dated: 07.05.2020. (Copies of order dated: 16.04.2020, FIR No.29, dated: 05.02.2020 and ad-interim pre-arrest bail granting order dated: 07.05.2020, are attached for kind perusal of your honor).
4. That impugned order dated: 16.04.2020 is against the law and facts/ circumstances of the case of the appellant, moreover, appellant has been condemned unheard which attracts the doctrine of audi alteram partem, hence carry no legal weight.
5. That any other ground, with the permission of your honor, will be taken at the time of personal hearing, if granted.

It is, therefore, most humbly prayed that on acceptance of instant appeal, impugned order dated: 16.04.2020 of the District Police Officer, Khyber may be set aside and appellant/petitioner may be re-instated in service with all consequential benefits.

Yours sincerely,

Hussain Akbar

HUSSAIN AKBAR
S/O Khan Akbar
Ex-Sepoy,
Wazir Dand, Kuki Khel,
Tehsil Jamrud-District Khyber
Cell : 0300-3000604
CNIC No.21202-2665378-3

Police Access Service (PAS) cpo Peshawar

Diary No. 1397 PAS.

Dated. 12/06/2020.

Sent to PUCUP

Phone No. - 091-9223576

Attested
Ky



Amir "K"
OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR

Phone No. 091-9210989

Fax No. 091-9212597

38

ORDER.

This order will dispose of the departmental appeal preferred by Ex Constable **Hussain Akbar** of District Police Khyber who was awarded the Major punishment of "Dismissal from service" by DPO Khyber vide No.1142/PSO dated 16-04-2020.

2- The allegations leveled against him were that he while posted at Police Station Jamrud, has been nominated as accused in case vide FIR No.29, dated 05-02-2020, U/S 9 CNSA / 11BCNSA PPC Police Station Jamrud.

3- He was served Charge Sheet and Summary of allegations by DPO Khyber and DSP/HQrs was appointed as enquiry officer to scrutinize the conduct of delinquent officer. The enquiry officer after conducting proper enquiry submitted his findings that the official may be awarded punishment according to the rules & regulations/ law & order to set an example for all criminals disguised as police officials/ officers who are the helping hands of criminals inside the department or involved in anti-social and criminal activities. The competent authority i.e DPO Khyber after perusal of enquiry report issued him Final Show Cause Notice to which his reply was also found unsatisfactory by the competent authority hence awarded the above major punishment.

4- He was heard in person in O.R and relevant record along-with his explanation perused. During personal hearing he failed to produce any plausible explanation in his defence. Therefore, his appeal for setting aside the punishment awarded to him by DPO Khyber vide order No.1142/PSO, dated 16-04-2020 is hereby rejected /dismissed.

(MUHAMMAD ALI KHAN)PSP
CAPITAL CITY POLICE OFFICER
PESHAWAR.

No. 1028-31 /PA dated Peshawar the 27-08 2020

Copies for information and n/a to the:-

1. District Police Officer Khyber.
2. SDPO HQrs Khyber.
3. Accountant Khyber
- ✓ 4. Official concerned.

Arrested
Be

وکالت نامہ

(40)

بعدالت جناب فیروز خان کوٹاہ سروس ٹریڈنگ لٹریچر
 صیغہ الکرہ نامہ حکومت فیروز خان کوٹاہ وغیرہ
 منجانب ایڈووکیٹ دعویٰ اجرم سروس لٹریچر
 تھانہ ایف آئی آر تاریخ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام

امین الرحمن یوسفزئی ایڈووکیٹ ہائی کورٹ فیڈرل شریعت کورٹ آف پاکستان اینڈ سجاد احمد محسود ایڈووکیٹ ہائی کورٹ

کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور بوقت پکارے جانے مقدمہ الکرہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظهر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بزور تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بزور تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرواختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد تالی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتہائی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا ایگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا ایئر سٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سند ہے مورخہ 18/9/2020 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:

Amin ur Rehman Yusufzai
 Advocate High Court
 &
 Federal Shariat Court of Pakistan
 CNIC: 17301-5813582-3
 Cell No. 0321-9022964
 BC-10-7562

Sajjad Ahmad Mehsud
 Advocate High Court

18-8689
 0333-9981666
 Khadija Khan Mahomed
 Advocate

I

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRINUNAL, PESHAWAR.

Service Appeal No. 11139/2020.

Hassan Akbar (Appellant)

Versus

Govt:of Khyber Pakhtunkhwa and others..... (Respondents)

PARAWISE COMMENTS BY RESPONDENTS NO.2, 3, 4

PRELIMINARY OBJECTION:-

- a) That the Appellant has got no cause of action to file present Appeal.
- b) That the Appeal is not based on facts.
- c) That the Appeal is not maintainable in the present form.
- d) That the Appeal is bad for non-joinder and miss-joinder of necessary parties.
- e) That the Appellant has not come to this Honorable Tribunal with clean hands
- f) That the Appellant is estopped by his own conduct to file the Appeal.
- g) That the appeal is barred by law and limitation.

FACTS.

1. Correct to the extent of Appellant enlistment order, absorption as well as his service/ duties in the respondent Department, He was dismissed from services after proper probe due to his involvement in Criminal Case registered vide FIR No.29 dated 05/02/2020 U/S 9CCNSA/11BCNSA ~~PPD~~ at Police Station Jamrud and proved to be involved in drugs peddling. Copy of FIR enclosed as annexure "A".
2. Incorrect Show Cause Notice was issued to Appellant vide office No654-B/ show cause/PSO Khyber dated 06/02/2020 and proper opportunity of self defence/hearing was given , which the appellant did not avail. Charge sheet with summary of allegations was issued and SDPO HQrs Khyber was appointed as Enquiry officer vide office No.733-B/order/PSO Khyber dated 14/02/2020, and due to active involvement in criminal case he has dismissed from service, after observing all codal formalities under the rules.
3. Correct to the extent that department appeal of appellant was considered by the competent authority but appellant failed to produce any plausible explanation in his defense hence appeal was dismissed on cogent reasons.
4. Incorrect. Appellant has wrongly challenged the legal & valid orders of respondents through unsound grounds, hence service appeal of the appellant not maintainable and liable to be dismissed on the following grounds.


29


GROUND.

- a) Incorrect. The orders of respondents are based on facts, justice and in accordance with the law/ rules.
- b) Incorrect. Proper Departmental enquiry was conducted and the charges of involvement in narcotics dealing were proved against the appellant after providing all opportunities of defense/hearing. Appellant was awarded punishment in accordance with law/ rules in light of findings of Inquiry Officer.
- c) Incorrect respondent department is a lawful authority to punish the appellant because his involvement in Criminal case of Narcotics was established and respondents department treated the appellant in accordance with law/ rules and regulations.
- d) Incorrect, Appellant was found involved in moral turpitude offences and the allegations were established in departmental probe thus he was given appropriate punishment under the rules.
- e) That respondents may also be allowed to raise additional grounds at the time of hearing of appeal.

PRAYER

Keeping in view the above stated facts it is humbly prayed that the instant appeal being devoid of legal force, May kindly be dismissed with costs please.


**INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
(Respondent No.2)**


**CHIEF CAPITAL CITY POLICE,
PESHAWAR
(Respondent No.3)**


**DISTRICT POLICE OFFICER
KHYBER
(RESPONDENT NO.4)**

گورنمنٹ پبلک پولیس ڈپارٹمنٹ، لاہور، پاکستان
2285/13 نمبر شہر، قادیان، لاہور، پاکستان، 20.05.2011ء (قاریہ شہر، قادیان) (پولیس)

قاریہ نمبر 23-15 (ا)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قاتل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

جرم رد 36
عدا 29

ضلع حیدر

تاریخ و وقت وقوعہ 05-02-2020ء لوہٹ 17:05 بج

| | |
|--|---|
| تاریخ وقت رپورٹ | 2020 - 02 - 05 لوہٹ 17:35 بج |
| نام و سکونت اطلاع دہندہ مستفیض | چاند اللہ، سولہ 20-2-05 لوہٹ 17:55 بج |
| مقرر کیفیت جرم (معدومہ) حال اگر کچھ لایا گیا ہو۔ | عبداللہ الدین، ASI قادیانہ ٹرور |
| جائے وقوعہ فاصلہ تھانہ سے اور دست | 9CCNSA - 11BCNSA |
| نام و سکونت ملزم | علاقہ وزیر ڈوڈر، حسیہ اذان، حسین اکبر، حیات مشرق، سولہ 03 لوہٹ |
| کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا، تو وجہ بیان کرو | کوٹھلی، سولہ 03 لوہٹ، حسیہ اذان، حسین اکبر، حیات مشرق، سولہ 03 لوہٹ |
| تھانہ سے روانگی کی تاریخ و وقت | ہم سولہ 03 لوہٹ، حسیہ اذان، حسین اکبر، حیات مشرق، سولہ 03 لوہٹ |

ابتدائی اطلاع نیچے درج کرو۔ جناب عالی! اس وقت ایک تھریوی سولہ سولہ

عبداللہ الدین ASI بدست کاشیل ملزم جو ملزم جو درج ذیل سے خبر دیا اس پر ایس آر جی نے خبر لے کر درج ذیل

مع کاشیلان ملزم، میرداد خان دیکھ لیا جو کہ ملزم کے علاقہ میں موجود تھا کہ اطلاع

دلی کہ علاقہ وزیر ڈوڈر میں جبرہ اذان حسین اکبر ولد خان اکبر سولہ 03 لوہٹ میں منشیات

مروفقت موجود ہے۔ اطلاع کو ملزم نے جان کر لیا کو ترقیب دے کر مذکورہ خبر پر حیا سولہ 03 لوہٹ

حسین اکبر خود کو نوکری ملزم حبابہ حسین اکبر کا گارڈ جو اس کے منشیات فروخت کرنا ہے سہمی دیکھ

الکر ولد شکیل احمد سیامیل مائن خبر سے آباد کو قابو کر کے اس کے خاؤ میں موجود بیڑا سٹاپر قبضے

میں سے کمر منشا پیر کی تلاشتیں ہونے پر منشا پیر سے پھر سولہ 03 لوہٹ اور اس کے بعد سولہ 03 لوہٹ

کی رقومات مبلغ 26800 اور ایک خود کھالی میں ہیں پھر سولہ 03 لوہٹ کے دوران سولہ 03 لوہٹ

دعا درج 7 میں ہر آدھ کر کے جو پھر سولہ 03 لوہٹ سے ہر 50 گرام اور آدھ 110 گرام شکل کر کے سولہ 03 لوہٹ

05 گرام علیحدہ کر کے لفرنس تجزیہ FSL پارسل نمبر 195 گرام پارسل نمبر 105 گرام

پارسل نمبر 105 گرام علیحدہ کر کے لفرنس تجزیہ FSL پارسل نمبر 105 گرام میں جبکہ نمبر 105

گرام پارسل نمبر 105 گرام میں بلور مال نمبر 105 گرام میں بلور مال نمبر 105 گرام

سے انڈر اور 3/3 خود کو پھر سولہ 03 لوہٹ میں بلور مال نمبر 105 گرام

تھریوی سولہ 03 لوہٹ میں سے ملزم مذکورہ بالا کو سہمی کہہ کر بلا کر چھوڑ دیا جس کے بعد سولہ 03 لوہٹ

اشارہ سولہ 03 لوہٹ میں منشیات ہیں سہمی حسین اکبر نے مذکورہ سہمی فروخت کرنا ہے سولہ 03 لوہٹ

حسین اکبر لوہٹ سولہ 03 لوہٹ دیکھا ہے لہذا ملزم حسین اکبر نے سولہ 03 لوہٹ سولہ 03 لوہٹ

افسرین فائینل شدیم بدست فائینل کنند در سال تو نام ہے شدم دنہ زبیر شہ
کرتے تھی کتنی افسر لو ماہر کتنی کیا جائے دستخط زبیر ماہر ذوالدین (AS)
در روز 05-2-2020 کیا روزی فائنل ہوا مدرسہ صرف ہر صرف در 10 ماہ لکھو کس
ہم ہم ماہ لکھو کس فائنل ہوا فہرین کتنی کتب ذوالدین خانہ
لکھو ماہ لکھو کس ہر صورت ہر روزی ہے

AS PS Javed
05-2-2020

مثال شدیم جو زمانہ آج روز ہم لکھو ماہر ذوالدین
لکھو ماہ لکھو کس ہر صورت ہر روزی ہے
AS PS Javed
05-2-2020

مثال شدیم جو زمانہ آج روز ہم لکھو ماہر ذوالدین
لکھو ماہ لکھو کس ہر صورت ہر روزی ہے
AS PS Javed
05-2-2020

اطلاع کے لیے اطلاع دہندہ کا دستخط ہوگا اس کی سرپائشان لکھا جائے گا اور افسر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف باء سرخ روشنائی سے بالمثل ہوا
ایک لزم یا مشترک علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان جہاں موزوں ہوں لکھنا چاہئے۔

5

**OFFICE OF THE
DISTRICT POLICE OFFICER
KHYBER**



ORDER

Constable Hussain Akbar of PS Jamrud have been nominated as accused in FIR registered vide No. 29, dated 05/02/2020, u/s 9CCNSA/11BCNSA PPC at Police Stations Jamrud and proved to be involved in drugs peddling consequent upon which the undersigned being a competent authority under Govt: Servants Service & Efficiency Rules 1975 issued a Show Cause Notice vide this office No. 654-B/Showcause/PSO-Khyber, dated 06/02/2020 with the opportunity to be heard in person which the defaulter official did not availed.

In reply of the Show Cause notice the defaulter constable failed to submit any cogent reason regarding the allegations leveled against him consequently a Charge Sheet with Summary of Allegations was issued & Acting SDPO Hqrs Khyber was appointed as Enquiry Officer vide this office No. 733-B/Order/PSO-Khyber, dated 14/02/2020.

The Enquiry Officer in his finding report stated that the defaulter Constable is not interested in submitting any reply in his defense and not appeared before the enquiry officer. It was also learned during the course of enquiry that the defaulter constable is habitual absentee and not interested in official duty having ill reputation. The Enquiry Officer recommended for major punishment. After which the defaulter constable was issued a Final Show Cause Notice by the undersigned with an opportunity to be heard in person. In reply of the Final Show Cause Notice issued vide this office No. 879-FCN/PSO-Khyber, dated 03/03/2020, the defaulter constable failed to submit neither any reply nor he appeared before this office against the allegations leveled against him.

Keeping in view the recommendations of the Enquiry Officer & available record and taking an ex-parte action, the Constable Hussain Akbar is hereby awarded a major punishment of Dismissal from service with immediate effect.

DISTRICT POLICE OFFICER,
KHYBER

No. 1142-Orders/PSO Khyber, dated Khyber 16/04/2020.

Copies to all concerned for further necessary action.

(6)

**OFFICE OF THE
DISTRICT POLICE OFFICER
KHYBER**



No. 654-B/Show Cause-PSO Khyber, dated Peshawar the 06/02/2020.

SHOW CAUSE NOTICE

Whereas you Constable Hussain Akbar s/o Khan Akbar currently posted Police Station Jamrud, District Khyber committed the following gross misconduct on your part:

“That you have been nominated as accused in FIR registered vide No. 29, dated 05/02/2020, u/s 9CCNSA/11BCNSA PPC at Police Stations Jamrud and involvement in Drugs Paddling”

If this allegation is proved against you, Proper departmental action will be initiated against you which may result in Dismissal from Service as per Police Rules (1975/04-b-iii).

Now I, District Police Officer, Khyber, being the competent authority, call upon you to Show Cause within 07 days of the receipt of this Notice as to why you should not be dealt with departmentally under Police Rules (1975/04-b-iii). Also intimate that whether you desire to be heard in person.

If you failed in submitting any reply an ex-parte action shall be taken against you.


**(DISTRICT POLICE OFFICER)
KHYBER.**

OFFICE OF THE
DISTRICT POLICE OFFICER
KHYBER



CHARGE SHEET U/S 6(1) (A) POLICE RULES 1975

You Constable Hussain Akbar while on duty at Police Station Jamrud, District Khyber is hereby charged for committing the following omission/commissions:-

“That you have been nominated as accused in FIR registered vide No. 29, dated 05/02/2020, u/s 9CCNSA/11BCNSA PPC at Police Stations Jamrud and involvement in Drugs Paddling which is a gross misconduct on your part and heinous crime.”

You are hereby called upon to submit your written defense against the above charges before the Enquiry Officer. Also intimate your consent that whether you desire to be heard in person.

Your reply should reach the Enquiry Officer within seven (07) days from the date of receipt of this charge Sheet, failing which ex-parte action shall be taken against you.

Summary of allegations is enclosed herewith.


DISTRICT POLICE OFFICER,
KHYBER

**Office of the District Police Officer
Khyber**



**SUMMERY/STATEMENT OF ALLEGATION
U/S 6(1) (A) POLICE RULES 1975**

Constable Hussain Akbar while on duty at Police Station Jamrud has committed the following:

“That you have been nominated as accused in FIR registered vide No. 29, dated 05/02/2020, u/s 9CCNSA/11BCNSA PPC at Police Stations Jamrud and involvement in drugs paddling which is a heinous crime”

Your this act falls within the purview of misconduct as contained u/s 2 (iii) of NWFP (now Khyber Pakhtunkhwa) Police Rules 1975.

**DISTRICT POLICE OFFICER,
KHYBER.**

Office of the District Police Officer
Khyber



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ORDER

UNDER SUB-SECTION-3 & SECTION 5 OF POLICE RULES, 1975.

I, District Police Officer, Khyber as competent authority, charge you Constable Hussain Akbar of Police Station Jamrud is prima facie guilt of the following acts to be dealt with u/s 5 (3) of the NWFP, (now Khyber Pakhtunkhwa) Police Rules, 1975.

“That you have been nominated as accused in FIR registered vide No. 29, dated 05/02/2020, u/s 9CCNSA/11BCNSA PPC at Police Stations Jamrud and involvement in drugs paddling which is a heinous crime”

The act of delinquent officer falls within the ambit of gross misconduct and is liable to be proceeded under the NWFP (now Khyber Pakhtunkhwa) Police Rules 1975.

For the purpose of scrutinizing the conduct of the said defaulter with reference to the above allegations, I, District Police Officer, Khyber being authorized officer hereby nominate Enquiry Officer as below to enquire into the charges within the meaning of 2 (iii) under the NWFP (now Khyber Pakhtunkhwa) Police Rules, 1975.

MR. Muhammad Nawaz (Acting SDPO/Hqrs) Khyber

The enquiry officer after completing all enquiry proceedings, should submit findings to the undersigned within stipulated period of (15) days per u/s 6 (5) of Police Rules.

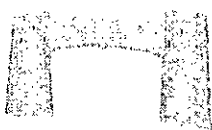
Charge Sheet and Statement of Allegations are issued against the defaulter officer separately. Reply should submit before the Enquiry Officer within the period of (07) days from the date of receipt.

**DISTRICT POLICE OFFICER,
KHYBER**

No.733-Order/PSO-Khyber, dated Khyber, the 14/02/2020.

Copy to:-

1. Acting SDPO/Hqrs Khyber for initiating proceedings against defaulter under the provisions of the Police Rules 1975.
2. Constable Hussain Akbar with the direction to appear before the Enquiry Officer on the date, time and place fixed by the Officer.



**Office of the District Police Officer
Khyber**



No. 879-FSC/PSO Khyber, dated 03/03/2020.

FINAL SHOW CAUSE NOTICE

I, **Muhammad Iqbal**, as competent authority, under the Khyber Pakhtunkhwa Police Rules, 1975 do hereby serve you, Constable Hussain Akbar of this District as follows:

1. (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.
- (ii) Going through the findings & recommendations of the enquiry officer, the material on record and other connected papers before the enquiry officer.

I am satisfied that you have committed the following act/omission specified in Police Rules 1975:

“That you have been nominated as accused in FIR registered vide No. 29, dated 05/02/2020, u/s 9CCNSA/11BCNSA PPC at Police Stations Jamrud and involvement in drugs paddling which is a heinous crime”

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of Dismissal from Service.
3. You are, thereof, 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.
4. If no reply to this notice is received within 05 days or not more than 07 days of its delivery to put in and in that case an ex-parte action shall be taken against you.
5. A copy of the finding of the enquiry officer is enclosed.

DISTRICT POLICE OFFICER, KHYBER

OFFICE OF THE
DISTRICT POLICE OFFICER
KHYBER



ORDER

Constable Hussain Akbar s/o Khan Akbar r/o Wazir Dand, Jamrud currently posted at Police Station Jamrud is hereby suspended with stoppage of pay with immediate effect due his involvement in Case FIR No. 29, dated 05/02/2020, u/s 09CCNSA/11BCNSA PPC registered at Police Station Jmaurd. Proper departmental proceedings shall be initiated against the accused constable separately.


DISTRICT POLICE OFFICER
KHYBER

No. 653/Orders/PSO-Khyber, dated 06/02/2020.

Copy of above is forwarded for information to the:-

1. Capital City Police Officer, Peshawar.
2. SDPO HQrs (Designate), Khyber.
3. SHO PS Jamrud, District Khyber.
4. Accountant, District Khyber.

State VS Wakeel Ahmad & Hussain Ahmad

IN THE COURT OF ALI GOHAR,

ADDITIONAL SESSIONS JUDGE-II, KHYBER

Case No. : 13 / SPC
Date of Institution : 08.09.2020
Date of decision : 11.03.2021

State VS Wakeel Ahmad & Hussain Akbar r/o Jamrud,
district Khyber
FIR No. 29 dated 05.02.2020 u/s 9-C / 11-B CNSA of PS
Jamrud

JUDGMENT:

State through APP present. Accused on bail present.

The accused namely (1) Wakeel Ahmad s/o Shakeel Ahmad (2) Hussain Akbar s/o Khan Akbar both r/o Jamrud, district Khyber involved in case FIR no. 29 dated 05.02.2020 u/s 9-C / 11B CNSA of police station Jamrud.

Brief story as spelt out from the FIR is that the accused facing trial namely Wakeel Ahmad was apprehended by the law enforcers from Hujra of co-accused namely Hussain Akbar situated at Wazir Dhand, Jamrud within the criminal jurisdiction of PS Jamrud. Contraband heroin 200 grams, methamphetamine (ICE) 110 grams, Pakistani Currency worth 26,800/- and a note book were recovered. Hence the instant case.

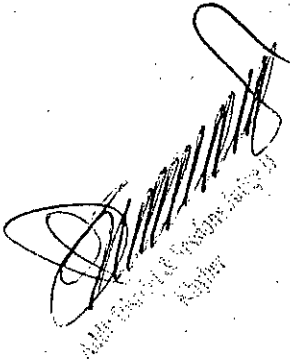
On conclusion of the investigation, complete challan was drawn and the matter was sent up for trial accordingly.

Accused Wakeel Ahmad and Hussain Akbar on bail present. Provisions of section 265-C Cr.P.C was complied with and charge was framed on 24.09.2020 to which the accused pleaded not guilty & claimed trial.

In order to substantiate guilt of the accused, the prosecution placed reliance on the statement of Akbar Khan SHO as PW-1, Nauman DFC as PW-2, constable Sikandar as PW-3, Zulfiqar SI as PW-4, Maaz ud Din SI as PW-5, Hazrat Munir ASO as PW-6, Rafi Ullah muharrir as PW-7 and Israr HC as PW-8.

Akbar Khan SHO appeared as PW-1 stated on oath that he has submitted complete challan against both the accused facing trial which is ExpW 1/1 and similarly he also submitted supplementary challan against accused Hussain Akbar which is ExpW 1/2. Today he has seen both the exhibits which correct and corrects bears his signature:

Nauman DFC appeared as PW-2 and stated on oath that he was entrusted with the warrants of arrest under section 204 Cr.P.C issued against accused Hussain Akbar s/o Khan Akbar r/o Wazir Dhand. He has searched for the accused in his village as well as in the surrounding area but the accused was avoiding his lawful arrest, therefore, he returned the warrant unexecuted along with his report on back which is ExSW-2/1. Similarly, he was also entrusted with the proclamation notices U/S 87 Cr.P.C issued against the accused named above, which

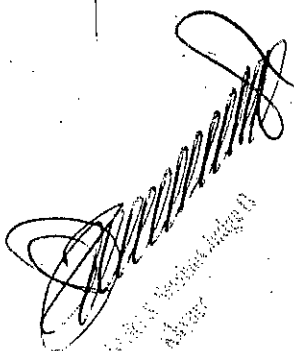


Nauman DFC
24/09/2021

ATTESTED
24/09/2021
(Examiner)
Secty. Genl. J. J. J.

he had served in accordance with the prescribed procedure and returned copies of the same to the judicial file alongwith his reports on back which is ExSW-2/2 and ExSW-2/3. He has affixed the said notice on the main door of the house of accused named above. Today he has seen the above referred documents which are correct and correctly bear his signature.

Constable Sikandar appeared as PW-3 and stated on oath that on 05.02.2020 at about 17:05 hours he alongwith Mirdad were present with Maaz ud Din ASI during patrolling. On receiving information regarding the selling of contraband at the hujra of Hussain Akbar, they raided there. They found accused Wakeel Ahmad from whose possession polythene bag was recovered wherein heroin, ICE (methamphetamine) and money i.e. 26800/- (money of sell and purchase of narcotics) were found. On weighing heroin, it appeared 200 grams whereas ICE (methamphetamine) appeared 110 grams. Samples were separated for chemical examination and samples alongwith the contraband sealed and stamped while affixation of monogram. Similarly, register regarding the detail of sell and purchase of Narcotic contraband was also recovered. Regarding the occurrence recovery memo was prepared to which he is marginal witness which is ExPW 3/1, similarly, mirasala was also prepared in his presence. He is also marginal witness to the pointation memo which is ExPW

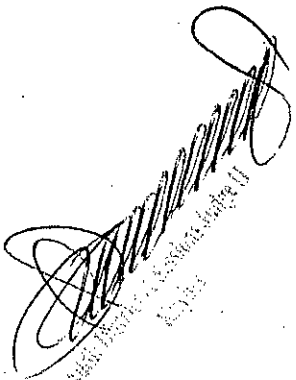

Maaz ud Din ASI
Assistant Sub-Inspector
Faisalabad

ATTESTED

(Examiner)
Session Court Faisalabad

3/2. Today he has seen both exhibits which are correct and correctly bears his signature. His statements were also recorded by the IO in the instant case.

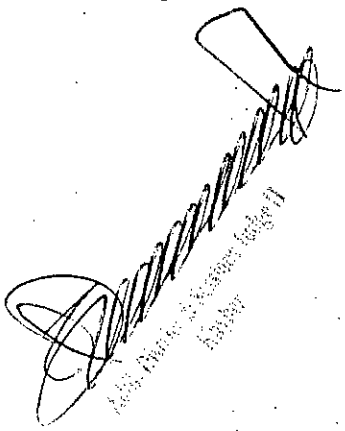
Zulfiqar SI appeared as PW-4 and stated on oath that after registration of instant case, copy of FIR and morasila were handed over to him therefore, left for spot in connection of investigation. He prepared site plan ExPW 4/1 on pointation of seizing officer as well as marginal witness to the recovery memo. He produced accused facing trial Wakeel vide application ExPW 4/2 before ilaqa magistrate for obtaining police custody in accordance with law. The learned JMIC granted him 02 days physical custody of the accused facing trial. During course of investigating / interrogation accused facing trial Wakeel confessed his guilt and told about association of co-accused Hussain Akbar and became ready for pointation of place of recovery / occurrence. He prepared pointation memo already exhibited ExPW 3/2 upon pointation of accused facing trial Wakeel in the presence of marginal witness. He nominated accused Hussain Akbar on the basis of 161 Cr.P.C. statement of co-accused Wakeel Ahmad. He then produced accused Wakeel Ahmad vide application ExPW 4/3 before JMIC for recording his confessional statement. On 22.02.2020, he obtained warrant of arrest u/s 204 Cr.P.C. against accused facing trial Hussain Akbar vide application ExPW 4/4 and entrusted the same to DFC concerned for


Zulfiqar SI
10/02/2021

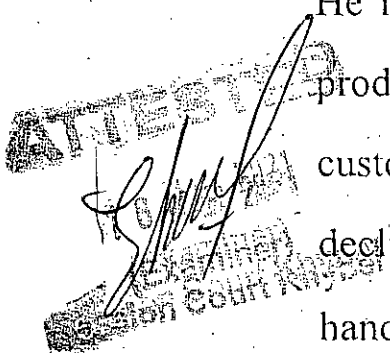
ATTESTED

10/02/2021
(Examiner)
Session Court Khyber

compliance. Warrant of arrest issued u/s 204 Cr.P.C. against accused facing trial Hussain Akbar ExPW 4/5. On 06.03.2020, he obtained proclamation notice u/s 87 Cr.P.C. vide application ExPW 4/6 from the court of learned JMIC against the accused Hussain Akbar and entrusted the same for compliance in accordance with law to DFC concerned. Proclamation notice u/s 87 Cr.P.C is ExPW 4/7. After receipt of the FSL report which is ExPW 4/8 in respect of recovered contraband in positive was placed on file. After completion of investigation, the case in hand was handed over to SHO for submission of challan in accordance with law i.e. u/s 512 Cr.P.C. against accused facing trial Hussain Akbar and complete challan against accused facing trial accused Wakeel. Accused Husain Akbar applied for BBA which was declined by the court of Honorable ASJ-I Khyber. On 03.06.2020, he arrested accused Hussain Akbar and prepared his card of arrest ExPW 4/9. He produced accused Hussain Akbar before the learned JMIC vide ExPW 4/10 for police custody. One-day custody was granted to me by the learned JMIC Khyber. He recorded statement of accused Hussain Akbar and produced him vide application ExPW 4/11 for further custody in the court of JMIC Khyber which was declined. After completion of investigation, he then handed over the case to SHO concerned for submission



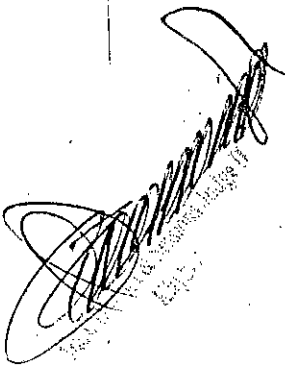
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of supplementary challan against accused facing trial Hussain Akbar.

Maaz ud Din SI appeared as PW-5 and stated on oath that on 05.02.2020 at about 17:05 hours, he alongwith Mirdad and Sikandar were present during patrolling. On receiving information regarding the selling of contraband at the hujra of Hussain Akbar, they raided there. They found accused Wakeel Ahmad from whose possession polythene bag was recovered wherein heroin, ICE (methamphetamine) and money i.e. 26800/- (money of sell and purchase of narcotics) were found which he has taken through recovery memo which is already been exhibited as ExpPW- 3/1 and recovered contraband is Exp-1, Exp-2 and recovered money of selling and purchase of narcotics is Exp-3. On weighing heroin, it appeared 200 grams whereas ICE (methamphetamine) appeared 110 grams. Samples were separated for chemical examination and samples alongwith the contraband sealed and stamped while affixation of monograms. Similarly, register regarding the detail of sell and purchase of Narcotic contraband was also recovered which is Exp-4. he issued card of arrest which is ExpPW- 5/1 and drafted murasila which is ExpPW- 5/2. Murasila was handed over to constable Sikandar for its transmission to the PS for registration of FIR. Today he has seen the relevant exhibits which are correct and correctly bears his signature.



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(Examiner)
Session Court Khyber

Hazrat Munir ASHO appeared as PW-6 and stated on oath that on receiving murasila from Maaz ud Din ASI through constable Sikandar, he has endorsed / scribed FIR which is ExPW- 6/1. Today he has seen relevant exhibit which is correct and correctly bears his signature.

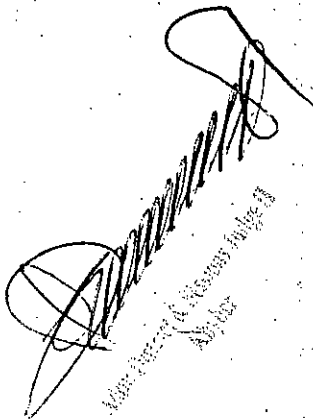
Rafi Ullah muharrir appeared as PW-7 and stated on oath that on 05.02.2020, he was handed over with the case property in the instant case. On receiving case property, he made entries in register No.19. The extracts of said register is ExPW- 7/1. Similarly, he has handed over the parcels taken for chemical examination to Israr Ullah HC for its transmission to FSL for chemical analysis through route certificate No. 45/21 ExPW- 7/2. Today he has seen relevant exhibits which are correct. His statement was also recorded by the IO in the instant case.

Israr HC appeared as PW-8 and stated on oath that samples in the instant case were handed over to him by Rafi Ullah Muharrar through route certificate No. 45/21 already been exhibited as ExPW- 7/2 for its transmission to FSL for chemical analysis. He submitted parcels to the FSL where the official affixed their stamp on said route certificate. He came back to the PS and submitted the said route certificate there. Today he has seen the relevant exhibit which is correct. Beside this his statement was also recorded by the IO in the instant case.

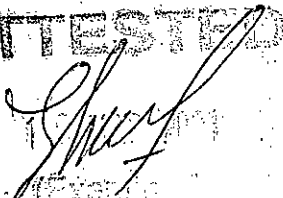
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(Examiner)
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- PW-3 being marginal witness undergoing cross examination regarding accused Hussain Akbar unequivocally replies at the tale-end of his cross examination terms it correct that in his presence nothing has been recovered from the accused Hussain Akbar. This disclosure strikes at the root of the case of prosecution particularly when it comes to role of accused Hussain Akbar. Similarly, regarding accused Wakeel Ahmad the witness says it correct that the date, time and place of patrolling or information received qua the alleged presence of narcotic contraband are not mentioned in both exhibited documents i.e. ExpW- 3/1 and ExpW- 3/2. He also says it correct that in his presence the provision of 103 Cr.P.C. was not complied inspite of the prior information. Similarly, he accedes the non-specification of scale and the allegedly recovered currency notes and also states it correct that daily diary with regard to their departure from and arrival to the PS is not available on the case file. The cross examination upon this witness squarely reveals the fragility of his stance taken in the chief examination particularly with regard to the mode and manner of the offence as



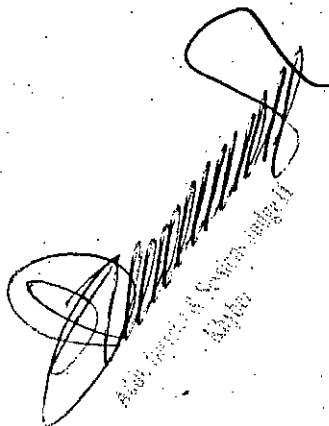
Witness
Name: Hussain Akbar
Address: Hussain Akbar

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Session Judge

initially alleged and the proceedings on spot as required by law.

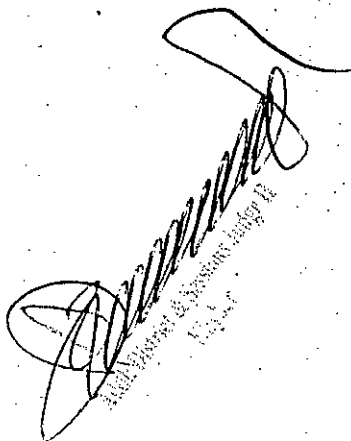
PW-2 is the DFC who gives detail of the service of notices and his visits and from whose cross examination nothing consequential bears out.

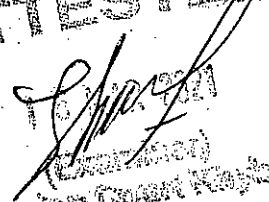
PW-4 The IO of the case after being subjected to cross examination for both the accused replies in his cross examination regarding accused Wakeel Ahmad that he cannot specify the exact point at which he had received information. How comes that the witness is unable to pinpoint the exact location on which he received information. Similarly, he is unable to give any word regarding entry in the relevant register nor the mad report (DD report) in connection of patrolling in the area of Wazir Dhand. As per the witness, he had not felt the necessity of associating private witness at the relevant time inspite of the fact that the raid was made in the wake of spy information. The witness is unable to give a proper account regarding the search of accused Wakeel Ahmad, the color of the cloths of the accused, the hand



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Session Court Raybar

(left or right) of the accused in which he was allegedly holding the polythene bag, the method of measurement of the recovered contraband and the denomination of the recovered money. This goes against the grain of common sense as how an IO can remain oblivious of the common things associated with the investigation of a case. Confronted with the cross examination with regard to accused Hussain Akbar, he admits that Hussain Akbar was not arrested on spot nor he (accused Hussain Akbar) told that accused Wakeel Ahmad deals in contrabands for him. The witness admits that he had not associated any notable of the area despite the fact that the raid was necessitated in the wake of spy information. A very revealing circumstance comes to the fore when the witness at the tale-end his cross examination clearly mentions that he has not seen running away of accused Hussain Akbar from the spot nor someone informed him that the accused Hussain Akbar decamped from the spot immediately before or at the time of the raid.



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PW-6 is the scribe of FIR who does not remember at what time he had handed over copy of FIR to Zulfiqar Khan IO in the instant case. This revelation does not appeal to common sense.

PW-7 the muharrir of PS Jamrud in the course of cross examination replies that he had not mentioned the name of Israr Ullah regarding the handed over of parcels for its transmission to FSL and admits that he has not mentioned about the official carrying the murasila in register No. 19 ExPW- 7/1. Strange enough the witness admits that he has not mentioned in his chief examination that the parcels were in sealed condition nor the same was recorded in his statement u/s 161 Cr.P.C. Similarly, the witness clearly replies that he has not mentioned the date on which he has handed over the parcels for FSL to constable Israr Ullah in the relevant page of register No. 19. This contradiction does not seem resolved in the chief and cross examination of the witness. The witness in the round of cross examination terms it clerical mistake that in the relevant column,



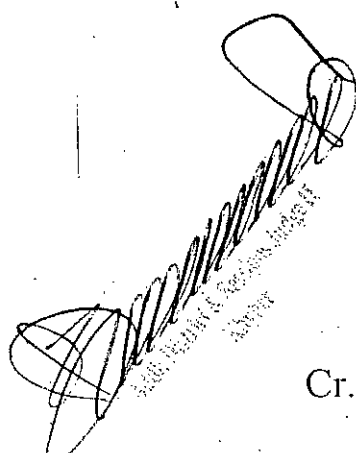
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(Examined)
Session Court, Jaipur

parcels No. 03 has been shown as parcel carrying contraband heroin and volunteers that the same is meant for ICE.

PW-8 carrier of samples openly states it correct that he had not mentioned in his chief examination and statement u/s 161 Cr.P.C. that the samples were in sealed condition and by volunteering hypothesizes that the samples is always in sealed condition. He terms it correct that his signature was not taken in the relevant column of register No. 19. The entire account of the chief and cross examination of this witness does not portray wholesome picture of the safe, sealed custody and dispatch of the entire contraband to the FSL.

The accused was examined under section 342 Cr.P.C. and he was confronted with the inculpatory / incriminatory part of the evidence during the course of which he pleaded his innocence and brushed aside the allegation of the prosecution on technical as well as factual sides. He neither opted to take oath nor wished to produce evidence against the allegation setup by the prosecution.



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Session Court

APP for State argued that it is none other but the accused whose apprehension on spot led to the recovery of contraband heroin 200 grams, methamphetamine (ICE) 110 grams. That immediately after the arrest, the entire codal formalities as envisaged under CNSA were complied and as a result of the trial, the offence against the accused stood proved from all the four corners. That the statements of the recovery and other witnesses do not bring about any element of doubt qua the taking of the incidence and the recovery of the contraband. That accused is liable to be convicted and sentenced to full dose.

Counsel for defense while brushing aside the contention of the APP vehemently argued that the arrest of the accused is dubious and false implication cannot be ruled out. That the entire evidentiary stuff is replete with material contradictions and weaknesses leaving a wide room for the acquittal of the accused. That the entire stuff of cross-examination fully denotes that no witness stood firm to the volley of questions put to them during the respective cross-examinations. That the said cross-examinations fully reveal the element of reasonable doubt which circumstance inescapably goes in favor of the accused. That the accused is outrightly entitled to acquittal.

Arguments heard. Record perused.

- Thrashing the entire evidentiary stuff in its proper perspective, it needs no in-depth elaboration that the statements of all the PWs are at sixes and sevens when it comes the question of requisite proceedings on spot, the safe custody of the contraband, proper entries in the relevant register, the proper sampling and sealing of the contraband for the purpose of laboratory, the timely dispatch of the samples to FSL and following protocols as envisaged under the law in field. That stated circumstances of the case cast direct aspersions on the case of prosecution in its entirety. Guidance may be had from 2011 SCMR 820:

(a) *Control of Narcotic Substances Act (XXV of 1997)*

---S. 9(c)----- *Delay of more than seven days in sending the samples of narcotics to Chemical Examiner for analysis was also not explained by the prosecution---Accused was acquitted on benefit of doubt in circumstances.*

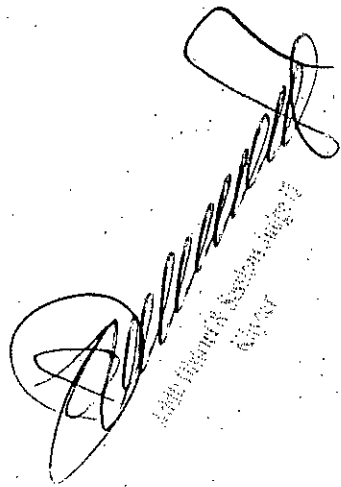
PLD 2020 Supreme Court 57

(a) *Control of Narcotic Substances (Government Analysts) Rules, 2001---*

---R. 6----- *Report of the Government Analyst must show*

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that the test applied was in accordance with a recognized standard protocol---Any test conducted without a protocol lost its reliability and evidentiary value---To serve the purposes of the Control of Narcotic Substances Act, 1997 and the Control of Narcotic Substances (Government Analysts) Rules, 2001, the report of the Government Analyst must contain three elements, i.e. the tests applied; the protocols applied to carry out these tests; and, the result of the test(s)---Report of the Government Analyst which did not specify the protocols of the tests applied did not meet the requirements of the law---Such a Report could not be relied upon for the conviction of an accused. [Context of 'protocol' as explained in the judgment reported as (Ikramullah's case 2015 SCMR 1002, Imam bakhsh's case 2018 SCMR 2039 and Khair-ul-Bashar's case 2019 SCMR 930) further clarified].



Government Analyst

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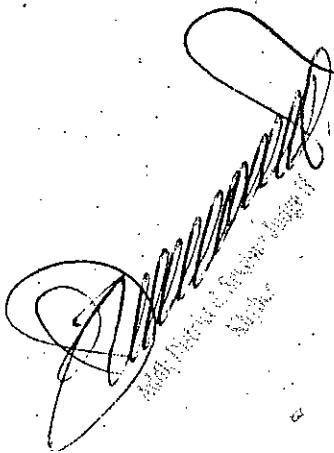
This position of the case inescapably gives rise to the element of reasonable doubt. This is held in host of authorities of august Superior Courts that *even a single circumstance of doubt if found reasonable is sufficient for the acquittal of an accused.*

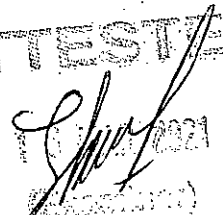
No sound and impressive reason is forthcoming on the record to justify the inordinate delay of the samples to the FSL. Besides, the record does not unequivocally establish that the contraband i.e. heroin and methamphetamine had been kept in safe custody particularly during the intervening period. A best insight may be had from

2018R 2039

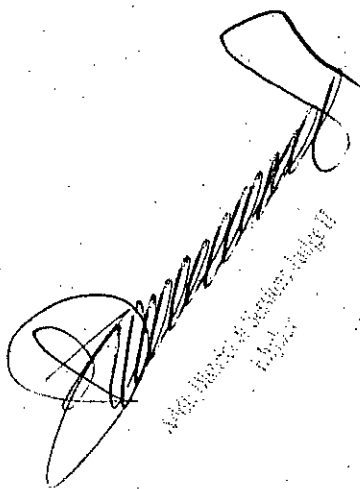
(a) *Control of Narcotic Substances (Government Analysts) Rules, 2001---*

---Rr. 5&6---Control of Narcotic Substances Act (XXV of 1997), S. 9---Possession of Narcotics---Report of Government Analyst---Safe custody and transmission of samples of the alleged drug from the spot of recovery till tis receipt by the Narcotics Testing Laboratory---Chain of custody began with the recovery of the seized drug and their dispatch to



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the Narcotics Testing Laboratory---Said chain of custody, was pivotal, as the entire construct of the Control of Narcotic Substances Act, 1997 and the Control of Narcotic Substances (Government Analysts) Rules, 2001 rested on the report of the Government analyst, which in turn rested on the process of sampling and its safe and secure custody and transmission to the laboratory--- Representative samples of the alleged drug must be in safe and undergo safe transmission from the stage of recovery till it is received at the Narcotics Testing Laboratory---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, would cast conclusiveness and reliability of the report of the Government Analyst, thus,



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S. M. Khan
Deputy
Session Court Officer

rendering it incapable of sustaining conviction.

2020 MLD 352

(a) *Control of Narcotic Substances Act (XXV of 1997)---*

---S. 9(c)-----*Safe custody of the samples and case property was not proved, in circumstances-*

--*Record was silent as to where the samples and case property remained from 28.11.2016 to*

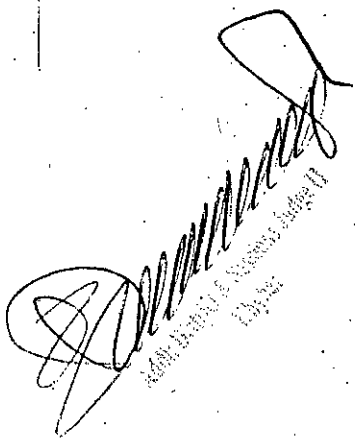
02.12.2016, when it was received in Forensic Science Laboratory with as considerable and unexplained delay of 4/5 days---

Prosecution had failed to prove its case against the accused

beyond any shadow of doubt---

The instant case of prosecution is nonetheless replete with doubts and inconsistencies and does not afford any meaningful cushion to sustain it. Thus the prosecution has failed to substantiate the charge against the accused.

Even as a formal expression on verbatim level no justification is borne out from the record as to the long procrastination and indulgence of the officials concerned vis-à-vis the safe custody of the contraband, proper entries thereabout in the daily diary qua the



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(Deputy)
Session Court, Lahore

dispatch and return of the contraband and the departures and return of the official / officials concerned in this regard. No single circumstance comes to the fore to suggest that during the intervening period the alleged contraband was kept in safe custody by the so and so official / officials as per the law in the field.

In the light of whatever was held, the prosecution has failed to substantiate the charges against the accused and thus while extending the benefit of doubt on the grounds mentioned above the accused are acquitted from the charges levelled against them. Their sureties are discharged from their respective liabilities.

Case property confiscated to the state after the expiry of 30 days if no appeal / revision was preferred.

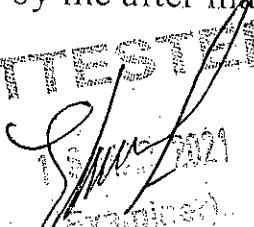
File be consigned to record room after necessary completion and compilation.


Announced
11.03.2021


ALI GOHAR
ASJ-II / JSC, Khyber

CERTIFICATE

This judgment of mine consists of 19 pages, each page has been verified and signed by me after making corrections wherever necessary.

ATTESTED

15/03/2021
Examined
Session Court, Khyber


ALI GOHAR
ASJ-II / JSC, Khyber