

**BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
AT PESHAWAR**

SERVICE APPEAL _____/2021

Hanifullah.....Appellant

VERSUS


Secretary Home KPK, & others..... Respondents

**SCANNED
KPST
Peshawar**

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Appellant through Counsel


SYED ABDUL HAQ (ASC)
HIGH COURT DARULQAZA
BAR ROOM SWAT
Cell No 0311-0950959

BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
AT PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

SERVICE APPEAL 4982/2021

Diary No. 5166

Dated 03/05/2021

Hanif Ullah Son of Muhammad Zaman Resident of Shenkari
Tehsil Wari District Dir Upper, Seopy Regiment No.212
Provincial Levies Dir UpperAppellant

VERSUS

- 1) Secretäry Home Khyber Pakhtunkhwa, at Peshawar.
- 2) Govt of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat Peshawar.
- 3) Commandant Dir Levies/Deputy Commissioner District
Dir Upper.....Respondents

APPEAL UNDER SECTION 4 OF THE GOVT. OF

KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL

ACT, 1974 AGAINST THE ILLEGAL, UNLAWFUL

ACTION WHEREBY THE OFFICIAL

RESPONDENTS REJECTED THE APPEAL

RESULTANTLY THE APPELLANT WAS

REMOVED FROM SERVICE VIDE ORDER

DATED 16.04.2018.

Filed to-day

Registrar

03/05/2021

Respectfully Sheweth;

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The facts of the instant are as under.

1. That the appellant was appointed as Sepoy in Dir Levies vide order No.5100-03/DCO/LHC dated 29.06.2005 **(attached as Annexure-A)**.
2. That the appellant served the respondent Department with zeal and zest but unfortunately someone involved him alongwith others in Criminal Case, by lodging F.I.R bearing NO. 285 dated 31-08-2009 registered at Police Station Wari, District Dir Upper. **(Copy of FIR is attached as annexure-B)**.
3. That the appellant was taken into custody and was kept in judicial lock. In the meanwhile the he was terminated by the respondent No.2 vide office order dated 10.12.2009 under the ordinance i.e. Removal from Service, 2000 **(Copy of the Removal order dated 10.12.2009 is attached as annexure-C)**.

4. That, as and when the appellant got knowledge about his removal from service, he filed the departmental appeal and after hearing he was re-instated in service vide order dated 18.04.2013 although the appellant at the time of his re-instatement was in down District due to threats in account of alleged criminal case, although the appellant was acquitted in the case *ibid* vide judgment dated 03.03.2012. ***(Copy judgment dated 03.03.2012 and re-instatement order dated 18.04.2013 are attached as annexure-D and E).***

5. That after acquittal the complainant party filed appeal against acquittal and after hearing the main Criminal Appeal bearing No. 40-M/2012 titled as Muhammad Zaman VS The State was decided however, the appeal of appellant was become infructuous vide judgment dated 11.12.2015.

6. That the department mala fidely kept concealed the re-instatement order i.e. 18.04.2013 that's why the appellant was un-able to appear for duty and the

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appellant was again terminated vide order dated 14.07.2014. **(copy of order dated 14.7.2014 is attached)**

7. That when the appellant mentally relaxed after patching up the matter, got knowledge qua his removal, he filed departmental appeal but the same was turned down by the concerned authority vide office order dated 16.4.2018. **(Copy of office order dated 16.04.2018 is attached as annexure-F)**

8. That the appellant filed writ petition bearing No.740-M/2018 whereby the honourable Peshawar High Court called for comments from respondents which were duly submitted. **(Copy of writ petition alongwith comments are attached).**

9. That after hearing the honourable Peshawar High Court declared the appellant as Civil Servant and directed the appellant to seek pursue his remedy before the Provincial Service Tribunal vide judgment

dated 09.04.2021 (*Copy of the judgment dated 09.04.2021 is attached as annexure-G*)

10. That the grievances of appellant are still intact having left no other remedy except to file the instant petition on the following grounds.

GROUND

- A. That the act of respondents as removed the appellant from service is one sided, illegal, cruel, unlawful, against the norms of justice, hence amounts to condemn unheard.
- B. That the appellant was removed from service vide order dated 14.07.2014 under the provision of the Khyber Pakhtunkhwa Government Servant Efficiency and Discipline rules 2011 but initiating the proceedings has not been followed as no show cause notice under the relevant provision of law has been issued, so such impugned removal

order is lack backing of law hence not maintainable.

- C. That in the instant case i.e. in case of alleged absence, the competent authority is bound to issue a notice via registered acknowledgement on his home address directing him to resume duty, but no such mode under the law has been adopted, so such order is nullity in the eyes of law and liable to be struck down.
- D. That the petitioner served the respondent department for sufficient period and the penalty imposed upon him is so harsh and is against the law on subject, hence not maintainable.
- E. that the respondents at the time of removing the appellant from service was duty bound to proceed the appellant under the Provincial Rules 2013, but being employee of Dir levies he was proceeded under the Khyber Pakhtunkhwa Government Servant Efficiency and Discipline Rules 2011,

which has only framed from a Civil Servant. So, on this analogy the impugned removal order is liable to be set aside

- F. That the appellant seeks leave of this honourable court to raise/argue any additional points at the time of arguments.

It is, therefore, humbly prayed on acceptance of this appeal in the light of aforementioned submissions, the order dated 16.04.2018 may kindly be set aside and the appellant may kindly be re-instated in service from the date of his removal with all back benefits.

Appellant Through

Hanif ulha

Syed Abdul Haq,
Advocate, Supreme Court
0311-0950959

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28. Thus, while following the law laid down by the Apex Court, we hold that the present petitioners may pursue their remedy before the Provincial Services Tribunal within the statutory period of limitation commencing from the date of issuance of certified copies of this judgment.

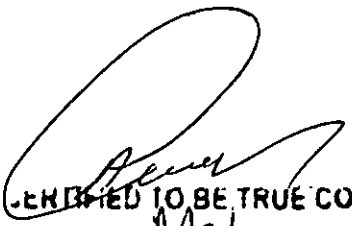
29. All the petitions stands disposed of accordingly.


ANNOUNCED.
Dated: 09.04.2021

Senior Puisne Judge

Judge

No. 33860
 Date of Presentation of Application 19/4/21
 No of Pages 97-9
 Copying fee 108
 Total 108
 Date of Preparation of Copy 23/4/21
 Date of Delivery of Copy 23/4/21
 Received By [Signature]


 EXAMINED TO BE TRUE COPY
 Examiner
 Peshawar High Court, Peshawar
 Authorized Under Article 8.7 of
 the Constitution of Pakistan Order 1985
 23 APR 2021


 Nawab Shah CS (DB) Justice Rooh-ul-Amin Khan & Justice Syed Arshed Ali J

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**BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
AT PESHAWAR**

SERVICE APPEAL _____/2021

Hanifullah.....Appellant

VERSUS

Secretary Home KPK,& others..... Respondents

CERTIFICATE

As per instruction of my client no such like appeal,
earlier has been filed by the appellant on the subject matter
before this Hon'able Tribunal.


ADVOCATE

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**BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
AT PESHAWAR**

SERVICE APPEAL _____/2021

Hanifullah.....appellant

VERSUS

Secretary Home KPK,& others..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT


Hanif Ullah Son of Muhammad Zaman Resident of
Shenkari Tehsil Wari District Dir Upper, Seopy Regiment
No.212 Provincial Levies Dir Upper

CNIC 1570225196181 MOB: 0345-9008194

RESPONDENTS

1. Secretary Home Khyber Pakhtunkhwa, at Peshawar.
2. Govt of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat Peshawar.
3. Commandant Dir Levies/Deputy Commissioner District
Dir Upper

Appellant, through Counsel


SYED ABDUL HAQ (ASC)
HIGH COURT DARULQAZA
BAR ROOM SWAT
Cell No 0311-0950959

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
AT PESHAWAR

Service appeal No. _____ -M/2021

Hanif Ullah (Petitioner)

VERSUS

Sectary Home KPK & others..... (Respondents)

AFFIDAVIT

I, Altaf Hussain S/o Muhammad Zaman Khan R/o Akhagram, Shinkari, Tehsil Wari, District Upper Dir, (attorney of the petitioner), do hereby solemnly affirm and declares on oath that, all the contents of the accompanying **appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed or withheld from this august court.**

DEPONENT



[Handwritten signature]

ALTAF HUSSAIN

NIC No. 15702-0186578-3

OFFICE OF THE DISTRICT COORDINATION OFFICER UPPER DIR

OFFICE ORDER

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As approved by the competent authority and conveyed by the Section Officer (SPL:H) Government of NWFP Home & Tribal Affairs Department Peshawar in his letter No.2/5-SOS-11/H15/99/Vol.36 dated 20-10-1999, the following persons of Upper Dir District are hereby recruited as Sepoys in BPS-1 in Dir Levies Provincial against the vacant posts of Sepoys subject to the production of Health and Age certificates from the Medical Superintendent Upper Dir. They will produce surety bonds to the effect that they will neither cultivate poppy on their lands nor will loan it out to any other person for such like purpose. In case of violation of the bond, they will be liable from the service will also be liable to pay Rs.50,000/- in penalty to the Government.

S.No.	Name	Father's Name	Residence
1.	Sartaj Khan	Gul Rasool	Almas
2.	Amjad Ali	Aqal Mohammad	Tarpatar
3.	Inayatullah	Bakht Zamin	Jabber
4.	Shakirullah	Sher Zamin	Kahs Bibyawar
5.	Shah Khalid	Raza Khan	Toomang
6.	Wakil Badshah	Shah Ambar Khan	Akhgaur
7.	Hanifullah	Mohammad Zaman	Shilganj
8.	Luqat Ali Khan	Gul Ambar Khan	Daskore
9.	Mohammad Jamil	Amir Bahadar	Gorral
10.	Shah Jehan	Gujar Khan	Dogram
11.	Zahoor Khan	Abidullah	Disthwan
12.	Mohammad Ayub	Nasib Rawan	Sundal
13.	Ghoushullah Khan	Fateh Mohammad	Galkore
14.	Badshah Zada	Habibur Rahman	Karpal
15.	Aitwar Wali	Fazal Ratuman	Kharposai
16.	Usul Mohammad	Asal Mohammad	Unrilar
17.	Ishtiaq Zada	Badshah Zada	Katigam
18.	Ismaail	Abdul Jabbar Khan	Jatgram
19.	Islamuddin	Jan Bakht Khan	War Payeen

District Coordination Officer
Upper Dir.

No. S/00-03/DCO/LHC

Dated

Dir the, 29/10/2005.

Copy forwarded to the:-

- 1. Zila Nazim, Upper Dir.
- 2. Section Officer (SPL:H) Home & Tribal Affairs Department Peshawar.
- 3. District Accounts Officer, Upper Dir.
- 4. Officials concerned for compliance.

District Coordination Officer
Upper Dir.

[Handwritten signature]

TESTED
TRUE COPY

Attested
to be true copy

OFFICE OF THE DISTRICT COORDINATION OFFICER UPPER DIROFFICE ORDER.

As approved by the competent authority and conveyed by the section officer (SPL II) Government of NWFP Home & Tribal Affairs Department, Peshawar in letter No. 2/5-SOS-II/HF/99/Vol:36 dated 20-10-1999, the following persons of district are hereby recruited as sepoy in BPS-1 in Dir Levies provincial government the vacant posts of sepoy subject to the production of Health and Age certificate from the medical superintendent Upper Dir, they will produce surely bonds in the effect that they will neither cultivate poppy on their lands nor will lease it out to any other person for such like purpose. In case of violation of the bond, they will besides from the service will also be liable to pay Rs. 50,000/- as penalty to the Government.

S. No	Name	Father's Name	Residence
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3.	Inayat Ullah	Bakht Zamin	Jahber
4.	Shakir Ullah	Sher Zamin	Kass Bibyawar
5.	Shah Khalid	Raza Khan	Toormang
6.	Wakil Badshah	Shah Ambar Khan	Akhagram
7.	Hanif Ullah	Mohammad Zaman	Shinkaral
8.	Liaqat Ali Khan	Gul Ambar Khan	Daskore
9.	Mohammad Jamil	Amir bahadar	Goral
10.	Shah Jehan	Gujar Khan	Dogram
11.	Zahoor Khan	Abdullah	Dishawar
12.	Mohammad Ayub	Nasib Rawan	Sundal
13.	Saeed Ullah Khan	Fateh Mohammad	Galkore
14.	Badshah Zada	Habib Ur Rahman	Karpal
15.	Anwar Wali	Fazal Rahman	Kharposal
16.	Fazal Muhammad	Asal Muhammad	Umialal
17.	Wazir Zada	Badshah Zada	Kaligram
18.	Ismail	Abdul jabbar Khan	Jatgram
19.	Islam Uddin	Jan Bakht Khan	Wail Payeen

District Coordination Officer
Upper

No. 5100-03/DCO/LHC dated Dir the, DCO/LHC dated Dir the, 29/6/2005
Copy forwarded to the:-

1. Zila Nazim Upper Dir.
2. Section officer (SPL:H) Home & Tribal Affairs Department Peshawar.
3. District Accounts Officer, Upper Dir.
4. Officials Concerned for Compliance.

District Coordination Officer
Upper Dir

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DISTRICT CO-
C/O

ضابطہ 1

صاحب
میل بکس 49 ورسیل بلوچستان
کے لیے طلبی عدالت AST کے لیے ورسیل
میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
m-m-wan
9-10-09

صاحب
میل بکس 49 ورسیل بلوچستان
کے لیے طلبی عدالت AST کے لیے ورسیل
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میری 470 23 10 9
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m-m-wan
19-12-09

صاحب
میل بکس 49 ورسیل بلوچستان
کے لیے طلبی عدالت AST کے لیے ورسیل
میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
m-m-wan
5-20-09

صاحب
میل بکس 49 ورسیل بلوچستان
کے لیے طلبی عدالت AST کے لیے ورسیل
میری 470 23 10 9
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میری 470 23 10 9
m-m-wan
5-20-09

ضابطہ 1

صاحب
میل بکس 49 ورسیل بلوچستان
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میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
m-m-wan
13/10/09

صاحب
میل بکس 49 ورسیل بلوچستان
کے لیے طلبی عدالت AST کے لیے ورسیل
میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
m-m-wan
2-14-12-09

ضابطہ 1

صاحب
میل بکس 49 ورسیل بلوچستان
کے لیے طلبی عدالت AST کے لیے ورسیل
میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
میری 470 23 10 9
m-m-wan
15-12-09

نوٹ: اطلاع کے نیچے دہندہ کا دستخط ہوگا۔ یا اس کی مہر نشان لگایا جائے گا اور اس پر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق
حروف الف بابت روشناسی سے بالمقابل نام ہر ایک ملزم یا مشتہر علی الترتیب واسطے باشندگان علاقہ یا وسط اسیامہ یا افغانستان جہاں
موزوں ہو لکھنا چاہیے۔

11-05-09

ابتدائی اطلاعی رپورٹ

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

دیر بالا	ضلع	واڑی	تھانہ
31-08-09 وقت 17:30	تاریخ وقت وقوع	205	علاقہ نمبر
31-08-09 وقت 19:50 بجے	چالیدگی پتہ	31-08-09 وقت 19:20	تاریخ وقت رپورٹ
فرید اللہ ولد محمد آمین قوم مزید نیل ہمر 35/36 سال ساکن شنکازی			سکونت اطلاع دہندہ استنبیث
302/348/148/149/427			مختصر کیفیت جرم (معدومہ) حال اگر کھولیا گیا ہو
خانہ واعی واقع شنکازی بناصلہ 15/16 کلومیٹر جانب جنوب از تھانہ			جائے وقوع فاصلہ تھانہ سے اور سمت
			نام و سکونت ملزم
			کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرے
پہنچیل ڈاک			تھانہ سے روانگی کی تاریخ و وقت
پرسیدگی تحریری معاصلہ پر چلایا گیا			

ابتدائی اطلاع نیچے درج کرو

بوقت صدر ایک تحریری مراسلہ منجانب عزیز الزمان خان بدست سبیل رحمت اللہ 223 موصول ہو کر ذیل ہے۔ بخدمت افسرانچارج تھانہ واڑی امرود میں مع نفری پولیس حسب اطلاع واڑی RH واڑی اکراپیر جنسی وارڈ میں مستانیٹ بالا کالغش بیت امراہ بیت مبارک زیب ولد خانزادہ ساکن دیہہ آش رپورٹ کرتا جبکہ میں نے اپنے گھر کے استعمال کے لئے خوڑ تنگے سے پانی کا پائپ بھیجا یا تھا۔ آج بوقت 17:30 بج مسیحا در خان، حنیف اللہ، الطاف حسین پیران عمر زمان، محمد زمان ولد انور خان، محمد منیر ولد محمود خان ساکنان شنکازی نے اگر مجھے کہا کہ پائپ اکاوں اور ساتھ ہی مجھ پر اسلحہ آئینے لنگ شروع کی جو محمد زمان کے فائرنگ سے میں دائیں ہاتھ کے بازو پر لگ کر زخمی ہوا ملزمان نے میرے مکان پر اندھا دھند فائرنگ کی جس کی وجہ سے مکان کو کافی نقصان پہنچا اور ہمارے علاوہ اور ہماری ام کے علاوہ حاجی معتبر ولد سید عمر، سلمان ولد جہان زیب وغیرہ ساکنان آم نے ہتھیار چھوڑ دیا ہے۔ میں اپنے آپ پر ارادہ قتل فائرنگ لگان رہائی کو نقصان پہنچانے بر خلاف شد کردہ کہان بالا دعویدار ہوں نشان انگشت میں مبارک زیب رپورٹ بالا کی تائید کرتا ہوں دستخط انگریزی کارروائی پولیس جب گفتہ کہ جسکی میں تصدیق کرتا ہوں، مجروح انیس ہاتھ بازو پر ڈٹی ہے۔ جس کی وجہ سے مجروح کا نقشہ ضرر مرتب کر کے بغرض علاج اکثری اور لڑ صاحب موصول رپورٹ ہے۔ امراہ بیت مبارک زیب اللہ 223 ارسال تھانہ ہے۔ تفتیش ہوں۔ مراسلہ گزارش ہے دستخط انگریزی عزیز الزمان خان مورخہ 31-08-09 تھانہ مراسلہ حرف بحرف درج و صدر و نقل پر چم مع اصل پر چم بدست کنسٹیبل بھیجوائے جاتے ہیں۔ افسران کو اطلاع دینی جا رہی ہے پر چم گزارش ہے۔

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OFFICE OF THE DISTRICT COORDINATION OFFICER UPPER DIR

OFFICER ORDER

Where as I Muhammad Javed Marwal District Coordination Officer Upper Dir in the capacity of competent authority under Section 2 (a) of the West Frontier Province Removal from Service (Special Powers) Ordinance, 2000 as amended vide NWFP Removal from Service (Special Powers) (Amended) Ordinance 2001 read with Notification No SOR-II(S&CAID)2000 Vol-III dated 28.09.2000 and of the considered opinion that Mr. Haniffullah Levy Sepoy (Provincial) Regimental No. 712 Upper Dir has been absent from duty since 31.03.2009 without sanctioning leave from the competent authority as reported by Subedar Major Di Levies. This act on the part of the official is against the office discipline and amounts to misconduct.

And whereas for the purpose of substantiating the conduct of the said accused with reference to the above allegations, Mr. Idris Muhammad Executive District Officer Finance & Planning Upper Dir was appointed as Inquiry Officer under Section 5 of the ordinance.

And whereas the Inquiry Officer recorded his findings and recommendations in his report "recommended him for removal from service". The charge against the accused has been proved in the meaning of section 3 of the said ordinance.

Now therefore I Muhammad Javed Marwal DCO Upper Dir in the capacity of competent authority am satisfied that the charge against the accused has been proved beyond any doubt. As a competent authority under the provisions contained upon me under Section 3 of the NWFP S&CAID Peshawar Notification bearing No SOR-II(S&CAID)1-80/73 dated 30.11.1973 impose major penalty of removal from service effect Recovery of salary for the absence period shall be made from the official concerned.

(Muhammad Javed Marwal) District Coordination Officer Upper Dir

No 16333-55 ACC/OLIC

Dated on the 10/12/2009

- 1 The District Accounts Officer Upper Dir
- 1 The Subedar Major Di Levies
- 3 Mr Haniffullah Levy Sepoy (Provincial) Regimental No. 712 Upper Dir

[Handwritten signature]
District Coordination Officer Upper Dir

Attended to be true copy

[Handwritten initials]

OFFICE OF THE DISTRICT COORDINATION OFFICER UPPER DIR

OFFICE ORDER.

Whereas Muhammad Javed Marwat District Coordination Officer Upper Dir of competent authority under section (a) of North West Frontier Province removal from service (special powers) ordinance, 2000 as amended vide NWFP removal from service (special powers) amended ordinance, 2001 read with notification No. SO-II(S&GAD)2000 Vol-III dated 28-09-2000 of the considered that MR. hanifullah sepoy provincial regimental commission.

"That he is absent from duty since 31.03.2009 without sanctioning leave from the competent authority as reported by sobedar Major Dir Levies. Thus act on the part of the absent the office description and amounts to misconduct."

And whereas for the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Mr. Fida Muhammad executive district officer finance & planning upper Dir was appointed as inquiry officer under section 5 of the ordinance.

And whereas the inquiry officer recorded his findings and recommendations in his report "recommended him for removal from service". The charge against the accused has been proved in the meaning of section of the said ordinance.

Now therefore ^{Satisfied} Muhammad Javed marwat DCO upper Dir in the capacity of competent authority an stashed that the charge against the accused has been proved beyond any doubt as a competent authority under the conferred upon the under section 3 of the NWFP S&GAD Peshawar notification No. SOS-III(S&GAD) 1-80/3 dated 30.11.19/3 purpose major penalty of removal from service levy sepoy (provincial)regimental No. Upper Dir with immediate recovery of salary for the absence period shall be made from the official's concerned.

(MUHAMMAD MARWAT)
District Coordination Officer Dir
Upper.

No.16303-55/ DCO/FIC

Dated Dir the, 10/12/2009.

Copy forwarded to the:-

1. The district accounts officer upper Dir.
2. The subedar Major Dir Levies.
3. Mr. Hanifullah Levy Sepoy (provincial) Regimental No. 212 Upper Dir.

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CAC

IN THE COURT OF TARIQ PERVEZ BLOCH, ADDITIONAL SESSIONS JUDGE/ IZAFI ZILLA QAZI
WARI, DIR UPPER

SESSIONS CASE NO. 126 OF 2010
DATE OF INSTITUTION 16.07.2010
DATE OF DECISION 03.03.2012

STATE VS MOHAMMAD ZAMAN ETC.

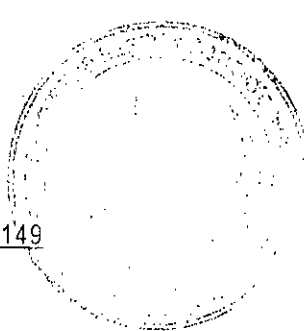
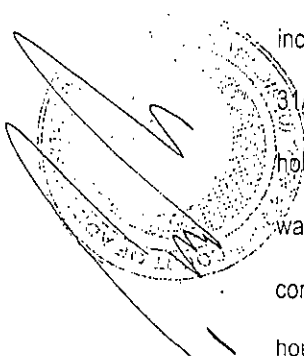
FIR No. 285 DATED 31.08.2009 U/S 302-427/148/149
PPC PS WARI, DIR UPPER.

JUDGEMENT

This judgment of mine will fix up the fate of the accused facing trial charged under Section 302-427/148/149 P.P.C vide Case FIR No. 285 dated 31.08.2009, Police Station Wari, Dir Upper.

This case has had its origin in the Marasla. It needs mention here that the deceased then injured Farid Ullah himself had told the tale of incident to the In charge Police Station in the emergency ward Rural Health Center (RHC) Wari in the presence of an eye witness one Mubarak Zeb S/o Khan Zada that read thus;

The in-charge police station knowing of the incident and coming of the deceased then injured Farid Ullah into the RHC Wari emergency room of the hospital, he got there in the hospital where the deceased then injured Farid Ullah told the tale of incident the way that he was laying down the water supply pipe in his house on 31/08/2009. It was around at 17:30 hours when all the accused facing trial got into the house commanding the complainant to undo the pipe and there with let out firing. It was the fire shot of the accused facing trial, Muhammad Zaman that hit the complainant in the right arm. The accused facing trial let out indiscriminate firing on his house giving a damn good damage. One Manidaar S/o Said Umer, Sulemaan S/o



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COURT ALIQUAD
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Jehan Zeb etc besides, the complainant and one Mubarak Zeb, insisted to have witnessed the scene of incident, hence, was the Marasia that was later on culminated into the FIR.

The Challan against the accused facing trial was put in court on 16.07.2010. The accused facing trial on bails were called to face the trial. On their coming in to Court they were supplied with the necessary copies of documents U/S 265-C Cr.P.C; they didn't confess to the guilt making this court frame the charge there against U/s 365-D Cr.P.C. Since, the prosecution had to establish the guilt of the accused facing trial through evidence, therefore, the prosecution was accorded the chance of leading evidence U/S 265-F Cr.P.C. the prosecution did get along with the following evidence.

بیان مبارک زب و لدخان زاہد مکملہ شہزاد کا زنی عمر 35 سال۔

PW-1

حلف نامہ بیان کیا کہ مورخہ 31/08/2009 کو میں میرا بیٹا مثنی دار اور فرید اللہ وغیرہ کے ساتھ موجود تھے اور ان کے ساتھ پانچ کا ہوتا ہوا تمام حالت چیت کر رہے تھے کہ بوقت 17:30 بجے مسلمان محمد زمان، محمد منیر، بھادر خان، الطاف حسین اور خلیف اللہ محمد منیر کی گھر کی طرف سے آ کر محمد زمان نے فرید اللہ کو آواز دی کہ پانچ نکالو اور ساتھ ہی محمد زمان نے فرید اللہ پر نازنگ شروع کی مثنی کی نازنگ سے فرید اللہ دائیں ہاتھ کے بازو پر لگ کر مٹی ہو اور اس طرح ملزم محمد منیر نے مثنی فرید اللہ پر ایک نازنگ کر کے مثنی کے نازنگ سے مثنی فرید اللہ زنی ہمایو گھر ملانے مثنی اندھا سٹار نازنگ شروع کی۔ مثنی فرید اللہ (فرید اللہ) کو ایمان دینیہ کے تمام ان سے مبارک پر آ کر چوکی آنگر ام ایسا چونکا فرید اللہ مثنی مثنی تھا اس لئے ابا کاران چونکی آنگر ام نے فوراً مثنی کو ہسپتال وازی پہنچانے کی ہدایت کی۔ ہسپتال وازی میں مثنی پولیس نے فرید اللہ کا رپورٹ درج کیا اور اس طرح ڈاکٹر صاحب نے ملاحظہ کر کے بغرض مزید علاج و معالجہ ہسپتال تھر گورنر کیا جہاں وہ مثنی کی تاب نہ آ کر جاں بحق ہوا۔ قومی کے اگلے روز پولیس نے مثنی پر آ کر میرے اور دیگر گواہان چشم دید مثنی دار اور سلیمان کے نشانہ مثنی پر تشدد مثنی مثنی کیا۔ پولیس نے جائے مثنی سے مثنی مثنی خون آلود اور کچیس عدد خالی خول کاٹوس 7.62 بوزر برآمد کر کے فرودات مرتب کیں۔ اس طرح ہر اور مثنی مثنی مثنی نے مثنی مثنی خون آلود آواز مثنی پولیس کو پیش کر کے پولیس نے بروئے نظر دیکھ لیا۔ دو عدویہ اور گواہان چشم دید نے چشم خورد دیکھا ہے۔ مثنی مثنی مثنی ہے۔



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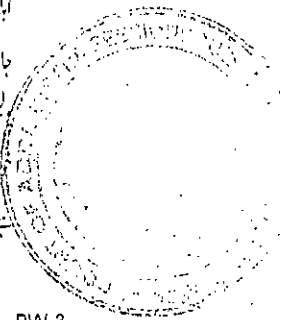
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PW-2

بیان حاجی دارالحدیث پبلک ٹیچنگ کالونی عمر 70/75 سال۔

حلفاً بیان کیا کہ تو مجھ سے ایک روز قبل فرید اللہ اور محمد زمان کے مابین پاپی پانچ پر تنازعہ پیدا ہوا تھا تو اس سلسلے میں میں فرید اللہ کے گھر گیا ہوا تھا اور ان کو سمجھا رہا تھا کہ محمد زمان آپ کا ماں ہے اور اس کا ملے گوندہ دست بڑھا تو تو اس دوران ملازمین بہادر خان، حنیف اللہ الطائف حسین اور محمد منیر نا نچھڑ میر کی طرف سے آپ کو ملازمہ زمان نے فرید اللہ کو آہ لڑائی کہ پاپی نا اور ساتھ ہی محمد زمان نے فرید اللہ پر نازنگ شروع کی جن کی وہ ناز سے فرید اللہ دائیں ہاتھ کے بازو پر لگ کر رکھی ہوا اس طرح محمد منیر نے بھی فرید اللہ پر نازنگ کی جن کی ایک نازنگ سے فرید اللہ لگ کر رکھی ہوا دیکر ملازمین نے بھی نازنگ شروع کی۔ اس کے بعد اہلیان دیہیہ نے فرید اللہ کو رکھی حالت میں ہسپتال لے جایا گیا جہاں سے وہ پھر گھر پہنچ گیا مگر جہاں مجروح و زخمی کی حالت نا اکر جہاں تک ہوا۔ تو مجھ کے لئے روز پاپی میں نے مونی پر آ کر میرے اور مبارک ذیب اور مسلمان کی نشان دہی پر نقشہ توجہ مرتب کیا۔

پاپی میں نے مونی پر تھوڑی سی خون آلودہ آٹھا کر بروئے فریقینہ خود میں کی۔ جائے ملازمین سے خانی ڈول کا تو اس آٹھا کر بروئے فریقینہ پاپی میں کی۔ اس طرح مبارک ذیب نے قمیص آلودہ پیش کر کے ہتل فریڈز پر مجھ سے انگشت بائیں ٹھیت کروائے۔ تو میرا ہاتھ دیا ہے۔



PW-3

بیان یاسین خان DFC نمبر 726 (ایجوگروہ پاپی)

یہ حلف بیان کیا کہ تو میں نے تھانہ ازی میں تعینات تھا کہ تفتیش آفیسر نے مجھے وارنٹ بائے کرنا زری زریہ نمبر 204 میں نافہ لگ کر کے میں موقع پر جا کر ملازمین کی پتہ برائی کی تو ملازمین رہا پیش تھے اور جا کر لڑائی سے گریز کر رہے تھے۔ تو میں نے وارنٹ زریہ نمبر 204 میں ایک پست پر رپورٹ تیار کی جسے میرا دستخط اور دست ثبوت ہے۔ رپورٹ بائے Ex.PW-3/1 Ex.PW-3/4 ہے۔ اس طرح اشتہارات زریہ نمبر 87 میں نافہ بر خلاف ملازمین مجھے دوا کر کے میں موقع پر جا کر اشتہارات کا ایک پتہ ملازم کے گھر کے دروازے پر چسپاں کی۔ دریں بارہ اشتہارات کے اصل پر میرا رپورٹ و تصدیق مرتب کر کے میرا رپورٹ Ex.PW-3/5 Ex.PW-3/8 ہے۔ آج میں نے جملہ رپورٹ دیکھی ہیں جس پر میرا دستخط درست طور پر ثبت ہے۔

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PW-4

بیان عزیز الرحمن خان ASI تھانہ ازی حائل تھانہ گندھار۔

یہ حلف بیان کیا کہ باپا پاپی تو میں نے جی کی انگلہ ام میں کھسپت ASI تعینات تھا۔ میں نے مستندیت کی رپورٹ پر مراسلہ قلم بند کر کے مستندیت سے انگشت ثبت کی اور مستندیت کے بیان پر مبارک ذیب سے تائید و دستخط ثبت کروا کر بعد از کاروائی مراسلہ بدست کاٹنے بل بدست اللہ نمبر 223 تھانہ ارسال کی جس پر میرا دستخط اور دست ثبوت ہے۔ مراسلہ Ex.PW-4/1 ہے۔

مستندیت کا نقشہ ضرر مرتب کر کے لائسنس ملازم ساجد دواہ ڈاکٹری ڈوک Ex.PW-4/2 ہے۔ بعد ہ مقدمہ میں تفتیش شروع کر کے حسب نشان دہی گواہان تفتیش نمونہ Ex.PW-4/3 ضمیمہ تحریر الیا کر دستاویز ثبت کی۔ بدو وہاں تفتیش جائے واردات و مقبول سے نئی خون آلودہ اور نجی عدد ڈول کا تو اس 7.62 ہو جائے ہو جو کی ملازم (محمد زمان) سے 8 عدد ہوائے موجود کی ملازم حنیف اللہ سے 6 عدد بہا ہر سے 5 عدد ہوائے موجود کی ملازم محمد منیر سے ایک عدد قبضہ خود کر کے بند پاپی اسلحہ پر میرے موروثی علیحدہ علیحدہ پارسل بنا کر ایک میں نئی خون آلودہ اور دھرتے میں 25 عدد ڈول کا تو اس بند کر کے وقت پر فریقینہ میں مرتب کر کے گواہان سے انگشت اور دستخط ثبت کروائے۔ فریڈ Ex.PW-4/4 ہے۔ اس طرح مقبول کا قمیص خون آلودہ برنگ سفید جن کے دائیں استین پر گولیوں لگنے سے

3/3/12




نکات اور دوسرے نکات کو مدد ملے۔ اسحاق جو کہ P-3 ہے۔ یہ ہے Ex.PW-4/5 قبلہ خود میں کر کے فرہربت کی۔ اور
 پروانہ تہیجی فرہربت کر کے جو کہ Ex.PW-4/6 ہے۔ رفر بصورت حال مقبول Ex.PW-4/7 مرتب کر کے طرمان کی خان
 کلاشی لے کر فرہربت کی جو کہ Ex.PW-4/8 ہے۔ فرہربت اور مقبول Ex.PW-4/9 ہے۔ طرمان غیر ضعیف ہندہ انداز
 مقبولہ پیش ہو کر ان کے خود ہندش دیکھنا کاروائی کی فرہربت سے درخواست ہائے ہنر DCO اور DAO بجوانے گئے جو
 کہ Ex.PW-4/10 اور Ex.PW-4/11 ہے۔ ایشیا اور آمد شدہ فرہربت پر یہ FSL بروئے درخواست
 Ex.PW-4/12 مجموعے جن کاروائی موصول ہو کر شامل مسل کی گئی جو کہ Ex.PW-4/13 ہے۔ اور گولہ بان کے
 بیانات زیر رقمہ 164، 161 قلمبند کروائے۔ طرمان بعد از تو مدد رو پیش ہو کر ان کے خلاف درخواست فرہربت موصول واربت 204
 علاقہ تاشی زبانی جو کہ Ex.PW-4/14 ہے اور واربت ہائے بر خلاف طرمان عدالت سے حاصل کر کے فرہربت موصول DFC
 کیا جو کہ Ex.PW-4/15 ہے۔ مقدمہ میں تفتیش مکمل ہونے کے بعد فرہربت چالان SHO کو پیش کی۔
 مرسلہ کو SHO پارچہ نمے FIR میں حرف جرف تبدیل کر کے FIR نمٹ 285 چاک کی جس کے دستخط میں ایشیا
 دیں جو کہ Ex.PW-4/19 ہے۔ اس طرح مقدمہ میں نمبر خان نے بر خلاف طرمان چالان مرتب کی جس کی دستخط میں
 ایشیا دیں۔ چالان Ex.PW-4/20 ہے۔ بعد از طرمان غیر ضعیف ہندہ انداز BBA کروا کر پیش ہوا اور BBA منظور ہونے پر میں
 نے گولہ بان کو ایسا اور بعد از موصول فرہربت بدل چھوایا گیا اور فرہربت Ex.PW-4/21 اور درخواست بہت موصول فرہربت
 Ex.PW-4/22 ہے۔ بعد از فرہربت تمہہ ہونے کے بعد عدالت نماز میں پیش کر کے تبدیل چھوایا۔ درخواست Ex.PW-4/23
 ہے۔ طرمان بعد از زمان بہادر خان، ضعیف اللہ، الطاف حسین کے خلاف بروئے درخواست Ex.PW-4/24، شہباز
 زیر رقمہ 87 ضعیف موصول کی۔ شہباز Ex.PW-4/25، Ex.PW-4/28 ہے۔ بعد از طرمان گولہ بان کو کارڈ
 گولہ بان طرمان Ex.PW-4/29 ہے۔ جرح برکی۔ بروئے درخواست Ex.PW-4/30، فرہربت پانچ دن فرہربت علاقہ تاشی کو
 پیش کی۔ بعد از درخواست منظور کر کے بعد از تمام فرہربت بروئے درخواست Ex.PW-4/31، بعد از فرہربت کے لئے استدعا
 کی جو منظور ہو کر طرمان کو روز پتیل دوا استہجوا گیا۔ اور بعد چالان بر خلاف طرمان نمبر خان نے فرہربت کر کے فرہربت ماحمت
 عدالت چھوایا گئی۔ جس کی میرا بیان ہے۔

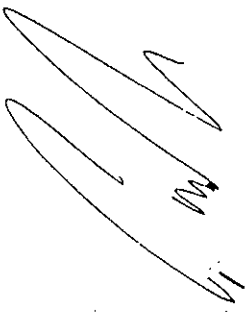
PW-5

بیان ڈاکٹر ماحمت خان، M/O، RHC، اور جنی مال برامل

برخلاف بیان کیا گیا۔ نام تو میں سمجھتا ہوں۔ RHC، M/O، اور جنی میں توجیحات تھا۔ جرح فریہ اندک فرہربت میں ماحمت پیش
 ہو کر اس کا طبی معائنہ کر کے جس کے جسم پر درج ذیل زخما پائے گئے۔

The patient was received with fire arm injury of right arm, due to very heavy
 bleeding a very ostensive wounds the entry and exit wounds would not be
 defferentiated. Patient was referred to DHQ hospital Timergarah in emergency
 where he examined at 10:30 PM same day.
 Cause of Death: massive Bleeding + Cardio Pulmonary artry.
 Nature of injury: FAI
 probable Duration fo injury: less than 2 hours.


 3/3/12



آج میں نے اپنا رپورٹ دیکھی جس پر میرا دستخط اور درست طور پر ثبت ہے۔ رپورٹ Ex.PW-5/1 ہے۔

On the last date the court heard both the counsel for the parties, since in this
 case the accused didn't come up with the defense evidence, therefore, APP for the
 state assisted by private counsel in their address to the court called the accused facing

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trial direct implicated for the commission of the offence. To the said counsel, it was prompt a report; it was diurnal an incident; the statement of the complainant, the deceased then injured, that the counsel for the prosecution called dying declaration served as contents of the Marasia and the FIR. Witnesses made mention in the Marasia and the FIR were brought in court and their statements along with official were put into black and white. To the prosecution since it had proved the guilt of the accused facing trial, therefore, requested that the accused facing trial may be accorded capital punishment. In order to give a good support to their brief they rested their reliance on worthy case law reported in;

2004 MLD Pesh, 200 titled "Munawar Shah VS The State"; 2002 SCMR 1568 (b) titled "Amrood Khan VS the State"; 2006 SCMR 1106 (c) titled Abdul rauf VS Mehdi Hsan"; 1992 SCMR 1036 (a, b) titled "Mst: Roheeda VS Khan Bahadar"; 2002 SCMR 588 (b) titled "Wahid Iqbal Vs the State"; 2002 SCMR 344 (b) titled "Muhammad Nawaz Vs The State"; 2002 P.Cr.L.J Lah, 886 (a, c) titled "Ameer Khan VS the State"; 2005 P.Cr.L.J FSC, 182 (c) titled "Abdul hakeem Vs the State".

In his address to the court, the defense counsel told that a damn good lacuna did exist in the case of the prosecution. The incident didn't take place the way it has been made up in the Marasia and in the FIR. The defense counsel directly implicated one Mubarak Zeb, a witness to Prosecution case, for the commission of the offence. He emphasized a good deal on the site plan that to the said counsel doesn't support the prosecution case, especially, against the accused facing trial. The said counsel told that according to the Marasia the incident had taken place within the house of the deceased then injured but there is no site plan of his house. He sought for acquittal of the accused facing trial. In order to give a good support to his brief he rested his reliance on worthy case law reported in;

2010 P.Cr.L.J Pesh 477 (B) titled "Syed Mutasim Wasit alias Momi VS The State an another"; PLD 2006 S.C 255 (a, b, c) titled" Mst: Zahida Bibi VS The State";

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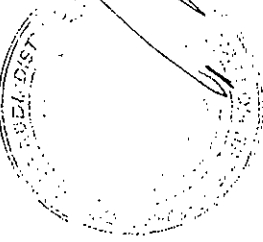
2010 P.Cr.L.J Pesh, 1065 titled "Amjad Iqbal VS The State"; 2003 P.Cr.L.J Kar, 1847 (f) titled "Abdul Hussain VS the State; 1990 P.Cr.L.J Pesh, 1945(d) title Farid Ullah Shah VS the State and Another; 2005 P.Cr.L.J Kar, 578 (b) titled "Ghulam Qadir Dayo Vs the State"; PLD 2005 Pesh, 204 titled "Rizwanullah VS the State"; 2008 P.Cr.L.J Shariat Court (AJ & K) 613 (c) titled "Naseema Bibi VS the State"; 2008 SCMR 95 titled "Liaquat Ali VS The State"; PLD 1995 Queta, 56 (a, g) titled "The State VS Doda"; 1978 SCMR, 303 titled "Muhammad Yaseen VS The State"; 1984 SCMR 1092 (b) titled "Nazim Khan and 2 others VS The State"; 1998 P.Cr.L.J Pesh, 1927(a) titled "Ilyas VS The State".

In the wake of the hearing both the counsel for the parties, this court did catch look of the evidence and the record existent in the fold of the file. Since it was the prosecution that has had to lay guilt at the hands of the accused facing trial U/S 304 PPC read with Article 17 & 117 of Qanun-e-Shahadat, 1984, the prosecution had come up with five witnesses. Mubarak Zeb PW-1 and Manidaar PW-2 were told as eyewitnesses to the scene of incident. Their names are there in the Marasla Ex.PW-4/1 and the FIR Ex.PW-4/19 respectively. Statements of both the witnesses do stand reproduced above. One Yaseen Khan DFC who had been proceeding with warrants U/s 204 Cr.P.C had seen the witness stand as PW-3. One Aziz Ur Rehman ASI, the officer who had investigated into the case have had got in as PW-4 whereas the Medical Officer Dr. Rahat Khan was taken down as PW-5 respectively. The guilt against the accused person is proved through.

1. Oral account of evidence,
2. Medical account of evidence
3. Circumstantial bits or evidence.

As for as medical evidence does matter, the Medical Officer Dr. Rahat Khan Pw-5 in his report Ex PW-5/1 confirmed the injuries that the deceased then injured received in the course of incident. It was firearm injuries that the Dr. Rahat Khan made confirm. In cross examination the witnesses told that the deceased then injured was brought into the hospital at 08:00 PM in the days when the time used to run fast by

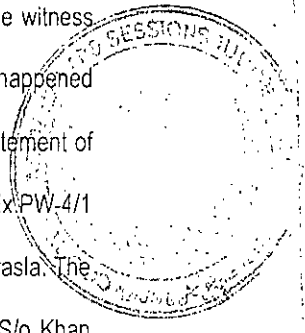
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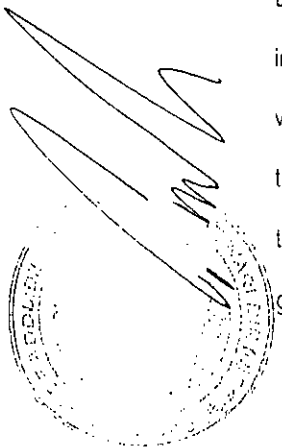
one hour. When the deceased then injured was brought to the hospital he was fainting owing to excessive oozing of blood and was in precarious position the Medical Officer added. The fading condition of the deceased then injured forced the Medical Officer to refer the victim to DHQ Timergarah. According to the Medical Officer, he had examined the injured at 08:20 PM. To the Medical Officer, the delay in bringing the injured to the hospital and excessive bleeding served as cause of death of the deceased.

Since, investigation plays a focal role in criminal cases and the witness Aziz Ur Rehman ASI had investigated in to the matter, therefore, he had seen the witness stand as PW-4. According to the witness during the days the incident had happened he was posted in Akhagram Police post as ASI. He had taken down the statement of the deceased then injured that he had reduced in the form of Marasla vide Ex.PW-4/1 and had taken the thumb impression of the deceased then injured on the Marasla. The deceased then injured has had with him his paternal cousin Mubarak Zeb S/o Khan Zada by the time of report in the hospital. This witness had prepared the injury sheet of the deceased then injured vide Ex.PW-4/2; site plan vide Ex. PW-4/3. According to the witness he had recovered blood soaked earth and grits vide P-1. He had recovered 25 empty shells of 7.62 bore from the place of incident EX.PW-4/3. Giving detail, the witness told he had recovered 8 empty shells from the place assigned to the accused facing trial Muhammad Zaman, 6 empty shells from the place of the accused Hanif Ullah; 6 empty shells from the place of the accused facing trial Altaf Hussain; 5 empty shells from the place of the accused facing trial Bahadar and 1 empty shell from the place of the accused facing trial Muhammad Munir. Recovery memo is Ex.PW-4/4. Blood soaked shirt of the deceased is Ex.PW-4/5. Since, later on the deceased then injured had died the same day and Sec. 324 PPC was converted into Sec. 302 PPC vide parwana Ex.PW-4/6, injury sheet is Ex.PW-4/7, Search memo of the houses of the accused facing trial is Ex.PW-4/8; List of legal heirs of the deceased is Ex.PW-4/9; the accused facing trial Muhammad Munir and Hanif Ullah, in the wake of incident had got on the run, therefore, their salary was attached and an application was moved to



COURT OF ADJWARI

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the DCO and DAO for departmental proceedings there against; vide Ex.PW-4/10 and Ex.PW-4/11 respectively. Articles recovered were sent to the FSL for analyses through application vide Ex.PW-4/12 and PW-4/13 respectively. Warrants U/S 204 Cr.P.C are Ex.PW-4/14 to Ex.PW-4/18 respectively. FIR is Ex.PW-4/19. Proceedings taken against the accused facing trial Muhammad Zaman, Bahadar Khan, Hanif Ullah U/S 87 Cr.P.C and the proclamation proceedings there against are vide Ex.PW-4/24 to Ex.PW-4/28 respectively; The card of arrest of the accused facing trial is Ex.PW-4/29. The witness did stand a damn long cross-examination. The witness admitted it correct that the house of the deceased Farid Ullah is in village "Khwar Tangay". He doesn't have any other house whereas the house of Muhammad Is'haq is situated in village "Shinkaray". The witness admitted it correct that in the FIR, the house of the deceased has been described as place of incident but the witness self-stated that the incident had taken place in the house of Muhammad Is'haq in village "Shinkaray".

According to the FIR, the witness told; the dispute of water supply pipe lining had taken place in the house of the deceased situated in village "Khwar Tangay". He admitted it correct that in the FIR there is no mention of the house of Muhammad Is'haq. The witness admitted that house of Mubarak Zeb is located to the South of Muhammad Is'haq. The witness also admitted that both rooms and terrace of Muhammad Is'haq stand open to the house of Mubarak Zeb. The witness admitted it correct that the places 2a, 3a and 4a are the one's that could serve as refuge. The immediate proximity of the house of Mubarak Zeb, the paternal cousin of the deceased had been emphasized a lot owing to insistent of the counsel for the accused facing trial who had been vocal for the implication of this Mubarak Zeb in the offence. To the said counsel for the accused facing trial, the places assigned to the accused facing trial didn't make it possible for them to fire at the deceased owing to want of source of inlet to the veranda in the inside of the house where immediately before firing upon him the deceased then injured had been made manifest in the site plan whereas the house of the witness Mubarak Zeb could conveniently be used for firing upon the deceased, who by the time of injury, was sitting in the veranda open to the house of

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Mubarak Zeb witness and cousin of the deceased then injured. The said counsel, in no indistinct words did do his best to implicate the witness Mubarak Zeb for the murder of the deceased Farid Ullah. Of course, site plan vide Ex.PW-4/3 holds a pivot position in the case but it cannot be taken as the last word to serve as nucleus and to be believed as if the Golden Piece of evidence. Mubarak Zeb was sitting by the side of the deceased then injured by the time when the later was telling the tale of incident to the Police in the Hospital and he was under no duress as to implicate a false soul and to spare the ~~dece~~ that had called for his imminent death.

The prosecution did lead in two eyewitnesses Mubarak Zeb who had seen the witness stand as PW-1 whereas one Manidaar had seen the witness stand as PW-2 respectively. Both the witnesses in their respective statements accorded efficient role of firing to the accused facing trial i.e. Muhammad Zaman and Muhammad Munir. The witness Mubarak Zeb, the paternal cousin of the deceased faced a long spell of cross-examination. Most of the questions asked to the witness Mubarak Zeb PW-1 were akin to the location of the house of the deceased Farid Ullah, for the counsel for the accused facing trial had been insistent on that the house of the deceased Farid Ullah is a long way ~~of~~ 900 meters from the house of the accused facing trial and since, the deceased was injured in his own house 900 meters away the village "Shinkaray", therefore, there seems no reason to implicate the accused facing trial for the injury to the deceased then injured Farid Ullah whereas in the site plan the deceased then injured has been spotted in the house of his brother Muhammad Is'haq and it was the place where the investigation Officer had recovered the blood soaked earth and it was this place where he was picked from for taking up to the hospital. In his examination in chief the witness Mubarak Zeb PW-1 did make it clear that the incident had taken place in the house located in the village "Shinkaray" which is mentioned as the house of the brother of the deceased Muhammad Is'haq. The witness further did make it clear that the deceased then injured had died, his cadaver was taken to the house of the deceased situated in village "Khwar Tangay" and not in the house where the incident had taken place owing to the close proximity of the residences of the

3/3/17



غلام عباس
بیان میں ہیں
حقیقت یہ ہے
کہ گواہوں کی

Mubarak Zeb witness and cousin of the deceased then injured. The said counsel, in no indistinct words did do his best to implicate the witness Mubarak Zeb for the murder of the deceased Farid Ullah. Of course, site plan vide Ex.PW-4/3 holds a pivot position in the case but it cannot be taken as the last word to serve as nucleus, and to be believed as if the Golden Piece of evidence. Mubarak Zeb was sitting by the side of the deceased then injured by the time when the later was telling the tale of incident to the Police in the Hospital and he was under no duress as to implicate a false soul and to spare the dude that had called for his imminent death.

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COURT
3/3/17

غلط ہے
بیان میں ہیں
حقیقت ہے
کی کوشش ہے

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accused facing trial. This piece of evidence makes it manifest that the deceased then injured was fired at, in the house made mention of in the site plan, for it was the house that the deceased and Muhammad Is'haq used to share, they being brother inter se.

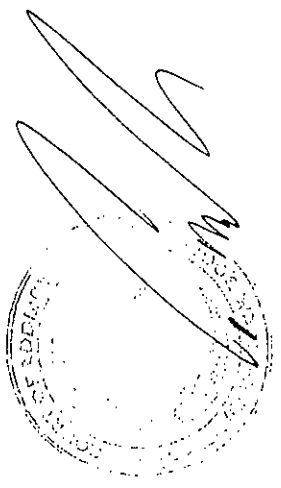
Manidaar is another eyewitness to the scene of incident who got into the witness stand as PW-2. The Marasla and the FIR do bear his name as an eyewitness. This witness followed the footsteps of his predecessor witness in letter and spirit. This witness too ascribed efficient role of causing death to the deceased then injured Farid Ullah to two accused facing trial i.e. Muhammad Zaman and Muhammad Munir. His examination in chief has been replica to his predecessor witness. This witness is the paternal uncle of the deceased then injured Farid Ullah. He is also a close kin of the accused Muhammad Zaman etc. This witness admitted it correct that the deceased Farid Ullah has had its house by the side of village "Khwar Tangay" but in the same breath he self stated that the house where the incident had taken place is the common house of the deceased Farid Ullah and his brother Muhammad Ishaq. And it was this place where the incident had taken place. The witness told that the house of the deceased then injured Farid Ullah might be 500 feet away. The witness also admitted that the dispute of pipe lining had erupted in the house located in village "Khwar Tangay". This is the gist and sap of the evidence that the prosecution did lead against the accused facing trial to lay guilt at their hands.



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Although, all sorts of evidence that is, the Oral Account of Evidence, the Medical and the Circumstantial bits play a nucleus role in criminal matters, yet the Oral account always has an edge over the rest of the evidence. The sort of evidence is called the best that assimilates the circumstantial, medical etc evidence the most. What stands ostensible it is that the deceased then injured Farid Ullah is dead. The medical evidence proves that the deceased then injured had breathed his last in an outcome of firearm injuries; As for as medical evidence is concerned, it can tell of the cause and number of injuries, its form and condition but it cannot tell the man causing the injuries. As his lordship had held that, "it is a corroboration to show that injuries were caused in a particular manner with particular weapon and even it can



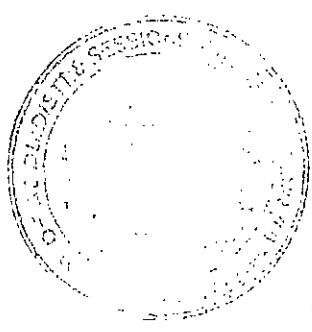
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supply corroboration to the fact as to how many assailants were there and whether number of injuries commensurate with number of assailants or not, but medical evidence can never be used as corroboration qua accused to show that particular accused has caused these injuries.

" PD 1993 S.C, 251.

Question is, who did cause the death and what is the place of incident? And whether the house of the deceased is located in village "Khwar Tangay" or in the village "Shinkaray"? The Counsel for the accused facing trial calls the house of the deceased then injured in village " Khwar Tangay" but that has no site plan. The FIR at the outset describes the house of the deceased then injured Farid Ullah as place of incident. The Marasia and the FIR were put into black and white in the words of the deceased then injured who in his report called the place of incident his house. This stands corroborated from the cross case FIR No. 286-U/s 506 etc PPC, the same dated and the same time wherein the deceased then injured along with the witnesses, are accused in that case and the place of incident in both the cases is the same, i.e. village "Shinkaray". This makes confirm that the deceased then injured by self-house meant, the house in village "Shinkaray" which he commonly owned with his brother Is'haq. In the site plan the place of incident is village "Shinkaray". It is this place where the houses of the accused are located. The deceased then injured had named all the accused facing trial for firing but accorded effective role to one accused facing trial Muhammad Zaman. It was some days later i.e. on 16/09/2009 when one Zakir had got into the court of learned Judicial Magistrate Wari, Dir. Upper telling that after the incident he was on duty when around at 17:55 hours his paternal cousin and other relatives were carrying the deceased then injured Farid Ullah to the hospital. When they caught sight of the deponent they halted and told the deponent that one Muhammad Zaman and Muhammad Munir, the accused facing trial had made the complainant injured. His statement was taken down U/S 164 Cr.P.C. one Muhammad Is'haq and Sulemaan whose statements were taken down U/S 164 Cr.P.C also told that the accused facing trial Muhammad Zaman and Muhammad Munir through fire

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arm injured the complainant Farid Ullah, the deceased then injured. These three witnesses in their respective statements U/S 164 Cr.P.C had been implicating two accused facing trial i.e. Muhammad Zaman and Muhammad Munir. Of course, oral account of evidence carries damn sight good weight. The significant aspect that exerts cumbersome bearing on the case it is, before the evidence of a witness is admitted or believed, the witness has to prove his being at the place of incident by the time it had taken place. In the words of his lordship, "An eye witness, who claims his presence at the spot, must satisfy the mind of the court through some physical circumstances or through some corroborative evidence in support of his presence at the spot. Court would not base conviction on the sole testimony of a witness, whose credibility is not free from doubt," Reliance is rested on worthy case law reported in 2005 P.Cr.L.J, 337

It is everywhere spread in the fold of the file that the witness Mubarak Zeb right since the incept of the incident down to the taking down of the statement of the deceased then injured in the hospital, had been with the deceased then injured. The witness Manidaar had been at the place of the incident as well as in the house with the deceased then injured. Both the witnesses i.e. Mubarak Zeb and Manidaar bear their names in the Marasla and the FIR. Last but not the least is that there is another cross case FIR No 286 U/S 506 etc PPC the same dated and the same time, wherein the deceased and his witnesses are the accused. The later case is also a same dated, same place and same time incident. Their names don't seem after thought owing to the fact of an agile report and implication. It needs mention here that both the parties along with the witnesses are close relatives.

The statement of the deceased then injured served as the first information report. The Marasla and the FIR reflect the statement of the deceased then injured, that tantamount to dying declaration owing to the fact that the deceased had breathed his last with in a couple of hours of his statement. This has been an age long principle ever held by his lordship reported in AIR 1939, P.C, 47. It was further held that, "no specific form has been prescribed for making or recording a dying declaration. There is

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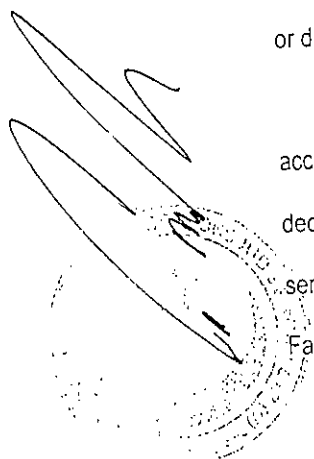
no pre-condition that it should be in writing; oral statement has often been regarded as dying declaration." "Dying declaration can be oral, none recording of the same does not give fatal blows to the prosecution case" 1996 SCMR, 1747. His Lordship held, "Dying Declaration made by the deceased in an injured condition was wrongly be inadmissible in evidence by the trial court which had been promptly made by him having no animosity against the accused" 2002 P.Cr.L.J Pesh, 1798. titled "Javed Khan VS The State". It was also held that, "Dying Declaration ... Sufficiency to sustain conviction therein... Dying Declaration, by itself, was sufficient to sustain conviction therein on provided there was no chance of mistaken identity; deceased was capable of making statement; the time elapsed after sustaining injury before deceased made statement; whether statement may be true; statement was free from promptness of other and deceased was not a man of questionable character" 1999 P.Cr.L.J Pesh, 1305 titled "Abdur Rahim VS The State". The dead should be respected. And the innocent victim dead deserve more respect and so their statements. All the witnesses PW1 or PW2 and the ones who had given their statements U/S 164 Cr.P.C had either watched the incident happen or had come across the deceased then injured before he breathed his last. In his Dying Declaration before the Police, the deceased then injured had implicated one accused facing trial Muhammad Zaman for effective role of firing and by this time the witness Mubarak Zeb was also sitting with the deceased then injured. This makes manifest that the deceased then injured implicated only Muhammad Zaman for effective role.

A known Hadith reads "He who favored the killer of a Muslim with a single syntax will stand before Allah inscribed with the words on his forehead, "the bereaved or despaired of the blessing of Allah";

From the existent evidence on the file Muhammad Zaman the accused facing trial seems to have a capital hand in causing the death of the deceased Fareedulah, therefore, he is hereby convicted U/S 302 (b) PPC and sentenced to rigorous imprisonment for life as Taazir for the murder of deceased Fareedulah. He will make good payment of Rs. 5,00,000/- as compensation to the

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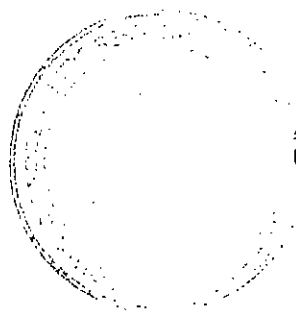


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legal heirs of the deceased Fareedulah U/S 544-A Cr.P.C. The compensation shall be recoverable as arrears of land revenue U/S 544-A (2) Cr.P.C. In default he will undergo further 6 months simple imprisonment. He is on bail. His bail bonds stand quashed and sureties absolved of their liabilities under the sureties bonds. He is accorded benefit of section 382-B Cr.P.C. The rest of the accused are acquitted. They are on bail. Their bail bonds stand quashed and sureties absolved of their liabilities under the sureties bonds. All the accused stand acquitted under section 427 PPC. Case property to remain as it is until the lapse of time allowed for appeal and if appeal is preferred till the Hon, ble High Court, decides it. Copy of judgment should go to the in charge District Prosecution Dir Upper U/S Section 374 Cr.P.C.

Announced.
03/03/2012



(Signature)
(TARIQ PERVEZ BLOCH)

Additional Sessions Judge/ IZQ,
Wari, Dir Upper.

Certificate-

Certified that this judgment of mine comprises fourteen (14) pages; each page has been read and signed after necessary correction.

(Signature)
2/3/12

(Signature)
(TARIQ PERVEZ BLOCH)

Additional Sessions Judge/ IZQ,
Wari, Dir Upper.

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Date of 3/3/012
No. 1400
Page 28
Date of 3/3/012
Date of 3/3/012

(Signature)

No 09 /ASJ/IZQ

Wari, Dir Upper

Dated 03/03/2012

From,

Tariq Pervez Bloch,
Additional District & Sessions Judge/IZQ,
Wari, Distt: Dir Upper.

To,

The Superintendent,
Distt: Jail Dir Lower at Timcr garah.

Subject: **CONVICTION WARRANT**

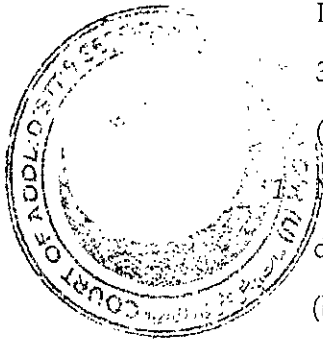
Memo:-

Whereas at a sessions held before me on 03/03/2012, after completion of trial, Muhammad Zaman S/O Anwar Khan, R/o Shinkaray Tehsil Wari Distt: Dir Upper, charged vide FIR No. 285 dated 31/08/2009 U/S 302/148/149 427 P.P.C P/S Wari was found guilty of the charge U/S 302 (b)P.P.C and was convicted as under:-

Muhammad Zaman the accused facing trial proved to have committed the death of the deceased Fareedulah, therefore, he is hereby convicted U/S 302 (b) PPC and sentenced to rigorous imprisonment for life as Taazir for the murder of deceased Fareedulah. He will make good payment of Rs. 5,00,000/- as compensation to the legal heirs of the deceased Fareedulah U/S 544-A Cr.P.C. The compensation shall be recoverable as arrears of land revenue U/S 544-A (2) Cr.P.C. In default he will undergo further 6 months simple imprisonment. He is accorded benefit of section 382-B Cr.P.C.

This is to authorize you and require you, to keep the above named convict in jail, and to carry out the execution of sentence according to law.

Given under my hand and the seal of court, this 3rd of March 2012.



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(TARIQ PERVIZ BLOCH)
Additional Sessions Judge/ IZQ,
Wari, Dir Upper.

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IN THE COURT OF SECRETARY HOME KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

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APPELLANT: HANIFULLAH

V/S

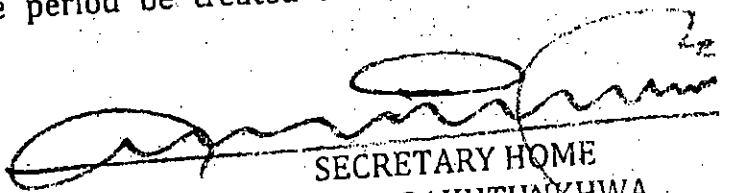
COMMANDANT LEVIES DIR (UPPER)

ORDER

This order will dispose off the departmental appeal filed by Mr. Hanifullah S/O Muhammad Zaman resident of Shenkari, Tehsil Wari, District Upper Dir, (Sepoy Regiment No.212 Provincial Levies; Dir Upper) against the order of Deputy Commissioner Dir Upper dated 10.12.2009.

2. Mr. Hanifullah was appointed on 29.06.2005 and was removed from service by DC/Commandant Levies, Dir Upper on 10.12.2009, (upon absence from duty for the period from 31.08.2009 to 10.12.2009) due to implication in murder case. Comments of the Deputy Commissioner Dir (Upper) were obtained. The appeal was processed in this department at appropriate level and it was felt that the appellant has honourably been acquitted by the court, so it was required that Deputy Commissioner / Commandant Levies to reinstate the appellant in service upon the judgment of the court.

3. The competent authority therefore accepted his appeal and reinstated the appellant in service with immediate effect subject to the condition that the absence period be treated as extra ordinary leave without pay.



SECRETARY HOME
KHYBER PAKHTUNKHWA

Announced
Dated 18.04.2013

RZ

No: 9438-1/DC/1107

Dated Upper Dir the: 16/7/2014

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To,

Mr: Hanifullah S/o Muhamamd Zaman
Levy Sepoy (Provincial)

Subject: -REMOVAL FROM SERVICE-

Memo: As per inquiry report received from the AAC/EM Dir vide his memo No. 502 AAC/EM /Levy dated 14-07-2014.

In light of the above, the undersigned has decided to impose upon you Mr. Hanifullah Levy Sepoy (Provincial) the major penalty of removal from service w.e.f 04-02-2014 under the provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline Rules) 2011 in interest of public service.

(Commandant Dir Levies)
Deputy Commissioner
Dir Upper

Even No, & Dated:-

Copy forwarded to the:-

1. The District Accounts Officer Dir Upper for information and necessary action.
2. Subidar Major Dir Levies
3. BBA

(Commandant Dir Levies)
Deputy Commissioner
Dir Upper

TO THE...

بخدمت جناب ڈی سی او (D.C.O) دیر بالا بمقام خاص دیر

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35

(اپیل برخلاف علم مورخہ 14/07/2014 جاری کردہ ڈی سی او کا نڈنٹ دیر لیویز پر جس کی رو سے من سائل کو سروس سے Dismiss کیا گیا ہے۔)

جناب عالی:

- (1) یہ کہ سائل اعلیٰ تعلیم یافتہ ہونے کے ساتھ ساتھ جب دیر لیویز میں ہوا تو تعریفی اسناد سے بھی نواز گیا۔
 - (2) یہ کہ سائل مورخہ 29/06/2005 کو محکمانہ کمیٹی کی سفارش پر لیوی میں بحیثیت سپاہی بھرتی ہوا۔ سائل اپنی ڈپٹی نہایت خوش اسلوبی سے سرانجام دے رہا تھا۔
 - (3) یہ کہ خانگی مسائل و حالات کے بناء پر مجھ پر مخالفین نے 302 کا پرحہ کیا جس کی بناء پر متعلقہ ملازمت مذکور سے سائل کو بہ امر مجبوری غیر حاضر ہونا پڑا بعدہ متعلقہ ادارہ کی طرف سے سائل کو ملازمت سے برخاست کیا گیا بعدہ مقدمہ نمبر 109/2005 میں عدالت سے بری ہوا۔ (نقل FIR و متعلقہ فیصلہ سیشن کورٹ لف درخواست ہیں)
 - (4) یہ کہ عدالت حضور کی فیصلہ کے بعد سائل نے ہوم سیکرٹری اپیل برائے بحالی ملازمت متعلقہ کی جس کی بناء پر سائل کو بحال کہا گیا لیکن مخالفین مقدمہ 302 کی جانب سے مسلسل دھمکیوں، شر و فساد اور سائل کی جان کو حقیقی خطرہ لاحق و درپیش ہونے کی بابت سائل بہ امر مجبوری ملازمت پر حاضر نہ ہو سکا۔ اور جان بچانے کی خاطر علاقہ غیر رپوش ہونا پڑا جس کی بناء پر سائل کو ملازمت مذکورہ سے ادارہ ہذا کی جانب سے بوجہ غیر حاضری ایک مرتبہ پر برخاستگی کا سامنا کرنا پڑا۔ (اپیل مذکورہ بحالی ملازمت کے نقولات لف درخواست ہیں)۔
 - (5) یہ کہ سائل ایک غریب و لاچار خاندان سے تعلق رکھتا ہے اور اپنے بال بچوں کی کفالت کا واحد ذریعہ ہے ملازمت مذکورہ پر بحالی سائل کیلئے اپنے خاندان کی کفالت کے مترادف ہوگا۔ علاوہ ازیں سائل بوجہ overage ہونے کے دوسرے ملازمتوں کیلئے اہل بھی نہیں رہا۔
- لہذا استدعا ہے کہ بمنظوری درخواست ہذا سائل کو ملازمت مذکورہ پر بحالی کے احکامات صادر فرما کر مشکور و ممنون فرمائے۔ سائل دعا گو رہیگا۔

مورخہ 14/07/2014

ریاضے

(سائل) بنیف اللہ ولد محمد زمان صاحب، جنم نل نمبر 212 سکینہ شہید کاٹری تحصیل ڈیر بالا ضلع دیر بالا

کافی برائے اطلاع:

(1) ہوم سیکرٹری خیبر پختونخواہ بمقام ریشاور

LABORATORY
CO-OP BRAND COPY



IN THE COURT OF SECRETARY HOME
KHYBER PAKHTUNKHWA
(APPELLATE AUTHORITY)

(36)

CASE TITLE:

APPELLANT: HANIF ULLAH, DIR UPPER LEVIES
VERSUS
COMMANDANT LEVIES, DIR UPPER.

INTRODUCTION:-

The applicant submitted an appeal before the Competent Authority on 22.11.2017 for reinstatement into service.

The representative of Deputy Commissioner / Commandant Levies Dir Upper submitted that the applicant was absent from duty without any prior permission of the competent authority. It was confirmed from reliable sources that applicant had gone abroad to Saudi Arab and recommended strict disciplinary action due to which, he was terminated from service w.e.f 04.02.2014.

PROCEEDINGS:-

The applicant was heard in person and supporting documents were also checked / scrutinized in details. He also produced a copy of FIR and judgment of Additional District and Session Judge/Dir Upper pertaining to his domestic/ family feud. The plea is time barred but the applicant was unaware of the proper procedure. In this regard he also submitted conconation application and prayed for reinstatement into service.

DECISION:-

After perusal of available record and statement of the appellant, the appeal is rejected in light of the comments / views of DC / Commandant Levies Dir Upper. The appellant may be informed accordingly.

(IKRAM ULLAH)
 SECRETARY HOME
 KHYBER PAKHTUNKHWA

Announced
Dated 16.04.2018

Handwritten signature and date: 13/04/2018

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
DARULQAZA SWAT

W.P _____-M/2018

Hanifullah.....Petitioner

VERSUS

Secretary Home KPK,& others..... Respondents

INDEX

S.No	Description	Annexure	Pages
1.	Copy of writ Petition		1-7
2.	Address of the Parties		8
3.	Affidavit		9
4.	Copy of order dated 29.06.2005	A	10
5.	Copy of FIR is attached	B	11
6.	Copy of the Removal order dated 10.12.2009	C	12
7.	Copy of Pakistani Passport	D	13-19
8.	Copy of judgment dated 12.02.2015 is attached)		20-28
9.	Copy of departmental appeal and other record		29-32
10.	Copy of order dated 16.04.2018	E	33
11.	Power of Attorney in favour of Altaf Hussain		34-37
12.	Court Fee		38
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Petitioner through Counsel


SYED ABDUL HAQ

(Advocate)

HIGH COURT DARULQAZA

BAR ROOM SWAT

Cell No 0311-0950959

BEFORE THE HONORABLE PESHAWAR HIGH COURT MINGORA BENCH
DAR-UL-QAZA SWAT

38

Writ petition No.740-M of 2018.

Hanif Ullah s/o Muhammad Zaman r/o Shenkarai, Tehsil Wari District Upper Dir.

.....Petitioner

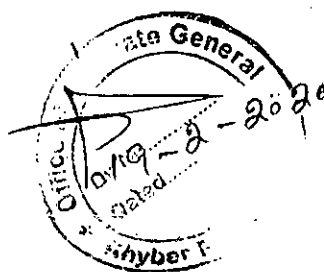
V/S

1. The Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department Khyber Pakhtunkhwa at Peshawar.
2. The Deputy Commissioner/Commandant Dir Levies, Upper Dir.

.....Respondents.

INDEX

S.NO	Description of Documents	Annexures	Pages
01	Joint Para Wise Comments	-	1-3
02	Affidavit	-	4
03	Absence Report of Subidar	"A"	5
04	Charge Sheet	"B"	6
05	Statement of Allegations	"C"	7
06	Removal Order No-01	"D"	8
07	Re-Instatement Order	"E"	9
08	Absence Report of Hawaldar	"F"	10
09	Explanation Notice	"G"	11
10	Show cause Notice	"H"	12
11	Inquiry Letter	RE-FILED TODAY Deputy Registrar 20 JUL 2020	13
12	Inquiry Report	"J"	14-17
13	Removal Order No-02	"K"	18
14	Rejected Departmental Appeal	"L"	19-20



FILED TODAY
Deputy Registrar
19 FEB 2020

Raza Ullah
Raza Ullah

(Levy Head Clerk DC Office Upper Dir)

Handwritten signature

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH DAR-UL-QAZA
SWAT.

Writ Petition No: 740-M of 2018

Hanif Ullah s/o Muhammad Zaman r/o Shenkarai Tehsil Wari District Dir Upper, Sepoy
Regimental No. 212 Provincial Levies Dir Upper.....Petitioner.

- Vs

1. Secretary Home Khyber Pakhtunkhwa at Peshawar.
2. Commandant Dir Levies/Deputy Commissioner Dir Upper.....Respondents.

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN 1973.

JOINT PARA -WISE COMMENTS ON BEHALF OF RESPONDENT NO.1 & 02
ARE GIVEN AS UNDER.

PRELIMINARY OBJECTIONS:

1. That the petition is not maintainable in its present form.
2. That the petitioner has got no locus stand to file the instant petition.
3. That the petition is not maintainable due to Mis-Joinder and Non-Joinder of necessary parties.
4. That the petitioner does not come to the Court with clean hands.
5. That the petitioner concealed the material fact from the Honorable Court.

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Deputy Registrar

19 FEB 2020

RESPECTFULLY SHEWETH:-

1. Correct to the extent of appointment/posting.
2. Correct. The Incharge Naib Subidar Levy Post Wari reported dated 14-10-2009 taking the plea that a month before while Sepoy Hanif Ullah/Petitioner was at home and due to some unknown reasons he assassinated a man and run away from the spot resultantly FIR has been lodged against him under U/S 302 PS Wari. Further reported that neither the accused has surrendered to police nor appeared at his post for duty (copy enclosed at Annexure "A").
3. Correct. Owing to the reason above proper charge sheet and statement of allegation was issued against the petitioner vide letter No. 1600 dated 21-11-2009 and No. 15996-99/DCO/Inquiry dated 21-11-2009 and at the same time the Executive District Officer F&P Dir Upper was nominated/appointed as inquiry officer to conduct fact finding inquiry into the matter and submit report recommendations (copies enclosed at Annexure B & C respectively). The inquiry officer recommended that major penalty may be imposed against the accused under the provision of NWFP Removal from Service (Special Powers) Ordinance

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2000 (Amended 2001). The then District Coordination Officer Dir Upper/Commandant Dir Levies/Respondent No. 02 was then satisfied to imposed major penalty of Removal from Service against the accused vide order No. 16353-55/DC/LHC dated 10-12-2009 (copy enclosed at Annexure D)

4. Correct. The Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar/Respondent No. 01 re-instated the petitioner vide order at Annexure "E".
5. No comment.
6. In correct. The Incharge Hawaldar Levy Line Dir reported that sepoy Hanif Ullah who has recently been re-instated by the Home Department has failed to make his presence for duty from the date of his re-instatement order. Owing to the reason above explanation and show cause notice was issued against the accused vide No. 1337-39/DC/LHC/Exp dated 04-02-2014 and No. 1727/DC/LHC dated 18-02-2014 respectively with the directions to submit reply of the same within 07 days positively but the accused failed to submit the same (copies enclosed at Annexure F, G & H). As a sequel thereof the Additional Assistant Commissioner Dir/EM Dir was nominated as inquiry officer to conduct proper inquiry into the matter and submit report/recommendations vide order No. 2010-12/DC/LHC/Provincial Levies dated 26-02-2014. The inquiry office after conducting fact finding inquiry recommended that **Major Penalty of Removal from Service may be imposed against the accused under Section 3(d) of E & D Rules 2011 read with Rule 10 Scheduled -IV(a) Para 10 of the Levy Rules 2013** vide letter No562/AAC/EM/Levy dated 14-07-2014. The then Commandant Dir Levies/Deputy Commissioner Dir Upper was then satisfied to imposed major penalty of Removal from Service vide order No. 9438-41/DC/LHC dated 16-07-2014 (copies enclosed at **Annexure I, J & K**).
7. The departmental appeal of the petitioner was rejected by the Home Department/ Respondent No. 01 on the grounds that the same was carrying no weight and was badly time barred and not covered the Rules vide order No. SO (Levies)/HD/6-7/017 dated 19-10-2017 (copy enclosed at **Annexure "L"**).
8. No comments.

Grounds:-

- a. **Incorrect.** As explained in the above paras the orders of the respondent No 1 & 2 are legal and according to law and rules.
- b. **Incorrect.** As explained in above paras.

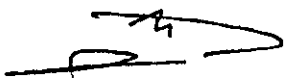
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Deputy Registrar
19 FEB 2020


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Federal Levies
Force
WP-528
Page 79
P-183

- (41)
- c. **Incorrect.** As explained in above paras disciplinary proceedings were initiated against the petitioner as per standing Law/Rules.
 - d. **Incorrect.** As explained earlier major penalty was imposed against the petitioner after fulfillment of all codal formalities.
 - e. **Incorrect.** as explained in above paras.
 - f. No comments

In light of the above, it is prayed that the petition is not based on facts having no merit consideration and may be dismissed with cost please.


Secretary Home & Tribal Affairs Department
Khyber Pakhtunkhwa Peshawar
Respondent No. 01
Home Secretary
Khyber Pakhtunkhwa


Commandant Dir Levies/
Deputy Commissioner
Dir Upper.
Respondent No. 02
DC/Commandant
Dir Levies

FILED TODAY
Deputy Registrar
19 FEB 2020



BEFORE THE HONORABLE PESHAWAR HIGH COURT MINGORA BENCH
DAR-UL-QAZA SWAT

Writ petition No.740-M of 2018.

Hanif Ullah s/o Muhammad Zaman r/o Shenkarai, Tehsil Wari District Upper Dir.

.....Petitioner

V/S

1. The Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department Khyber Pakhtunkhwa at Peshawar.
2. The Deputy Commissioner/Commandant Dir Levies, Upper Dir.

.....Respondents.

AFFIDAVIT

I, Raza Ullah, Levy Head Clerk Office of the Deputy Commissioner/Commandant Dir Levies Upper Dir do hereby solemnly affirm and declare on oath that the contents of the instant Joint Parawise Comments are true and correct to the best of my knowledge and belief and nothing relevant has been concealed from this Honorable Court.

Mr. Raza Ullah
Levy Head Clerk Office of the
Deputy Commissioner Dir Upper.

0906 - 5748800

Identified by
Advocate General
Khyber Pakhtunkhwa
Supdt. (D)

No: 29734
Certified that the above was verified on solemn affirmation before me in office, this 19 th day of Feb, 2020, Raza Ullah s/o Head Clerk who was identified by self Who is personally known to me:
<i>[Signature]</i> Deputy Commissioner Peshawar High Court, Peshawar.

FILED TODAY

Deputy Registrar

19 FEB 2020

Nadra Verified

15702-2500720-3.

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شکر

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH DAR-UL-ADAB
SWAT.**

Writ Petition No: 740-M of 2018.

Hanif Ullah s/o Muhammad Zaman r/o Shenkarai Tehsil Wari District Dir Upper, Sepoy
Regimental No. 212 Provincial Levies Dir Upper.....Petitioner.

Vs

1. Secretary Home Khyber Pakhtunkhwa at Peshawar.
2. Commandant Dir Levies/Deputy Commissioner Dir Upper.....Respondents.

**WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN 1973.**

**JOINT PARA -WISE COMMENTS ON BEHALF OF RESPONDENT NO.1 & 02
ARE GIVEN AS UNDER.**

PRELIMINARY OBJECTIONS:

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2. That the petitioner has got no locus stand to file the instant petition.
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4. That the petitioner does not come to the Court with clean hands.
5. That the petitioner concealed the material fact from the Honorable Court.

FILED TODAY
Deputy Registrar
19 FEB 2020

RESPECTFULLY SHEWETH:-

1. Correct to the extent of appointment/posting.
2. Correct. The Incharge Naib Subidar Levy Post Wari reported dated 14-10-2009 taking the plea that a month before while Sepoy Hanif Ullah/Petitioner was at home and due to some unknown reasons he assassinated a man and run away from the spot resultantly FIR has been lodged against him under U/S 302 PS Wari. Further reported that neither the accused has surrendered to police nor appeared at his post for duty (copy enclosed at Annexure "A").
3. Correct. Owing to the reason above proper charge sheet and statement of allegation was issued against the petitioner vide letter No. 1600 dated 21-11-2009 and No. 15996-99/DCO/Inquiry dated 21-11-2009 and at the same time the Executive District Officer F&P Dir Upper was nominated/appointed as inquiry officer to conduct fact finding inquiry into the matter and submit report recommendations (copies enclosed at Annexure B & C respectively). The inquiry officer recommended that major penalty may be imposed against the accused under the provision of NWFP Removal from Service (Special Powers) Ordinance

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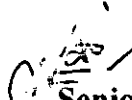

Peshawar High Court

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET



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Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<p><u>24/03/2021</u></p>	<p><u>WP No. 740-M/2018</u></p> <p><u>Present:</u> Syed Abdul Haq, Advocate, for the petitioner. Mr. Arshad Ahmad Khan AAG, for respondents.</p> <p align="center">===</p> <p>Arguments heard. Judgment reserved.</p> <p align="right">  Senior Puisne Judge  Judge </p>

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 Date of Preparation of _____
 Total _____
 Copying fee _____
 No of Pages _____
 Date of Presentation of Application _____
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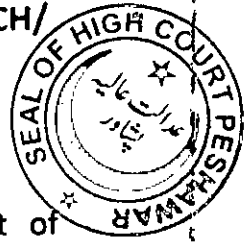
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10 APR 2021

No. 10/4/2021
 Date of Presentation of Application 10/4/2021
 No of Pages 2
 Copying fee 8/-
 Total 8/-
 Date of Preparation 10/4/2021
 Date of Delivery of Copy 10/4/2021
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BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH/
DARULQAZA SWAT

W.P. 740 -M/2018



1. Hanif Ullah Son of Muhammad Zaman Resident of
Shenkari Tehsil Wari District Dir Upper, Seopy
Regimental No.212 Provincial Levies Dir Upper
.....Petitioner

VERSUS

- 1) Secretary Home Khyber Pakhtunkhwa, at Peshawar.
- 2) Commandant Dir Levies/Deputy Commissioner District
Dir Upper.....Respondents

WRIT PETITION

**UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN 1973**

Respectfully Sheweth;

The facts of the instant are as under.

1. That the petitioner was appointed as Sepoy in Dir
Levies vide order No.5100-03/DCO/LHC dated
29.06.2005 (Annexure-A).
2. That the petitioners served the Department
devotedly, honestly and sincerely but unfortunately
someone involved him alongwith others in Criminal

Re-Filed Today

06 JUL 2018

Additional Registrar

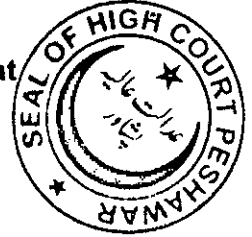
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EXAMINER
Peshawar High Court

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 740-M/2018

**Hanifullah vs. Secretary Home Khyber Pakhtunkhwa at
Peshawar and another.**



JUDGMENT.

Date of hearing: 24.03.2021.

Petitioner (s) By Syed Abdul Hag, Advocate.

Respondent (s) By Mr. Arshad Ahmad Khan AAG.

SYED ARSHAD ALI, J.:- For reasons recorded in the connected Writ Petition No. 528-M/2016, this petition stands disposed of accordingly.

ANNOUNCED.

Dated: 09.04.2021


Senior Puisne Judge


Judge


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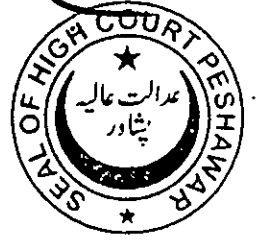
**EXAMINER
Peshawar High Court Peshawar
Authorised Under Article 57 of
The Constitution of Pakistan**

23 APR 2021

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 528-M/2016

**Ikramullah and another vs. Deputy
Commissioner/Commandant Dir Levies Provincial District Dir
Upper and others.**



JUDGMENT.

Date of hearing: **24.03.2021.**

Petitioner (s) **By Syed Abdul Haq, Advocate.**

Respondent (s) **By M/s Arshad Ahmad Khan AAG &
Ihsanullah Khan Advocate.**

SYED ARSHAD ALI, J.:- Through this consolidated judgment, we shall dispose of this petition as well as connected petitions. Particulars of the said petitions are as under:-

S. No.	Case Title
1.	WP No. 528-M/2016 "Ikramullah and another vs. Deputy Commissioner/Commandant Dir Levies Provincial District Dir Upper and others".
2.	WP No. 900-M/2017 "Ikramullah and another vs. Deputy Commissioner/Commandant Dir Levies District Dir Upper and others".
3.	WP No. 192-M/2018 "Inayat Ullah vs. Government of Pakistan through Secretary SAFRON, Civil Secretariat Islamabad and others".
4.	WP No. 303-M/2018 "Amir Nawaz Khan vs. Deputy Commissioner/Commandant Dir Levies District Dir Upper and another".
5.	WP No. 350-M/2018 "Bakhti Rehman vs. The Govt. of Pakistan through Secretary SAFRON Civil Secretariat, Islamabad and others".
6.	WP No. 398-M/2018 "Abdul Hamid and another vs. Federation of Pakistan through Ministry of SAFRON, Pak Secretariat, Islamabad and others".
7.	WP No. 595-M/2018 "Manzoor Ahmad vs. Commandant Dir Levies/Deputy Commissioner Dir Upper and others".
8.	WP No. 596-M/2018 "Shams-ul-Islam vs. Commandant Dir Levies/Deputy Commissioner Dir Upper and others".
9.	WP No. 740-M/2018 "Hanifullah vs. Secretary Home Khyber Pakhtunkhwa at Peshawar and another".
10.	Review Petition No. 4/2019 in COC No. 95-M/2018 in WP No. 883-M/2017 "Subidar Noor Azam Khan and others vs. Khurshid Alam Khan Deputy Commissioner Chitral".

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EXAMINER
Peshawar High Court

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11.	WP No. 387-M/2019 "Subedar Noor Azam Khan vs. Govt. of KP through Chief Secretary KP, Peshawar and others".
12.	WP No. 745-M/2019 "Tawakal Khan and others vs. Govt. of KP through Chief Secretary at Civil Secretariat, Peshawar and others".
13.	WP No. 1008-M/2019 "Saifullah vs. Govt. of KP through Secretary Home and Tribal Affairs, Civil Secretariat, Peshawar and others".

Writ Petition No. 528-M/2016

2. Petitioners, Ikramullah and another, through the instant constitutional petition, have approached this Court for the following relief:-

"It is therefore, humbly prayed that on acceptance of the instant writ petition, the impugned seniority list dated 10.03.2006 and subsequent promotion orders may kindly be set aside and the seniority list be prepared according to the spirit of Provincial Dir Levies Rules 2015, and further the Respondent No.1 may graciously be directed to determine the seniority list of petitioners as per their appointment order and then to consider them on the basis thereof for promotion to the post and rank according to their entitlement.

Any other relief which this Honorable Court deems fit and proper in the circumstances may also be very kindly granted".

It is alleged in the petition that the petitioners were appointed as Sepoy in Dir Levies vide office order dated 22.11.1999 and after assuming charge of their duties, they were placed at serial No. 122 & 143 of the seniority list dated 10.03.2006. It is further alleged that the petitioners and others had questioned the seniority list dated 10.03.2006 along with promotion order dated 22.03.2006 before this Court through Writ Petition No. 1855/2007, however, the said petition was disposed of vide order dated 02.11.2011 in view of undertaking given by respondent No.1 that the petitioners would be considered for promotion in accordance with law/rules and seniority-cum-fitness. Claim of the present petitioners is that respondent No.1 not only deviated from his stance but also based the alleged seniority list dated 10.03.2006 promoting juniors to them inspite of rules issued

May
ATTESTED
 EXAMINER
 Peshawar High Court

by the Govt. of KP Home & Tribal Affairs Department vide Notification dated 15.05.2015 whereby criteria for promotion has been laid down; hence, the present petition.

Respondent No.1 has furnished his comments and opposed the contents of petition by stating that Provincial PATA Rules 2015 are effective from April, 2015, therefore, after issuance of these rules, seniority list from serial No. 153 onward has been prepared on the basis of first come first serve. The petitioners' request/plea with regard to preparation of seniority list if admitted will damage the whole structure of the Force.

Writ Petition No. 900-M/2017

3. Petitioners, Ikramullah and another, through the instant constitutional petition, have approached this Court for the following relief:

"It is, therefore, humbly prayed that on acceptance of this writ petition in the light of aforementioned submissions the impugned letter No. 508 dated 11.12.2017 may be declared illegal, against the rules and be of no legal effect".

It is alleged in the petition that the petitioners were appointed as Sepoy in Dir Levies vide appointment order dated 22.11.1999, however, they were dropped from promotion and filed Writ Petition No. 1855/2007 before the competent court of law, which was disposed of vide order dated 02.11.2011 on the assurance of respondent No.1 that petitioners would be considered for promotion in accordance with law. It is further alleged that the petitioners filed a C.M. for implementation of aforesaid order dated 02.11.2011, however, later the same was withdrawn and thus, filed a Writ Petition No. 528-M/2016 before this Court, which is pending. In the meanwhile, the petitioners submitted an application to the Director General Ehtesab Commission KP for redressal of grievance, who marked the same to respondent No.1, but respondent No.1 instead of redressing their grievance ordered for initiation of inquiry against them. On completion of

May
ATTESTED
 EXAMINER
 Peshawar High Court

inquiry, respondent No.3 submitted his report dated 28.12.2015 whereby minor penalty of withholding two annual increments was recommended, which was duly endorsed by respondent No.1 vide office order dated 26.01.2016. Against that, the petitioners filed appeal before respondent No.2 but the same was rejected vide order 12.04.2016. The petitioners, then, filed Writ Petition No. 106-M/2017 before this Court, which was allowed vide order dated 19.10.2017 and the respondents were advised to initiate fresh inquiry against the petitioners keeping in view the relevant law on the subject. On the strength of aforesaid judgment of this Court, fresh inquiry was initiated against the present petitioners and upon its conclusion, major penalty of removal from service was recommended vide letter dated 11.12.2017, which has now been impugned before this Court through the instant petition.

Respondent No.1 has furnished his comments and opposed the contents of petition.

Writ Petition No. 192-M/2018

4. Petitioner, Inayatullah, through the instant constitutional petition, have approached this Court for the following relief:-

"In the above circumstances, it is most humbly prayed that on acceptance of this writ petition the impugned minutes/order No. 210-14/DC/CSL dated 10.07.2017 may kindly be set aside to the extent of petitioner and the respondent may graciously be directed to promote the petitioner to the post of Lance Naik BPS-06 with back benefits".

It is alleged in the petition that the petitioner was recruited as Sepoy in Swat Levies vide order dated 18.05.2010 and placed him at serial No. 5 of the final seniority list issued on 20.12.2016. Claim of the present petitioner is that a meeting of Departmental Promotion Committee was held on 10.07.2017, whereby juniors were promoted to the rank of Lance Naik (BPS-06) while he was deferred on account of observation of respondent No.4/Assistant Commissioner Matta at Swat being not fit for promotion. Against that, the

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petitioner filed an application before respondent No.3 for redressal of grievance but the same was not addressed. Thereafter, the petitioner filed appeal before respondent No.2 but instead of addressing his grievances, the petitioner was directed to follow the legal course of action vide letter dated 23.01.2018; hence, the present petition.

Respondent No.3 has furnished his comments and opposed the contents of petition by stating that promotion of petitioner to the rank of Lance Naik was withheld/deferred after the written complaint/report received from the then Assistant Commissioner Matta, Swat.

Writ Petition No. 303-M/2018

5. Petitioner, Amir Nawaz Khan, through the instant constitutional petition, has approached this Court for the following relief:-

"It is, therefore, in view of the above submissions, it is most humbly prayed that on acceptance of this writ petition.

- i) The petitioner may kindly be allowed to join their duty according to his entitlement.*
- ii) That if there is any adverse order against the petitioner may kindly be declared void ab-initio, unlawful, and be set aside.*
- iii) Any other relief which are proper in the instant circumstances of the case may also be granted".*

It is alleged in the petition that the petitioner was appointed as Sepoy in Dir Levies vide appointment order dated 22.11.1999 and was promoted from time to time to the rank of Naik vide office order dated 08.09.2010. However, the petitioner was allegedly informed that his services have been terminated and in this regard, he approached the concerned office but no order has been handed over to him; hence, the present petition.

Respondents No. 1 & 2 have furnished their comments and opposed the contents of petition by stating that as per report of Subidar Major Dir Levies dated 17.03.2009, petitioner has failed to make compliance of the order of his superiors and refused to perform squad duty of Commissioner

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Malakand Division; thus, requested for initiation of disciplinary proceedings against him and stoppage of his salary. Owing to this reason, proper inquiry was conducted and upon its conclusion, the inquiry officer recommended that the petitioner may be proceeded against under the NWFP Removal from Service Rules (Special Powers) Ordinance 2000 (Amended Ordinance, 2001) and thereby the then District Coordination Officer/Commandant Dir Levies imposed major penalty of removal from service against the petitioner w.e.f.17.03.2009 vide letter dated 11.05.2009.

Writ Petition No. 350-M/2018

6. Petitioner Bakhti Rehman, through the instant constitutional petition, has approached this Court for the following relief:-

"It is, therefore, humbly prayed that on acceptance of this writ petition, the order # 548-50 dated 23.01.2017 issued by respondent # 3 may please be set aside as null and void, unlawful against merits, contrary to the rules and regulations and the respondent # 3 may kindly be directed to re-instate/promoted the petitioner with all back benefits as Subedar in accordance with law/old Rules. Any other relief which this august court deems just in the circumstances may also be granted in favour of petitioner though not specifically prayed for".

It is alleged in the petition that the present petitioner was serving in the Malakand Levies as Naib Subedar, however, on completion of seven years tenure, he was retired from service vide order dated 23.01.2017. Against that, the present petitioner filed Writ Petition No. 342-M/2017 before this Court, which was allowed vide order dated 19.10.2017 and the respondents were directed to consider the petitioner for promotion in line with the judgment of this Court in W.P. No. 479-M/2017. The petitioner, then, filed COC No. 84-M/2017 before this Court, which was disposed of vide order dated 05.03.2018 in the following manner:-

"When learned counsel for the petitioner was confronted with the comments that since the petitioner has retired from service how could he be again reinstated with all back benefits, he still argued that the judgment of this court had to be

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implemented in letter and spirit and the petitioner is entitled to be promoted. The prayer in the main writ petition was for setting aside notification dated 23.01.2017 but since the main writ petition was though allowed and the matter was referred to the respondents for consideration which they did as per their comments and if the petitioner still feels that he has got a further cause of action against any official, he may invoke the same. Learned A.A.G submitted a copy of judgment dated 24.01.2018 of August Supreme Court of Pakistan passed in civil petitions No. 1557 and 1569 of 2017 wherein the petitioners were considered eligible for promotion but the determining factor was that a junior person was promoted instead of the petitioner. In the instant case no other official who was considered to have superseded the petitioner was impleaded as respondent to show that a junior official has been promoted in his place as it is purely a case of entitlement to promotion but this exercise could not be done by invoking jurisdiction of this court through the instant petition as the respondents have already undertaken this exercise.

In view of the above, this petition stands disposed off".

Hence, having no other alternate remedy, the petitioner on the ground of compulsion has filed the instant Writ Petition.

Respondent No. 3 has furnished his comments and opposed the contents of petition by stating that the petitioner was retired from service after completion of seven years tenure as Naib Subedar as per Levy Rules, 2016. Furthermore, in pursuance of order dated 19.10.2017 of Hon'ble Peshawar High Court Mingora Bench (Dar-ul-Qaza), Swat, a meeting of Departmental Promotion Committee was convened and the promotion case of the petitioner was discussed in detail and in light of record, the same was rejected.

Writ Petition No. 398-M/2018

7. Petitioners, Abdul Hamid and another, through the instant constitutional petition, seek issuance of an appropriate writ for directing respondent No.4 to appoint them as Sepoy with all back benefits.

It is alleged in the petition that the petitioners were appointed as Sepoy in Dir Levies vide appointment

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orders dated 01.02.2010 & 27.05.2010, however, they were removed from service vide order dated 14.07.2011 on the ground of being remained absent from duty. Against that, the petitioners filed departmental appeals before the respondents but in vain; hence, the present petition.

Respondent No. 4 has furnished his comments and opposed the contents of petition by stating that as per report of the Incharge Subidar Levy Post at Panakot Dir, the petitioners remained absent from their duties since long without any prior permission of the competent authority due to which they were proceeded against under the rules and notices were issued to them with direction to submit their reply within three days positively but they failed to do so. Resultantly, final show cause notice/notice for personal hearing was issued to the petitioners and again they were directed to submit written reply within seven days and to appear before the competent authority for personal hearing, but, this time too, they neither submitted their written reply nor appeared before the competent authority for personal hearing, thus, they were dismissed from services vide order dated 14.07.2011.

Writ Petition No. 595-M/2018

9. Petitioner, Manzoor Ahmad, through the instant constitutional petition, has approached this Court for the following relief:-

"It is, therefore, most humbly prayed that on acceptance of this petition, impugned Orders dated 11.05.2009 and 25.04.2018 regarding major penalty i.e. dismissal from service of petitioner may kindly be set aside and the petitioner may kindly be re-instated to his service with all back benefits of service".

It is alleged in the petition that initially, the petitioner joined the respondent-department as Levy Sepoy vide office order dated 26.04.2000 and performed his duties

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with zeal and zest, however, in the year, 2009, due to some unavoidable circumstances, he could not continue his service and thus, remained absent from duty. Later, the petitioner was dismissed from service vide impugned order dated 11.05.2009 without observing legal formalities. According to the petitioner, the respondents had reinstated some of his colleagues in similar circumstances and thus, he filed departmental appeal against his impugned dismissal order before respondent No.3 but the same was rejected vide order dated 25.04.2018; hence, the instant petition.

Respondents No. 1 to 3 have furnished their comments and opposed the contents of petition by stating that as per report of Subidar Major Dir Levies, District Dir Lower dated 17.03.2009, the petitioner has failed to make compliance of the order of his superiors and refused to perform squad duty of Commissioner Malakand Division and thus, requested for initiation of disciplinary proceedings against him. Owing to this reason, proper inquiry was conducted and upon its conclusion, the inquiry officer recommended that the petitioner may be proceeded against under the NWFP Removal from Service Rules (Special Powers) Ordinance 2000 (Amended Ordinance, 2001) and thereby the then District Coordination Officer/Commandant Dir Levies imposed major penalty of removal from service upon the petitioner vide letter dated 11.05.2009.

Writ Petition No. 596-M/2018

9. Petitioner, Shams-ul-Islam, through the instant constitutional petition, has approached this Court for the following relief:-

"It is, therefore, most humbly prayed that on acceptance of this petition, impugned Orders dated 14.07.2011 and 25.04.2018 regarding major penalty i.e. dismissal from service of petitioner may kindly be set aside and the petitioner may kindly be reinstated to his service with all back benefits of service".

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It is alleged in the petition that initially, the petitioner was appointed as Sepoy in Dir Levies vide office order dated 22.11.1999 and performed his duties with zeal and zest, however, in the year, 2011, due to some unavoidable circumstances, he could not continue his service and thus, remained absent from duty. Later, the petitioner was dismissed from service vide impugned order dated 11.05.2009 without observing legal formalities. According to the petitioner, the respondents had reinstated some of his colleagues in similar circumstances and thus, he filed departmental appeal against his impugned dismissal order before respondent No.3 but the same was rejected vide order dated 25.04.2018; hence, the instant petition.

Respondents No. 1 to 3 have furnished their comments and opposed the contents of petition by stating that the Incharge Subidar Levy Post Wari reported that the petitioner has left his duty point and is continuously remained absent from his duty since 19.05.2011 despite the fact that he has been contacted several times to make sure his presence for duty, however, later, it has been confirmed that he has left for Saudi Arabia for earning livelihood. Owing to this reason, proper inquiry was conducted wherein the petitioner has neither submitted written reply to the final show cause notice nor appeared before the competent authority for personal hearing and thus, the competent authority imposed major penalty of removal from service upon the petitioner vide letter dated 14.07.2011.

Writ Petition No. 740-M/2018

10. Petitioner, Hanifullah, through the instant constitutional petition, has approached this Court for the following relief:-

"It is, therefore, humbly prayed that on acceptance of this writ petition in the light of aforementioned submissions, the order dated 16.04.2018 may kindly be set aside and the petitioner may kindly be reinstated w.e.f. 18.04.2013 with all back benefits".

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It is alleged in the petition that the petitioner was appointed as Sepoy in Dir Levies vide order dated 29.06.2005. Later, a criminal case was registered against the petitioner and he was terminated from service vide office order dated 10.12.2009. According to the petitioner, although he was reinstated in service on filing of departmental appeal vide order dated 18.04.2013 but at that time, he was in Saudi Arabia for earning livelihood and again he was removed from service vide office order dated 14.07.2014. On returning back to Pakistan and getting knowledge regarding his removal order, the petitioner filed departmental appeal on 22.10.2017 before the competent authority but the same was rejected vide order dated 16.04.2018; hence, the instant petition.

Respondents No. 1 to 3 have furnished their comments and opposed the contents of petition by stating that as per report dated 14.10.2009 of Incharge Naib Subidar Levy Post Wari, the petitioner was at home and due to some unknown reasons, he assassinated a man and ran away from the spot; thus, an F.I.R. was registered against him. Further, the petitioner neither surrendered to police nor appeared at his post for duty. Owing to this reason, proper inquiry was conducted against the petitioner and upon its conclusion, major penalty of removal from service was imposed upon him vide order dated 10.12.2009. Further stated that although the petitioner had recently been reinstated by the Home Department but he has failed to appear for duty and thus, another inquiry was conducted against him and upon its conclusion, major penalty of removal from service was imposed upon him vide order dated 16.07.2014.

Review Petition No. 4/2019 in COC No. 95-M/2018 in WP No. 883-M/2017

11. Petitioners, through the instant petition, seek review of judgment/order dated 04.03.2019 delivered by this Court delivered in COC No. 95-M/2018 with the following prayer:-

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"It is therefore most humbly prayed that on acceptance of this Review Petition, the impugned order may graciously be reviewed and suitable and effective measures and directions be added in the judgment/order for the safe administration of justice and check the arbitratial and prejudicial attitude and practice of the respondent which he has adopted during the proceedings of the C.O.C.

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It is alleged in the petition that the petitioners had filed Writ Petition No. 883-M/2017 before this Court with a prayer to direct the respondents to act upon and comply with newly amended Rules of 2016 with further direction to respondent No.3 to initiate and take immediate steps for their promotion to the next higher posts strictly in accordance with the newly amended Rules of 2016 and to abstain from taking any action which may prove fatal and violation to their fundamental rights especially to their right of promotion under the newly amended Rules of 2016. The said petition came up for hearing and the same was allowed vide consolidated judgment dated 02.05.2018 with direction to the respondents to strictly follow the amended updated rules in the matter of promotion/retirements by examining the case of petitioners, individually, in the light of ibid rules and if any, right of the petitioners accrued under the amended rules notified on 25.08.2016, their grievances be redressed within a period of two months from the date of receipt of this order. The present petitioner, thereafter, filed C.O.C. No. 95-M/2018 before this Court for implementation of aforesaid judgment/order dated 02.05.2018. The said petition was disposed of vide order dated 04.03.2019 with direction to the respondents to pass an appropriate order with regard to redressal of grievance of the petitioners in the light of directions handed down by this Court in Writ Petition bearing No. 883-M/2017. Hence, the instant review petition.

Writ Petition No. 387-M/2019

12. Petitioner, Subedar Noor Azam Khan, through the instant constitutional petition, has approached this Court for the following relief:-

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"In the background of the above factual and legal grounds inter alia, a suitable writ may graciously be issued directing:

- i. The orders of respondent No. 3 dated 02.02.2018 and 02.03.2019 to be declared void ab initio, illegal, ultra vires, malicious, malafide and ineffective upon the rights of the petitioner.*
- ii. Declaring the petitioner to be entitled to promoted as Subedar Major with effect from 25.08.2016 when the new rules of 2016 were promulgated or from 23.05.2017 when the writ petitions challenging the vires of the said rules, were dismissed by this Honorable Court.*
- iii. To pass order of promotion of the petitioner to the post of Subedar Major being the senior most serving Subedar and regulated by new rules of 2016.*
- iv. Any other order this Honorable Court may deem just and proper may also be granted in favour of the petitioner".*

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It is alleged in the petition that the petitioner was appointed as Sepoy Border Police and from time to time, he was promoted to the post of Subedar on 27.11.2014. According to the petitioner, the post of Subedar Major was vacant and his case for promotion was delayed by the respondents, therefore, he approached this Court through writ petition No. 883-M/2017, however, during its pendency, the petitioner was issued his retirement order dated 02.02.2018, which was further challenged before this Court in Writ Petition N. 179-M/2018. Both the petitions were decided by single judgment dated 02.05.2018 in favour of petitioner, however, the respondents failed to comply with the same and thus, the petitioner had filed contempt petition before this Court, which was disposed of vide order dated 04.03.2019 with advised to petitioner to challenge the order dated 02.03.2019 of learned Deputy Commissioner, Chitral before appropriate forum; hence, the instant petition.

Respondents No. 2 & 3 have furnished their comments and opposed the contents of petition that the matter was under adjudication in the Apex Court and in the meanwhile the petitioner has crossed the age limit and retired from service honourably by granting him all benefits. Further,

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all those promotees, who were promoted with the petitioner, were reverted to their legal ranks i.e. Sepoys and the financial benefits were recovered from them and deposited in government exchequer.

Writ Petition No. 745-M/2019

13. Petitioners, Tawakal Khan and others, through the instant constitutional petition, have approached this Court for the following relief:-

"It is therefore, in view of aforementioned submission, most humbly prayed that on acceptance of this writ petition, this honourable Court may kindly directed the respondents to release the salaries of the petitioners from 1.12.2014 to up to date and further be directed to posting and granting others benefit of the petitioners which they have been reinstated in light of the judgments passed by this Hon'ble Court".

It is alleged in the petition that the petitioners were appointed as Sepoy Border Police and performed their duties with full devotion for the last twenty years, however, on 27.11.2014, the respondents promoted 29 levy personnel to different ranks by superseding the petitioners and lastly on 01.12.2014, the petitioners were forcibly retired from service. Against that, the petitioners filed Writ Petition No. 608-M/2014 before this Court, which was allowed vide order dated 07.02.2018 by directing the respondents to reinstate the petitioners. The respondents challenged the said order before the Apex Court through Civil Petition No. 296-P of 2018, however, the same was dismissed vide order dated 04.07.2018. Thereafter, the present petitioners were reinstated in service on 05.10.2018 and working with the respondents-department but did not release their salaries. The petitioners submitted an application to respondent No.4 for providing salaries and their posting but refused; hence, the instant petition.

Respondents No. 2 & 4 have furnished their comments and opposed the contents of petition by stating that the petitioners did not report for duty from 01.12.2014 to

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07.02.2018; hence, cannot claim any benefit. Further, the accounting system could not accept their salaries as three personnel have crossed superannuation and four personnel have crossed the required length of service for Sepoys i.e. 25 years.

Writ Petition No. 1008-M/2019

14. Petitioner, Saifullah, through the instant constitutional petition, has approached this Court for the following relief:-

"It is, therefore, humbly prayed that on acceptance of this petition, cancellation order dated 23.04.2013 as well as order dated 25.04.2018 and 21.08.2019 may kindly be set aside and that of order dated 22.04.2013 may graciously be restored and the petitioner may also be appointed as Sepoy with all consequential back benefits".

It is alleged in the petition that the respondents have advertised the posts of Sepoy (BPS-05) in Malakand Levies (Federal) and the petitioner applied for the same and after qualifying written test/physical test, he was appointed vide order dated 22.04.2013, however, on the following day i.e. 23.04.2013, his appointment order was cancelled being not fulfilled the required height. Against that, the petitioner filed appeal before respondent No.1 but the same was rejected on 25.04.2018. Against the said order, the petitioner filed review petition, but the same was also dismissed on 21.08.2019; hence, the instant petition.

15. Learned counsels appearing on behalf of respondents have raised a preliminary objection to the maintainability of these petitions by arguing that all the petitioners are the employees of Provincial Levies Force, which was constituted for maintaining law & order situation in the erstwhile Provincially Administered Tribal Area ("PATA") and thus, for all practical purposes, they were performing police services and as such falls within the definition of civil servants. The matter in issue relates to enforcement of the terms & conditions of their service; hence,

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this Court has no jurisdiction in the matter being barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 ("*Constitution*").

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16. While rebutting the arguments of the said preliminary objection, the learned counsels representing the petitioners have argued that the levy force was established through a separate instrument i.e. the Provincially Administered Tribal Areas Provincial Levies Force Regulation, 2014 (Khyber Pakhtunkhwa Regulation No.1 of 2014) and as such, they are not governed under any provision of the Civil Servants Act, 1973; hence, these constitutional petitions are maintainable.

17. Heard.

18. Article 247 of the Constitution envisages the mechanism for extension and making of laws for the erstwhile FATA/PATA, which reads as under:-

"247. (1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein.

(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions.

(3) No Act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of [Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.

(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of [Majlis-e-Shoora (Parliament)], and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make

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regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the Province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good governance of a Federally Administered Tribal Area or any part thereof.

(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper:

Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides:

Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day".

19. The Provincial Levies Force ("**Force**") was granted statutory cover through Khyber Pakhtunkhwa Regulation No.1 of 2014 ("**Regulation**"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

"3. Power to constitute and maintain by the Force and its functions.--- (1) Government may constitute and maintain a Force for performing the following functions, namely:

- (a) ensuring security of roads in PATA;
- (b) ensuring security and manning of piquet;
- (c) guarding Government institutions and installations;
- (d) ensuring security of jails and arrested criminals;
- (e) generally maintaining law and order providing mobile escort to VIPs;
- (f) anti-smuggling activities especially timber smuggling;
- (g) destruction of illicit crops;
- (h) serving of summons or procedures;
- (I) raid and ambush; and
- (j) such other functions as Government may, by notification in the official Gazette, require the Force to perform.

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- (2) *In discharge of their functions, officers and staff of the Force shall be guided in accordance with this Regulation and the rules.*
- (3) *The head of the Force shall be Commandant in his respective jurisdiction.*
- (4) *Secretary to Government, Home and Tribal Affairs Department shall be the competent authority of the Force.*
- (5) *The Force shall consist of such ranks and number of officers and members and shall be constituted in such manner as may be prescribed by rules.*
- (6) *The officers and members of the Force shall receive such pay, pension, allowances and other remunerations and shall enjoy such leave and other privileges as may be prescribed by rules.*
- (7) *The officers and members of the Force shall wear such uniform as may be prescribed by rules or instructions.*
- (8) *The administration of the Force shall vest in the Commandant in his jurisdiction who shall administer it in accordance with the provisions of this Regulation, rules and instructions.*
- (9) *The Commandant shall exercise his powers and perform his functions under the general supervision and directions of Government.*

4. Powers and duties of officers and members of the Force.—An officer or member of the Force shall-

- (a) *take effective measures for ensuring security of assigned jurisdiction and for safeguarding against acts of unlawful interference;*
- (b) *prevent unauthorized persons and vehicles from access to the territorial jurisdiction;*
- (c) *take effective measures for preventing sabotage, placement of car bombs, letter bombs, dangerous article and carriage of arms and ammunition into the restricted area;*
- (d) *use such arms and ammunition and equipment as may be authorized by the Commandant or an officer authorized by him;*
- (e) *search and arrest without warrant any person who he suspects of endangering or attempting to endanger or having endangered the safety of an installation and may use such force as may be necessary in the discharge of his aforesaid duties; and*
- (f) *perform such other legal functions as the competent authority may require him to perform".*

20. The close perusal of the Regulation would clearly shows that the Force is receiving its salary from the Provincial Exchequer and performs the policing service in the erstwhile PATA.

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21. Having said this, we would now refer to the crucial issue as to whether the employees of the Force can be termed as a civil servants and as such they cannot maintain a constitutional petition before this Court for enforcement of the terms & conditions of their service.

22. The connotation 'civil servant' is defined and explained in respect to the Province of Khyber Pakhtunkhwa, in the Civil Servants Act, 1973 ("Act, 1973"). For ease reference, we would refer to Section 2 (b) of Act, 1973, which reads as under:-

"2. Definitions.—(1) In this act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say--

- (a)
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include—
 - (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
 - (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
 - (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923)".

23. The perusal of the definition would show that a member of a civil service of the Province or who holds a civil post in connection with the affairs of the Province is civil servants. All Pakistan Services are explained in Article 260 of the Constitution, which reads as under:-

"260. (1).....
.....
.....

"service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of [Majlis-e-Shoora (Parliament)] or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister,

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Provincial Minister, [Attorney-General], [Advocate-General],] Parliament Secretary] or [Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister] or member of a House or a Provincial Assembly;

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Whereas Article 240 of the Constitution envisages that:-

"240. Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined -

- (a)
- (b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation.- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".

24. The Phrase "performing in connection with the affairs of Federation or for present matter Province" was elaborately explained in the case of Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others (PLD 1975 Supreme Court 244). In the said judgment, the Apex Court has held:

"Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province". It is clear that the reference is to governmental or State functions, involving, in one form or another, an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility service and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the Federal Government or a Provincial Government".

25. Admittedly, as evident from the bare reading of paragraph-3 & 4 of the Regulation, the present petitioners are performing policing service in the erstwhile tribal area,

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however, their terms and conditions are being regulating through Regulation No.1 of 2014 and after the omission of Article 247 from the Constitution; through a provincial statute i.e. the Khyber Continuation of Laws in the Erstwhile Provincially Administered Tribal Areas Act, 2018 (Khyber Pakhtunkhwa Act No. III of 2019), the operation of Regulation No.1 of 2014 was continued. Thus, the essential criteria for being a civil servant is that the person holding the post must perform his functions in connection with the affairs of Federation/Province and the terms and conditions of his service should be determined by or under the Act of Parliament/Provincial Assembly. The Apex Court in the case of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1081), while dealing with the case of an employee of Pakistan Rangers has observed that:

"7....Perusal of these rules clearly shows that they are all embracing, and therefore, under the amendment of section 1 of the Pakistan Rangers Ordinance, these rules would prevail over the Rules of 1973. The Pakistan Rangers Ordinance was promulgated to constitute a force called the Pakistan Rangers for the protection of and maintenance of order in the border areas. Since with regard to the status of the members of the force the Pakistan Rangers Ordinance is silent, therefore, it can be safely said that the employees of the Pakistan Rangers will be deemed to be civil servants as they are performing duties in connection with affairs of the Federation and hence under the Service Tribunals Act, 1973, an appeal by a member of the Pakistan Rangers regarding a matter relating to terms and conditions of his service is competent before the Federal Service Tribunal..."

26. Similarly, in the case of Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib Khan and others (2018 SCMR 903), the Hon'ble Apex Court has elaborately examined service structure of the employees of Frontier Constabulary, which is established under Frontier Constabulary Act (Act-XIII) of

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1915. Relevant paragraphs of the said judgment are reproduced as under:-

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"6. Three broad tests for establishing the status and character of a civil servant emerge from the Constitutional mandate of the afore-going Articles. Firstly, under Article 240(a) of the Constitution, appointments to and the terms and conditions of service of the persons in the "service of Pakistan" are to be determined by or under Act of Parliament. Secondly, by virtue of Article 260 of the Constitution, 'service of Pakistan' means any service, post or office in connection with the affairs of the Federation. Thirdly, under Article 212(1) (a) of the Constitution, the exclusive jurisdiction to adjudicate disputes relating to the terms and conditions of persons, who are in the service of Pakistan vests in an Administrative Tribunal, namely, the Federal Service Tribunal. These tests are mentioned in the Muhammad Mubeen-us-Salam case *ibid* (at pp. 686-689 of the law report). The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, *inter alia*, holds a civil post "in connection with the affairs of the Federation" including any such post connected with defence, to be a civil servant. The larger Bench has in this respect taken the logical step to incorporate the requirements under Article 240 (a) and 260 of the Constitution as the definitional criteria of the term "civil servant" (at p. 682 of the law report).

7. Having noticed the qualifying criteria of a civil servant under the law, it is appropriate now to examine the factual matrix of the present controversy. The FC was established by the NWFP Constabulary Act, (Act-XIII) of 1915 ("Constabulary Act"). Section 3 of the Constabulary Act empowers the Federal Government to maintain the FC as a force "for the better protection and administration of the external frontiers of Pakistan within the limits of or adjoining North-West Frontier or any part thereof". Section 3-A of the Constabulary Act authorises the Federal Government to employ the FC outside the limits of or adjoining the North-West Frontier Province in other parts of Pakistan for the better protection and administration of those parts. Section 5(1) of the Act *ibid* vests the Federal Government with power to appoint the Commandant and other persons including the District Constabulary Officers or Assistant Constabulary Officers of the force in one or more districts. Section 6 delegates to the Commandant and District Constabulary Officer the power to appoint subordinate officers in the manner prescribed by Rules made under the Act. The Federal Government exercised its power conferred by Section 21 of the Constabulary Act, to frame the NWFP Constabulary Rules, 1958 ("Constabulary Rules"), in order to provide the terms and conditions of service of the officers and men in the FC.

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8. It will be observed that the matter of terms and conditions of service of the respondent-employees of the FC, are in the first place regulated by the Constabulary Act and elaborated pursuant thereto by the FC Rules. The provisions made by the Constabulary Rules are in furtherance of and in exercise of the power conferred by the Constabulary Act. Therefore, the terms and conditions of service of the employees of the FC are prescribed in the Act and the Rules. The test laid down in Article 240(a) of the Constitution requires that the appointment to and the terms and conditions of service of posts in connection with the affairs of the Federation and of a service of Pakistan shall be determined "by or under an Act of" Parliament. The expression "by or under" in Article 240(a) of the Constitution authorizes the terms and conditions of service of a civil servant to be provided both by statute or by statutory rules. The provision made in the Constabulary Act and the Constabulary Rules, therefore, satisfy the Article 240(a) test. The judgment in the Muhammad Mubeen-us-Salam case *ibid* endorses this point of view:-

"86.... The terms and conditions of service of those employees, however, are required to be specified under Article 240 of the Constitution by or under Act of the Parliament. Thus, the conclusion would be that only those persons, who are in the service of Pakistan, as discussed hereinabove, and if their terms and conditions are governed either by a statute or statutory rules, in terms of Article 240 of the Constitution, can seek remedy before the Service Tribunals.."

27. Similarly, this Court in the case of Gul Munir vs. The Government of Pakistan through Secretary, Ministry of States and Frontier Regions (SAFRON), Islamabad and others (2019 PLC (C.S) 645), on the basis of law laid down by the Apex Court in Commandant, Frontier Constabulary Khyber Pakhtunkhwa, Peshawar's case (2018 SCMR 903), while dealing with the case of Federal Levies Force, which was established through Federal Levies Force Regulation, 2012 having the same structure of service for its employees/force as provided in Regulation No. 1 of 2014 has held that employees of the Federal Levies Force whose terms and conditions of service are governed under Federal Levies Force Regulation, 2012 are civil servants. Keeping in view the

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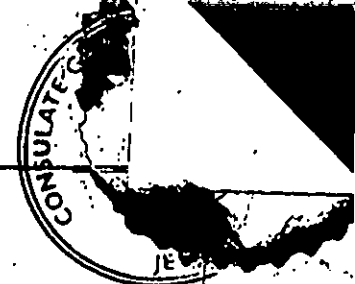
69

above, the Force established under Regulation No. 1 of 2014 qualifies the criteria of being civil servant in view of its composition, functions and duties as per law laid down by the Apex Court in the cases of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1081) and Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib Khan and others (2018 SCMR 903), thus, the preliminary objection raised by the learned counsels for the respondents is sustained and accordingly, the present petitions in view of clear bar contained in Article 212 of the Constitution are not maintainable. The present petitioners may agitate their grievances before the Provincial Services Tribunal. However, prior to this judgment, the status of present petitioners being a civil servant was not determined and in the similar cases, the Apex Court in Gul Raqib Khan's case (2018 SCMR 903) has held that:

"11. It follows from the dicta laid down above that the protection of the border areas is a sovereign function belonging to and performed by the Federation. The same duty is performed equally in the present case by the FC not only on the frontiers of KPK Province but also by maintaining order in other parts of Pakistan. For discharging such functions, the services rendered by the FC have direct nexus with the affairs of the Federation. Therefore, the reasons given in the Muhammad Nazir case (supra) fully apply here as well and we hold that the employees of FC are civil servants. Insofar as the question of competent remedy in respect of service disputes of FC men is concerned, we hold that in a matter relating to the terms and conditions of service of the respondent-employees of the FC, an appeal before the Federal Service Tribunal is available to them as the exclusive remedy under the law. Accordingly, this remedy may be availed by them within the statutory period of limitation commencing from the date of issuance of certified copy of this judgment. All these appeals filed by the appellant-Commandant, FC are according allowed in above terms".

May
ATTESTED
 EXAMINER
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Attested

Aslam Raza Hussaini
Vice Consul (Accounts)
Consulate General of Pakistan
Jeddah

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

72

28 MAY 2018



مختار نامہ حاصل برائے پیروی مقدمات

منکہ حنیف اللہ ولد محمد زین خان شاہی

ساکن سنکھارٹی ڈائمنہ اعلیٰ کھلی واکس فلور ایئر پاکستان

حال مقیم سعودی عرب۔ بوجہ قیام بیرون ملک اپنے معاملات کی پیروی کرنے سے تباہ ہونے کی بناء پر اپنی طرف سے ایسے برادر حصیبی -

مس احمد الطاف الحسن واچمنہ خان شاہی

ساکن سنکھارٹی ڈائمنہ اعلیٰ کھلی واکس فلور ایئر پاکستان

کو مختار قانونی مقرر کرتے ہوئے اختیار دیتا ہوں کہ وہ میری طرف سے مندرجہ ذیل قانونی امور و انحال سر انجام دے: برائے رٹیشن بعنوان حنیف اللہ بنام سیکرٹری ایچ ایم

1- میرے مفکرہ جانب سے مورٹیشن بعنوان مالا لکھہ کے مالک

شمارہ 1 کو رٹیشن منسوخ منسوخ سوائے اس کے کہ جس میں حنیف اللہ کے مفکرہ کو

2- میری جانب سے کوئی وکیل / کونسل ایپر دکار مقرر کرے۔ البتہ اس کے ذریعہ

3- عرضداشت ادعوی / جواب ادعوی / جواب الجواب / بیانات دے اور تمام کاغذات و دستاویزات پیش کرے / داخل کرے۔

4- میری طرف سے جملہ مطلوبہ دستاویزات پر دستخط کرے اور داخل عدالت کرے۔ یا واپس لے

5- میری جانب سے متعلقہ دستاویزات دائر عدالت کرے، تحریر اجازت پیش کرے اور واپس لے۔

6- صلح نامہ / اراضی نامہ کرے، دستبرداری دے یا معاملہ پر عدالت کرے۔

7- نقدی / روپیہ / زر / ختم وغیرہ داخل کرے، مطالبہ کرے، برآمد کرے یا واپس لے۔

8- ڈگری کا اجراء کروائے، من مظنر کی جانب سے زر نقدی وصول کرے اور رسید دے۔

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002717
28 MAY 2018

Aslam Raza

Aslam Raza Hussaini

Vice Consul (Accounts)

Consulate General of Pakistan
Jeddah

9 - دعویٰ / فیصلہ کی اپیل از عدالت استیصال کے لئے، دفاع کرے و مقدمہ

کی پیرودی کے سلسلے میں بالعموم جملہ مطلوبہ امور کی انجام دہی کرے۔

28 MAY 2018

10 - نظر ثانی / نگرانی کیلئے درخواست پیش کرے۔

11 - مذکورہ بالا معاملات / مقدمات کی جہت دیگر دائر شدہ یا آئندہ دائر ہونے والے

مقدمہ / مقدمات جو میری خلاف ہوں یا میری جانب سے ہوں، اور پاکستان

میں کسی عدالت میں ہوں، مختار مذکور کو پیرودی کا مکمل حق و اختیار حاصل ہوگا۔

در میری جانب سے سر انجام دئے گئے جملہ قانونی امور از طرف مختار مذکور

میرے لئے منظور و قابل قبول ہوں گے۔

لہذا مختار نامہ ہذا تحریر کرتے ہوئے دستخط ثبت کر دئے کر سدرے۔

تحریر بمقام قونصلخانہ پاکستان جدہ، سعودی عرب، بتاریخ 28 مئی 2018۔

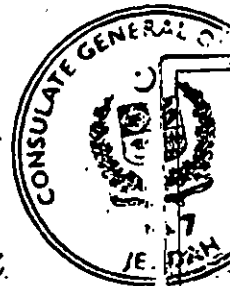
عبد العبد (مذکور)

نام / دستخط: حنیف اللہ محمد زمان

شناختی کارڈ: 1- 8- 519- 157022

اقامت: 2342286568

صوبہ: 80966-582139546





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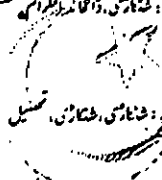
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KINGDOM OF SAUDI ARABIA
MINISTRY OF INTERIOR
RESIDENT IDENTITY
HANIF ULLAH MUHAMMAD ZAMAN KHAN



حنیف اللہ محمد زمان خان
الرقم ۲۳۴۲۲۸۶۵۶۰ نسخة ۵
مکمل الإصدار جلد
الإنهاء ۱۴۴۳/۰۹/۱۸ لليلاد ۱۹۸۶/۰۳/۱۱
المهنة سائق سيارة عمومي
الجنسية باكستان
بطاقة العمل ۱۲۲۹۶۵۱۱
صاحب العمل مؤسسة التكاثر الخاصة بقطاع الزراعة
تصنيف عدد القربى

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ملاحظات
OBSERVATIONS

ملاحظات
OBSERVATIONS

08 DEC 2017

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PAKISTAN
ENTRY
* 31 8 DEC 2014 *

JEHANABAD AIRPORT
PAKISTAN

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IRREGULAR ARRIVAL
15 MAR 2013
IRREGULAR ARRIVAL
PAKISTAN
IMMIGRATION OFFICER
EXIT 131

PAKISTAN
ENTRY
11 JUN 2017
KHISRA
IMMIGRATION OFFICE

Government of Pakistan
Certified that the holder has been
registered under the Immigrant Ordinance
1979 and is eligible for

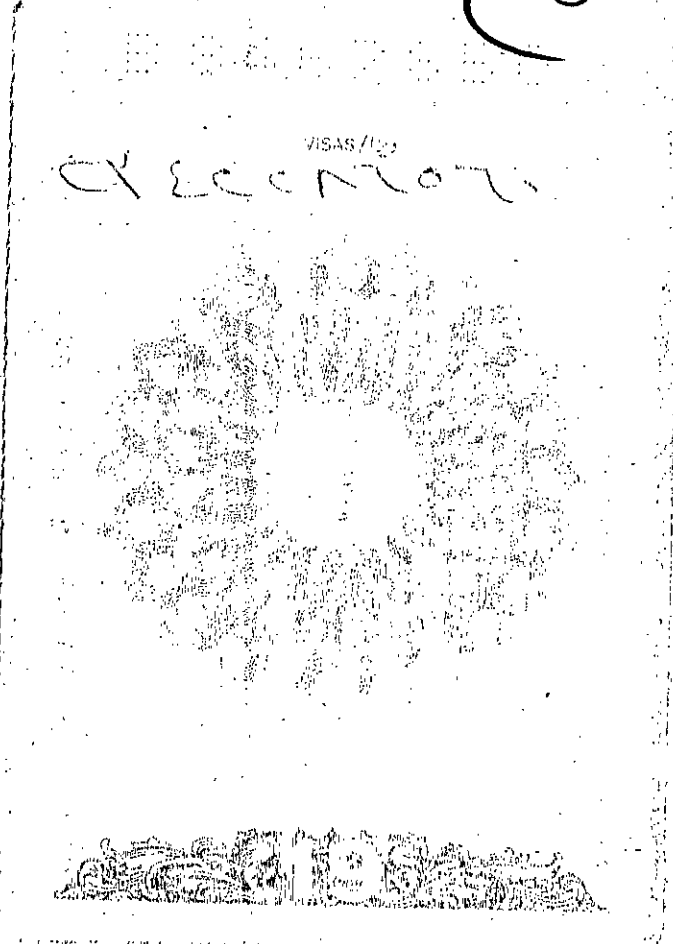
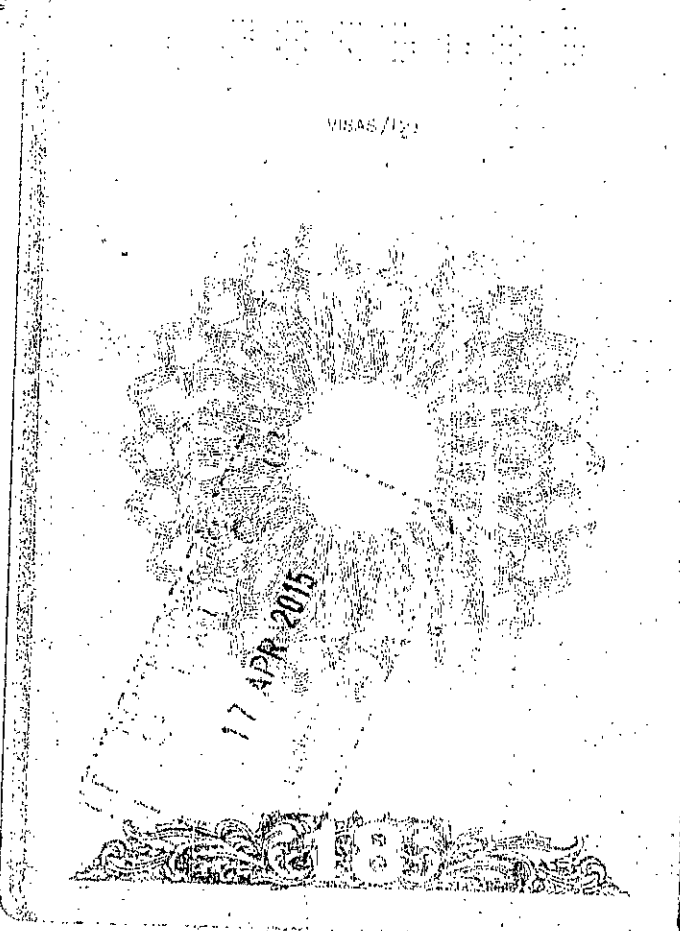
employment
Vide No. P.O. 11123 dated 3.13
Through Mr. Ahmad
OEP for 258L
to work with

PROTECTION OF IMMIGRANTS
ORDINANCE

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At the beach
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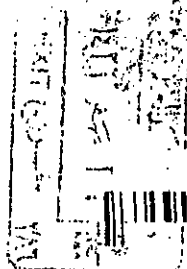
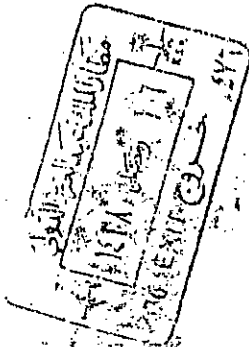
ضوابط

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رجسٹریشن

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2/1/2011



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BEFORE HON'BLE SERVICE TRIBUNAL PESHAWAR

WAKALAT NAMA

Case No. _____ of _____

CASE TITLE

Hanifullah.

VERSUS

Govt. of KPK.

I, _____, do hereby appoint **SYED ABDUL HAQ Advocate, Supreme Court of Pakistan** in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct prosecution or defence of the said case at all its stages.
3. To receive payment of and issue receipts for, all money that may be or become due and payable to us during the course of proceedings.
4. To do any act necessary or ancillary to the above acts, deed and things.
5. To appoint any other counsel to do any/all of the acts, deeds and things.
6. I/We shall appear in the court/tribunal on every date of hearing for assistance and if due to my/our non-appearance, any adverse judgment/order/decree is passed, they will not be held responsible.

In witness whereof I/We have signed this Wakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this, 28/04/2021.

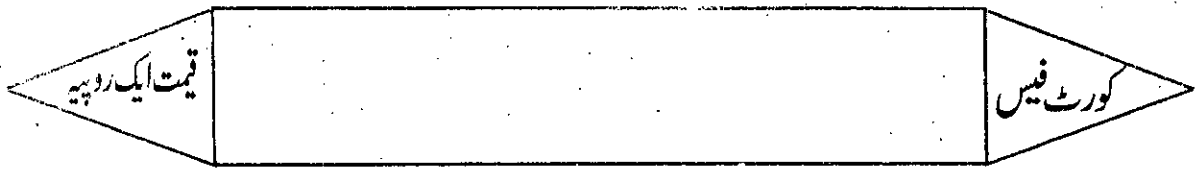
Signature of Executant

Attested & Accepted by:

SYED ABDUL HAQ
Advocate, Supreme Court of Pakistan
Cell No. 0311-0950959

CNIC #
15702-0186578-3
Cell# 03459008194

بعدالت سرورس ٹریبیونل پشاور مقام ضلع سوات



مورخہ ۲۰۲۳ منجانب اسپلانٹ
مقدمہ حنیف اللہ بنام حنیف مختون کوخواہ حکومت
دعویٰ جرم

باعث تحریر آنک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام سرورس ٹریبیونل پشاور ضلع سوات کے امیر اسٹوٹ ایڈووکیٹ کو مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زر اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا ایے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کر پتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم ۵۹ ماہ فروری ۲۰۲۳

العبد گداہ شادہ العبد

مقام سرورس ٹریبیونل پشاور ضلع سوات کے لئے منظور ہے

Attested & Accepted by Humaira Shaikat
Advocate High Court

حنیف اللہ ولد محمد زمان خان سکینہ شنگاٹ تحصیل ڈاڑی ضلع ایبٹ آباد

بار کونسل نمبر: Bc-16-7151	118893
بار ایسوسی ایشن نمبر: 363	QR Code
رابطہ نمبر: 03415257453	ڈسٹرکٹ بار ایسوسی ایشن سوات
ای میل ایڈریس:	

بعدالت جناب:

منجانب: Appellant	دعویٰ اور درخواست:
حیف انور بنام ایجنٹ سید بی بی دین	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

بابت تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے برائے پیروی مقدمہ

سوات کیلئے محمد سائر احمد ایڈووکیٹ
آن مقام کو مقرر کر کے
اقرار کیا جاتا ہے، کہ صاحب موصوف کو مقدمہ کی کل کاروائی کو کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ
کرنے و تقرر ثالث کرنے، دعویٰ، جواب دعویٰ، اقبال دعویٰ اور درخواست برائے سرسبزی مقدمہ، منسوخی ڈگری
یکطرفہ، اجراء و پیروی کرنے کا مختار ہوگا۔ نیز دائر کرنے اپیل نگرانی، نظر ثانی و پیروی کرنے کا مختار ہوگا۔ اور مقدمہ
مذکورہ کیلئے کل وقتی یا جزوی کاروائی کیلئے کسی دیگر وکیل یا مختار قانون کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا
اور صاحب مقرر شدہ کو بھی جملہ مذکورہ اختیارات حاصل ہوں گے، اور اس کا ساختہ و پرداختہ منظور قبول ہوگا، بدوران
مقدمہ جو خرچہ و ہر جانہ کسی بھی سبب سے حاصل ہوگا، وہ وکیل موصوف وصول کرنے کا حقدار ہوگا، کوئی تاریخ پیشی
مقام مذکورہ بالا سے باہر ہو، تو وکیل صاحب پیروی مقدمہ کرنے کے پابند نہ ہوں گے، مقدمہ کسی عدالت میں بعد
پیروی خارج ہونے یا ڈگری یکطرفہ ہونے کے صورت میں وکیل صاحب ذمہ دار نہیں ہوں گے،
لہذا وکالت نامہ لکھ دیا کہ سندر ہے

مقام کے لئے منظور ہے۔

سوات

ایڈووکیٹ دستخط:

ایڈووکیٹ دستخط:

Accepted
And
Attested

المزوم: 3/5/23

حیف انور
بنام
ایجنٹ سید بی بی دین
(Appellant)