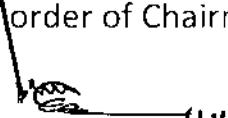


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 91/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
	21.02.2023	<p>The execution petition of Mr. Misal Khan submitted today by Mr. Muhammad Masoom Shah Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE LEARNED SERVICE TRIBUNAL, K.P
PESHAWAR

Misal Khan

Execution Petition NO. 91/2023
Versus

Senior Superintendant of Police, CTD, Peshawar & others

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2	ADDRESSES OF PARTIES		05
3	Copy of Termination letter dated: 03/09/2015	A	07
4	Copy of Order of High Court: 13/12/2019	B	08
5	Copy of Departmental Appeal dated 10-02-2020. (Order)	C	19
5	COPY OF ORDER OF SERVICE TRIBUNAL DATED 19-10-2022	D	20
6	Copy Of Application for Implementation	E	24
7	COPY OF NOTICE OF PETITION ALONG WITH RECEIPTS	F	06
8	WAKALATNAMA		

PETITIONER/DECREE HOLDER

Through


MUHAMMAD MASOOM SHAH

Advocate, High Court



Muhammad Shoaib Khan

Rizwan Ahmed

Advocates.

b.c : 10-4795

Contact : 0333-9113892

e-mail : mohammadmasoom@hotmail.com

C M No. _____/2023

MISAL KHAN S/O TOOR KHAN, EX DRIVER/CONSTABLE C.T.D,
PESHAWAR.

DECREE HOLDER/PETITIONER

VERSUS

1. Senior Superintendant of Police, C.T.D, Peshawar.
2. Deputy Inspector General, C.T.D, Peshawar.
3. Inspector General of Police, C.P.O, Khyber Pakhtunkhwa Peshawar
4. Accountant General, Khyber Pakhtunkhwa

Respondents/Judgment debtors

**PETITION FOR IMPLEMENTATION OF THE ORDER DATED 19/07/2022
PASSED BY THIS HONOURABLE COURT/TRIBUNAL IN SERVICE APPEAL
No. "1407/2020" TITLED "MISAL KHAN VERSUS S.S.P CTD & OTHERS".**

**PETITION FOR INITIATION OF CONTEMPT OF COURT PROCEEDINGS
AGAINST RESPONDENTS NO. 1-3/JUDGMENT DEBTORS FOR NON-
IMPLEMENTATION OF THE ORDER DATED 19TH OF JULY 2022 PASSED IN
SERVICE APPEAL NO. 1407/2022 TITLED MISAL KHAN VERSUS SSP CTD
& OTHERS. BY THIS HONOURABLE COURT/TRIBUNAL.**

=====
Respectfully Sheweth:

BRIEF FACTS:

1. That appellatant was working as a head constable posted in CTD and was implicated and arrested in FIR no 112 dated 18/04/2015 u/sec 9c CNSA Lodged at Police Station Alpuri District Shangla.

2. That the departmental proceedings were initiated against the appellant in his absence and subsequently he was terminated from his services on 03/09/2015, in absence.

(Copy of termination letter is attached herewith marked as Annex A)

3. That the honorable high court acquitted the appellant from the charge and when the appellant approached the department to rejoin his services but the appellant's departmental appeal was turned down and the respondents handed him termination letter dated 03/09/2015.

(Copy of High Court Order are attached herewith marked as Annex B)

4. That on 08/01/2020 the appellant submitted departmental appeal before the respondents which was rejected on 10/02/2020.

(Copy Of Order Dated 10/02/2020 Is Attached Herewith Marked As Annex C)

5. That the appellant then approached the *Khyber Pakhtunkhwa Service Tribunal* Peshawar vide service appeal no 1407/2020 whereby the tribunal accepted the aforementioned appeal and set aside the order dated 03/09/2015 and 10/02/2020 and also reinstated the appellant into the service.

(Copy Of Order Dated: 19/10/2022 Is Attached Herewith Marked As Annex-D)

6. That the petitioner/decreed holder submitted an application for implementation of order dated: 19/07/2022 to the respondents no 1 to 3 but it did not bare any fruit as the respondents are still reluctant to implement the order of the KHYBER PUKHTUNKHWA Service Tribunal in true letter and spirit.

(Copy Of Application 16/11/2022 Is Attached Herewith Marked As Annex-E)

7. That the petitioner feeling aggrieved from the omission and non-implementation of order dated: 19/07/2022 submits this instant petition on following grounds inter-alia, amongst others:

GROUND:

1. That the omission/non-implementation of order dated: 19/07/2022 amounts to contempt of court, as the order is clear, unambiguous and vocal.

2. That order dated: 19/07/2022 has been passed after contested litigation.
3. That till date decree holder/petitioner has not received any notice/summon from the Honourable Supreme Court, to be acknowledged whether the respondents have preferred an appeal against order of this Honourable court dated: 19/07/2022.
4. That respondents are purposely, knowingly & purposely not implementing order dated: 19/07/2022.
5. That the Respondents in their inaction to the this Honourable court's orders are liable to be held in contempt of court.
6. That the inaction of the respondents amounts to the violation of the fundamental rights of equal implementation of law the petitioner guaranteed by the Constitution of the Islamic Republic of Pakistan 1973.
7. That any other grounds will be raised at the time of arguments before this Honourable Court.

PRAYER

In wake of the grounds mentioned above, the petition as prayed for may kindly be allowed in favor of the petitioner against the respondents.

Any other relief deemed fit may also be granted in favor of the petitioner.

Petitioner/Decree Holder

Misal Khan

Through

Muhammad Masoom Shah

Muhammad Shoaib Khan

Rizwan Ahmed

Advocates.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Misal Khan

Versus

Senior Superintendant of Police, CTD, Peshawar & others

AFFIDAVIT

I, Misal Khan (Petitioner/Decree holder) S/o Toor Khan R/o Village Badraga, Tehsil Dargai, District Malakand do hereby solemnly affirm on oath and declare that all the content of this petition to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

DEPONENT

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Misal Khan

Versus

Senior Superintendant of Police, CTD, Peshawar & others

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PETITIONER/DECREE HOLDER

Through

MUHAMMAD MASOOM SHAH
Advocate, High Court

Muhammad Shoaib Khan

Rizwan Ahmed
Advocates.

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

C A No. _____/2016

Misal Khan S/O Toor Khan .

Versus

Senior Superintendant of Police, CTD, Peshawar & others

ADDRESSES OF PARTIES

Petitioner:

MISAL KHAN S/O TOOR KHAN, EX DRIVER/CONSTABLE C.T.D,
PESHAWAR.

Respondents:

1. Senior Superintendant of Police, C.T.D, Peshawar.
2. Deputy Inspector General, C.T.D, Peshawar.
3. Inspector General of Police, C.P.O, Khyber Pakhtunkhwa Peshawar
4. Accountant General, Khyber Pakhtunkhwa

Counsel

Notice

1. Senior Superintendant of Police, C.T.D, Peshawar.
2. Deputy Inspector General, C.T.D, Peshawar.
3. Inspector General of Police, C.P.O, Khyber Pakhtunkhwa Peshawar
4. Accountant General Khyber Pakhtunkhwa, Fort Road Peshawar.

I am filing implementation/contempt of court petition, on behalf of Misal Khan S/O Toor khan against you in Khyber Pakhtunkhwa service tribunal Peshawar for not implementing the order of the Honourable Court/Tribunal dated 19/07/2022 in the service appeal no 1407/2020.

Petitioner/Decree holder

Misal Khan

Through

**Muhammad Shoaib Khan
Advocate**

**19-A, Nasir Mansion, railway
Road Peshawar.**

CELL 0345 9177948

ORDER

My this order so far relates to the disposal off Departmental enquiry against Driver Constable Missal Khan, No. 157 of this unit on the score of following allegations leveled against him:-

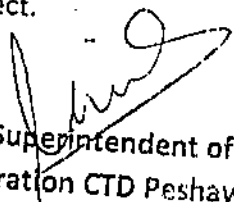
- a) As reported by SHO, CTD. Driver Constable Missal Khan No. 157 of this unit absent himself intentionally and deliberately from his lawful duties.
- b) He has been arrested by the local police of PS Alpori Distt: Shangla and recovered 11.388 kilo gram of "Hashish" from his possession and a proper case vide FIR No. 112 dated 18-04-2015 under section 95C/CNSA police Station, Alpori Distt: Shangla was registered against him and sent to judicial lockup at District Jail Shangla.

Being involved in criminal case the defaulter Driver Constable Missal Khan was placed under suspension vide this office order No. 4186-91/EC/CTD dated 22-04-2015 and proper departmental enquiry was initiated against him. He was issued charge sheet along with summary of allegation vide this office No. 4337-39/HC/Opss/CTD dated 24-04-2015 to him. Mr. Sameen Jan khan was nominated as inquiry officer probe into the matter. After completion the enquiry officer forwarded his findings of the enquiry found the defaulter guilty of the charges and recommended for major punishment.

Later on the Senior Superintendent of Police operation CTD Peshawar issued him final Show Cause notice vide this office No. 7650/HC/Opss: CTD dated 12-08-2015 but he did not submit reply within stipulated period. The undersigned also agreed with the recommendation of the enquiry officer.

Now, I SOHAIL KHALID SENIOR SUPERINTENDENT OF POLICE, OPERATION CTD, PESHAWAR, the power vested in me under Police Rules 1975 read amendment 2014 have no option but to order of his dismissal from service with immediate effect.

OB. NO. 236
Dated 03/09/15


Senior Superintendent of Police,
Operation CTD Peshawar.

3/09/2015.

No. 8394-97HC/Opss/CTD dated Peshawar.

Copy of above is forwarded to all concerned for information and necessary action please.

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

1) Cr.A No. 255-M/2016

Zahir Shah s/o Nowrooz Khan r/o Badraga Dargai, Malakand
Agency.

(Appellant)

Versus

The State.

(Respondent)

2) Cr.A No. 277-M/2016

Misal Khan s/o Toor Khan r/o Badraga, Tehsli Dargai,
Malakand.

(Appellant)

Versus

The State.

(Respondent)

Present:

Farhana Marwat, Advocate for appellant: Zahir
Shah.

M/S Adil Khan Khalil and M. Masoom Shah, Advocates
for appellant Misal Khan.

Mr. Haq Nawaz, Assistant A.G. for State.

Date of hearing: 03.12.2019

JUDGMENT

SYED ARSHAD ALI, J.- Our this judgment is
aimed to dispose of and decide the instant Cr.A.
No. 255-M/2016 filed by appellant/convict Zahir
Shah as well as the connected Cr.A No. 277-M/2016
preferred by appellant/convict Misal Khan, as both
these appeals are emanating from one and the same
judgment of the learned Sessions Judge/Judge
Special Court Shangla, Camp Court Swat, in case
F.I.R. No. 112 dated 18.04.2015 registered at Police

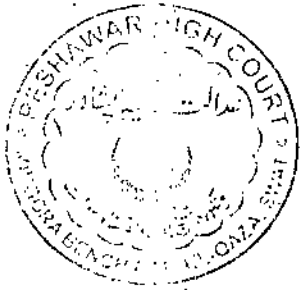
ATTESTED

E. Syner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

13/12/2019

By: Hon'ble Mr. Justice Syed Arshad Ali
Hon'ble Mr. Justice Syed Arshad Ali
Cr.A No. 255-M/2016 Zahir Shah vs. The State

Station Alpurai, District Shangla, whereby both the appellants were convicted u/s 9 (c) of the Control of Narcotic Substances Act, 1997 and sentenced to life imprisonment with fine of Rs.100,000/- each or to undergo further one year S.I in case of non-payment of fine.



2. The police of District Shangla had received information that huge quantity of narcotics will be smuggled through a Carry Van to District Shangla, therefore, Habib Said Khan, S.H.O of P.S Alpurai (PW-4) in the company of Sher Muhammad Khan ASI (PW-5) and constables Amir Hussain, Tausif Ali and Saif Ullah (not produced) led by DSP Circle made a barricade at Shangla Top check post on 18.04.2015. At 13:00 hours, a Carry Van bearing Registration No. 9653/LRK, being driven by appellant/Convict Zahir Shah, was stopped by constable Saifullah. The person occupying the front seat of the said vehicle disclosed his name Misal Khan (appellant/convict in the connected appeal). The vehicle was thoroughly searched during which nine packets of chars, covered in yellow plastic bags, were recovered from secret cavities of the doors of the vehicle. On weighing the chars through digital scale, the same were found to be of 11388

ATTESTED

Examiner

Gilgit-Baltistan High Court Bench
Mingora District-Gaza, Swat.

Tajmeel/PS

DR: Hon'ble Mr. Justice Syed Arshad JAR
Hon'ble Mr. Justice Waqar Ahmad
(C.A No. 233-44 of 2018 Zahir Shah Vs. The State)

grams. 10 grams from each packet were separated for analysis through the Forensic Lab and sealed in separate parcels whereas the remaining bulk of 11298 grams were also sealed in separate parcels. In this regard recovery memo Ex.PC was prepared and both the appellants were arrested on the spot.



3. The matter was reported through *Murasila* (Ex.PA/1) on the basis whereof formal F.I.R (Ex.PA) was registered initially against the present appellants/convicts. During investigation, appellant/convict Misal Khan recorded his confessional statement (Ex.PW-6/2) on 21.04.2015 before the Judicial Magistrate (PW-6) in light whereof the acquitted co-accused Ali Shah and Aziz-ur-Rehman were also arrayed as accused in the case.

ATTESTED
L. Karim
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

4. After completion of investigation, challan was put in Court for trial of the accused. Upon commencement of trial against them, the prosecution produced seven witnesses in support of its case whereafter they were examined u/s 342, Cr.P.C wherein they professed innocence, however, they neither recorded their own statements, on oath nor opted to examine any witness in their defence. On conclusion of trial, the present appellants.

convicts namely Zahir Shah and Misal Khan were convicted and sentenced through the impugned judgment whereas their two co-accused were acquitted of the charge. Hence, these appeals.



5. We have heard the arguments of learned counsels appearing on behalf of the appellants/convicts and the learned Assistant A.G. on behalf of State and perused the record with their able assistance.

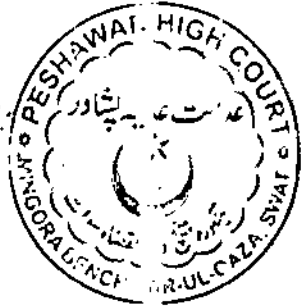
6. The prosecution version is that the recovery of chars from the secret cavities of the Carry Van No. LRK/9653 was effected by Habib Said S.H.O (PW-4). According to this witness, when the vehicle was stopped by constable Saifullah at the check-post, on cursory search thereof he had noticed yellow packets in the vehicle and thereafter the vehicle was moved to the nearby helipad for the purpose of thorough search where the chars were recovered from the said vehicle. PW-4 during cross-examination stated that:

چیک پوسٹ پر میں نے گاڑی کا سرسری ملاحظہ نہیں کیا تھا۔ گواہ نے پھر کہا کہ
چیک پوسٹ پر میں نے گاڑی کا سرسری ملاحظہ کیا تھا۔ بدوران سرسری ملاحظہ
میں نے زرد پیکٹ دیکھے تھے اور تفصیلی چیکنگ کیلئے یہی بیڈ پر لے جانے پر
برآمدگی چرس کی۔۔۔۔۔ چیک پوسٹ پر جب میں نے گاڑی میں زرد تھیلے
ملاحظہ کی تو وہ تھیلے میں نے گاڑی سے نہیں اٹھائے اور نہ ہی پیکٹ کیے۔

ATTESTED
Examiner
Peshawar High Court Bench
Mingora Dera Ismail Khan, Swat.

Close perusal of the F.I.R and statement of the recovery officer (PW-4) would reveal that prosecution has adopted two different versions regarding the recovery of contraband from the vehicle. According to the first version mentioned in the F.I.R and examination-in-chief of PW-4, the chairs were recovered from secret cavities of the vehicle but according to the second version emerging from cross-examination of PW-4, he had noticed yellow packets on cursory checking of the vehicle at the check post and recovered the narcotics by taking the vehicle to helipad at a distance of 40/50 feet according to the statement of I.O (PW-7). In such situation, we cannot determine that which of the two versions is true. If statement of the recovery officer is adopted as true then it would definitely nullify the other version of prosecution in the F.I.R that the narcotics were recovered from secret cavities of the vehicle. Thus, the mode and manner of the recovery has not remained the same as set forth by prosecution in *Murasila* F.I.R.

Z. It is evident from the record that the appellants were at some distance from the vehicle at the time of its search by S.H.O. Although the recovery officer (PW-4) has stated that:



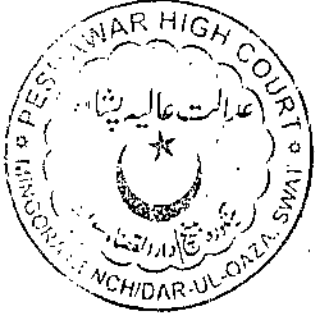
ATTESTED

Examiner

Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

[Handwritten mark]

جب ٹرمان کو گاڑی سے اُتار تو ٹرمان کچھ فاصلے پر کھڑے تھے اور ہم نے
گاڑی اڈہ کی تلاشی شروع کی۔ از خود کہا کہ تقریباً ڈیڑھ اڈھ کے فاصلے پر
کھڑے تھے۔



However, Sher Muhammad Khan ASI
(PW-5), marginal witness of recovery memo Ex.PC,
has admitted in his cross-examination that:

ڈبہ کو چیکنگ کی غرض سے رکوا یا اور موقع پر چیکنگ نہیں ہوئی اور ڈبہ مذکورہ کو
چیک پوسٹ سے کافی فاصلے پر لے جایا گیا۔ جہاں پر ڈبہ کی تلاشی لی گئی۔ دو بارہ کہا
کہ SHO نے تلاشی لی۔ ٹرمان کو گاڑی سے اُتار کر تلاشی لی گئی۔ ٹرمان کی جامدہ
تلاشی سے کوئی چیز برآمد نہیں ہوئی تھی۔ ٹرمان یہی پتہ پر موجود تھے۔ جو کہ
گاڑی سے کافی فاصلے پر تھے۔ میں ٹرمان کے ساتھ کھڑا تھا۔

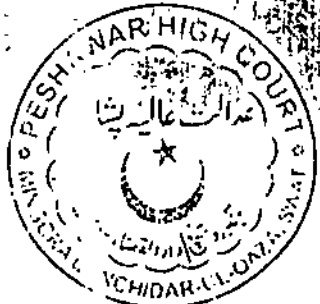
The above admissions of PW-5 make it
abundantly clear that he was not an eye witness of
recovery of chars because he was standing alongwith
the accused at a sufficient distance from the vehicle
when it was searched by PW-4. It is pertinent to note
here that prosecution has examined only the said
Sher Muhammad Khan ASI (PW-4) as attesting
witness of the recovery memo and the other
marginal witness constable Amir Hussain was
abandoned. Thus, in view of the above stated
position, the statement of PW-4 cannot be relied
upon for maintaining conviction of the present
appellants.

Another glaring inconsistency in the
prosecution case which we have got notice of is the

ATTESTED

Examiner
Peshawar High Court Bench
Mingora, Swat.

number of persons seated in the vehicle when it was stopped by police at the check post. The recovery officer (PW-4) though has stated that only the present appellants were boarded in the vehicle at the relevant time and in response to a suggestion put to him he stated that:



یہ تجویز کرنا بلا ہے کہ ذہبہ مذکورہ میں تین اور سواریاں بھی تھی۔

Against the above assertion of PW-4, the eye witness PW-5 has categorically admitted in his cross-examination that:

ذکورہ ذہبہ میں دو افراد سواری تھے پھر کہا کہ چار افراد سواری تھے۔

The above-mentioned situation has created a serious dent in the prosecution case and it appears that the police had specifically chosen two out of four persons i.e the present appellants, boarded in the vehicle for their nomination as accused in the present case. The mentioned factor has further rendered the prosecution case doubtful, as such, conviction of the appellants in the circumstances was not safe.

ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

2. However, the fatal discrepancy in the prosecution case is its failure to establish safe custody/transmission of the contraband and samples to Lab. *Muharrir* of the P.S, to whom the case property was allegedly entrusted, was not produced

300

in view of the admission of the recovery officer stating that:

یہ درست ہے کہ مال مقدمہ میں سے ایک پیکٹ آج میرے روز و عدالت میں موجود ہے۔ یعنی فرد مقبولی 9 عدوی پیکٹ درج سے اور آج عدالت میں 8 عدوی پیکٹ پیش کیے گئے۔



The above scenario leads us to the conclusion that safe custody of the contraband has not been established by prosecution.

10. Regarding the transmission of the samples to Forensic Lab, according to application/transit receipt Ex.PW-7/13, the samples were handed over to constable Zia-ur-Rehman No. 927 on 20.04.2015 for its onward transmission to the F.S.L where the same were delivered on the next day i.e 21.04.2015. The prosecution has not bothered to examine the said person to have explained that for what purpose he had retained the samples with him during the night falling between 20th and 21st of April, 2015. Thus, it can safely be concluded that the chain of custody of the contraband since the time of recovery till delivery to the lab has not remained intact, hence, the F.S.L report in the present case cannot be considered as authentic document against the appellants/convicts in view of the mentioned circumstances. Wisdom in this regard is drawn from

TESTED

Examiner
Peshawar High Court Bench
Mingora, Dar-ul-Qaza, Swat.

3/11

the judgment of the august Supreme Court of Pakistan in the case titled "The State through Regional Director ANF V/s. Imam Bakhs and others" 2018 SCMR 2039 wherein it was held that:

"The chain of custody begins with the recovery of the seized drug by the Police and includes the separation of the representative sample(s) of the seized drug and their dispatch to the Narcotics Testing Laboratory. This chain of custody, is pivotal, as the entire construct of the Act and the Rules rests on the Report of the Government Analyst, which in turn rests on the process of sampling and its safe and secure custody and transmission to the laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspecting, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction".

This view was followed by the august

Supreme Court in another judgment handed down in the case of "Mst. Razia Sultana V/s. The State and another" 2019 SCMR 1300.

II. Moving on to the confessional statement of the appellant/convict Misal Khan, when the prosecution case is replete with contradictions and inconsistencies of blatant nature, his conviction



ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

Tajam/PS*

OB: Hon'ble Mr. Justice Syed Arshad Ali
Hon'ble Mr. Justice Yousaf Ahmad
(G.A No. 255-M of 2018 Zuhri Sheh V. The State)

on the sole basis of his confession cannot be maintained which was not only recorded after three days of police custody but the same was retracted by him during his examination u/s 342, Cr.P.C. We would not deviate from the settled principle of law that an accused can be convicted even on the basis of his retracted confession but the condition laid down by superior Courts in this regard is that it must be corroborated by the prosecution evidence which factor is missing in the present case. It is also a trite law that prosecution must prove its case against an accused beyond reasonable doubt and his conviction cannot be based on his sole confession. As discussed above, the prosecution case is suffering from various discrepancies and inconsistencies giving rise to many reasonable doubts in prudent mind qua the guilt of the appellants/convicts and the prosecution has badly failed to establish its case against them beyond shadow of doubt, therefore, their conviction cannot be maintained on the basis of sole confession recorded by appellant Misal Khan which neither appears to be voluntary nor true. Guidance is sought from the judgment in the case titled "Dadullah and another V/s. The State" (2015 SCMR 856) wherein though the confession of accused was relied upon



ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

500

but it was considered in combination with other convincing and trustworthy evidence of prosecution and it was laid down that.

"This is settled law that conviction could not be recorded on the sole basis of confessional statement and the prosecution has to prove its case beyond any shadow of doubt".



12. In light of the above discussion, the prosecution has failed to prove the guilt of appellants/convicts beyond shadow of doubt, therefore, their conviction and sentence are not sustainable in the circumstances. Resultantly, these appeals are allowed, the impugned judgment is set aside and the appellants/convicts namely Zahir Shah and Misal Khan are acquitted of the charge in the present case. They be set at liberty forthwith if not required in any other case.

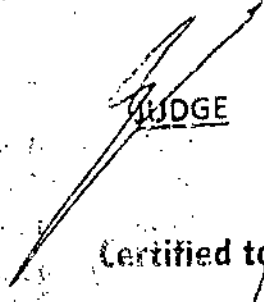
13. Above are the reasons of our short orders of the even date.

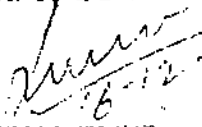
Announced
Dt: 03.12.2019


JUDGE

Office
9/12
WR

S.No.----- 20 -----
Name of Applicant----- Zahir Shah -----
Date of Presentation of Applicant----- 16-12-19 -----
Date of Completion of Copies----- 16-12-19 -----
No of Copies----- 16-P -----
Urgent Fee----- -----
Fee Charged----- 32/- -----
Date of Delivery of Copies----- 16-12-19 -----


JUDGE

Certified to be true copy

16-12-19
EXAMINER
Peshawar High Court, Mirpur/Dera-e-Qaza
Authorized Under Article 47 of Constitution of Pakistan

33

Annex-F



OFFICE OF THE,
DEPUTY INSPECTOR GENERAL OF POLICE,
COUNTER TERRORISM DEPARTMENT,
KHYBER PAKHTUNKHWA, PESHAWAR.

ORDER

As approved by the competent authority, the appeal of Ex-Driver Constable Misal Khan No. 157 requesting therein for his re-instatement in services is hereby filed due to badly time barred.]

OB No. 75 CTD
Dated: 10/02/2020

SP/HQrs:
For Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar.

No 1680-83EC/CTD

Dated Peshawar the 10/02/2020

Copy of above is forwarded for information and necessary action to the:-

- i. Ex-Driver Constable Misal Khan No. 157
- ii. Accountant, OASI/SRC CTD HQrs: Peshawar.

1/P/2000

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT PESHAWAR.

SERVICE APPEAL No. _____

MISAL KHAN s/o TOOR KHAN
EX-DRIVER/CONSTABLE C.T.D PESHAWAR
r/o VILLAGE BADRAGA, TEHSIL DARGAI, DISTRICT MALAKAND.
.....APPELLANT.

-VERSUS-

1. SENIOR SUPERINDENT OF POLICE,
OPERATION C.T.D PESHAWAR,
AT POLICE LINES, CIVIL SECRETARIAT,
PESHAWAR.

2. DEPUTY INSPECTOR GENERAL,
COUNTER TERRORISM DEPARTMENT (CTD), PESHAWAR
AT POLICE LINES, CIVIL SECRETARIAT,
PESHAWAR.

3. INSPECTOR GENERAL OF POLICE,
KYBERPAKHTUNKHWA PESHAWAR
AT CENTRAL POLICE OFFICE (C.P.O),
PESHAWAR.

.....RESPONDENTS.

*Attorney
General
Peshawar*

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT 1974 AGAINST O.B
NO. 236 DATED: 03/09/2015 OF RESPONDENT NO.1, WHEREBY
APPELLANT WAS DISMISSED FROM SERVICE OR O.B NO.
75/CTD DATED: 10/02/2020 OF RESPONDENT NO.2 WHEREBY
REPRESENTATION OF APPELLANT WAS FILED.

Respected Sir.

Appellant humbly submits as under:-

FACTS:-

Brief facts of the case as narrated below:-

1. That appellant was appointed as Constable/driver on 01/07/1988 in the Police Department and was posted in Special Branch Peshawar.

2. That appellant was serving the department to the best of his ability and to the entire satisfaction of the superiors.
3. That unfortunately appellant was implicated in FIR No. 112, Dated: 18/04/2015, Police Station: Alpuri U/S: 9-C, CNSA 1997.
Copy of FIR is attached herewith marked as annex-A
4. That on the day of occurrence appellant informed the department about the lodging of the said F.I.R as he was arrested in the case on the spot.
5. That the departmental proceedings were initiated against the appellant in his absentia despite the fact that the appellant was in custody at District Jail Daggar (District Bunir), yet on 03/09/2015 appellant was dismissed from service on account of absence but as stated earlier the appellant was in District Jail Daggar and was not willfully or intentionally absent from his duty. It is pertinent to clarify here that the petitioner during the period of his custody has been kept in different jails including Central Jail Haripur & district Jail Mardan.
Copy of order dated: 03/09/2015 is attached herewith marked as annex-B
6. That during this period the trial court initiated criminal proceedings against the appellant in the court of District Judge/Zilla Qazi/Judge Special Court Shangla Camp Court at Swat and after completion of the trial; the appellant was convicted to "Life Imprisonment" and was also liable to pay a fine of Rs. 01 Lakh vide order dated: 24/11/2016. Benefit of Section 382 CrPC was also extended to the appellant meaning thereby, that he was behind the bar since the date of his arrest i.e. 18/04/2015.
Copy of the judgment dated: 24/11/2015 is attached herewith marked as annex-C.
7. That feeling aggrieved from the judgment the appellant filed Criminal Appeal No. 277-M/2016 against the judgment dated: 24/11/2016 of the Special Court Shangla, against conviction which came up for hearing on 03/12/2019. The Honourable Peshawar High Court Mingora Bench (Dar-Ul-Qaza) was pleased to allow the appeal, set-aside the impugned judgment dated: 24/11/2016 of the Learned Trial Court and the appellant was acquitted from the false, fabricated, baseless charges with further direction to release him from jail forthwith. It is pertinent to mention herein that though petitioner was acquitted of the charges leveled him vide order dated: 24/11/2016 but he was released from jail after completion of due process of law and formalities which took about 10-14 days.

Copy of judgment dated: 03/12/2019 is attached herewith marked as annex-D.

8. That after the release of the appellant from jail, appellant made arrival report for duty to the respondents but there he was handed-over the impugned order dated: 03/09/2015 of dismissal from service.

9. That on 08/01/2020 appellant submitted the departmental appeal before respondents which was rejected on 10/02/2020 by respondent No.2.

Copy of departmental appeal & impugned order are attached herewith marked as annex-E & F.

Feeling aggrieved from the decision of the department, the instant appeal inter-alia on the following grounds:

GROUND:-

- A. That from the aforesaid submissions and facts, it is quite clear that appellant was behind the bars since his 18/04/2015 and was not absent from duty. A person who is in jail shall be considered as in-service.
- B. That the respondents were well aware with the appellant that he was behind the bars but neither show-cause notice or charge sheet or statement of allegation(s) were served upon him through Superintendent District Jail, more-so, no any inquiry was conducted as per the mandate of law, thus the impugned order(s) are illegal and incorrect.
- C. That original impugned order was passed on 03/09/2015 but no copy of the same was neither endorsed to the appellant nor served upon him, rather it was kept in office.
- D. That the trial court convicted the appellant for Life Imprisonment and a fine of Rs. 01 Lakh but the same was set-aside in judgment dated: 03/12/2019 of the Honourable Peshawar high court Peshawar, Mingora Bench (Dar-ul-Qaza) Swat, meaning thereby that the allegations were unfounded, fabricated, concocted and base-less.
- E. That Honourable High Court passed the judgment on 03/12/2019, but the appellant was released from jail after fulfilling the codal formalities and legal process which took more than 10 days. On 16/12/2019 application was submitted for attested copy of the aforesaid judgment which was delivered to him on the said date and thereafter on 08/01/2020 appellant submitted representation/department appeal for his reinstatement.

- F. That it would be not out of place to mention that representation bore date 06/01/2015 which was in fact 06/01/2020, as it was inadvertent/clerical mistake to write 06/01/2015.
- G. That from the afore said dates order of rejection of appeal by respondent No.2 doesnot become time barred but was well with in time.
- H. That as and when appellant got acquitted from the baseless charges, the respondents were legally bound to reinstate appellant in service with all back benefits.
- I. That as stated above appellant was not absent from service but was behind the bars since the date of FIR till the date of release from the Jail. Such period in jail could not be treated as absentia from duty but it is considered to be on duty, which is reiterated time and again by of the Appex Courts.
- J. That the impugned orders are not per the mandate of law, so are illegal and ab inito void.

It is therefore most humbly prayed that on the acceptance of the appeal, the impugned order dated: 03/09/2015 or 10/02/2020 of the respondents be set aside and appellant be reinstated in service with all consequential benefits alongwith any as such relief as may be considered deemed appropriate and just in the circumstances of the case.

10/31/2020

APPELLANT
MISAL KHAN

Through

Mob MOHAMMAD MASOOM

MOHAMMAD MASOOM SHAH
ADVOCATE.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT PESHAWAR.

SERVICE APPEAL No. _____

MISAL KHAN

-VERSUS-

**SENIOR SUPERINDENT
OF POLICE & OTHER'S.**

AFFIDAVIT

I, **MISAL KHAN (APPELLANT)** s/o Toor Khan r/o Village Badraga, Tehsil Dargai & District Malakand, solemnly affirm and declare on oath that the contents of the instant appeal are true and correct to best of my belief and knowledge and nothing has been concealed from this Honourable Court.

(DEPONENT)

C.N.I.C: **15401-0691488-3**

CONTACT: **0311-0378891**

Misal Khan

Oath
Commissioner
Peshawar
16-3-2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT PESHAWAR.

SERVICE APPEAL No. _____

MISAL KHAN

-VERSUS-

**SENIOR SUPERINDENT
OF POLICE & OTHER'S.**

ADDRESSES OF PARTIES

APPELLANT:-

**MISAL KHAN s/o TOOR KHAN
EX-DRIVER/CONSTABLE C.T.D PESHAWAR
r/o VILLAGE BADRAGA, TEHSIL DARGAI, DISTRICT MALAKAND.**

RESPONDENTS:-

- 1. SENIOR SUPERINDENT OF POLICE,
OPERATION CTD PESHAWAR
At Police Lines, Civil Secretariat,
Peshawar.**
- 2. DEPUTY INSPECTOR GENERAL,
COUNTER TERRORISM DEPARTMENT (CTD).
At Police Lines. Civil Secretariat,
Peshawar.**
- 3. INSPECTOR GENERAL OF POLICE,
KYBERPAKHTUNKHWA PESHAWAR,
At Central Police Office (C.P.O),
Peshawar.**

***Mob*
Amir Masoomi
COUNSEL FOR APPELLANT**

Service Appeal No. 1407/2020

BEFORE: **MRS. ROZINA REHMAN** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Misal Khan S/O Toor Khan, Ex- Driver/Constable C.T.D, Peshawar.
....(Appellant)

Versus

1. **Senior Superintendent of Police, Hqr; Peshawar.**
2. **Deputy Inspector General, C.T.D, Peshawar.**
3. **Inspector General of Police, C.P.O, Khyber Pakhtunkhwa Peshawar.**

....(Respondents)

Mr. Muhammad Masoom Shah,
Advocate

For appellant.

Mr. Muhammad Adeel Butt,
Addl. Advocate General

For respondents.

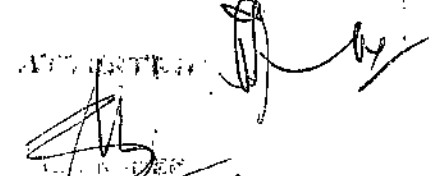
Date of Institution.....10.03.2020

Date of Hearing.....19.07.2022

Date of Decision.....19.07.2022

JUDGEMENT

FAREEHA PAUL MEMBER (E): The service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order of respondent No. 1 dated 03.09.2015 whereby appellant was dismissed from service and O.B. NO. 75/CTD dated 10.02.2020 of respondent No. 2 whereby his representation was filed, with the prayer that the orders may be set aside and the appellant may be reinstated in service with all back benefits.


FAREEHA PAUL
MEMBER (E)
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

2. Brief facts, as per memorandum of appeal, are that the appellant was appointed as constable/driver on 01.07.1988 in the Police Department and was posted in Special Branch Peshawar. He was implicated in FIR No. 112 dated 18.04.2015, Police Station Alpuri, under Section 9-C, CNSA 1997 and was arrested on spot. He informed the department about lodging of said FIR and his arrest. Departmental proceedings were initiated against him in his absence when he was in custody of District Jail Daggar (District Buner). On 03.09.2015 he was dismissed from service on account of absence. During period of his custody he was kept in different jails including Central Jail Haripur and District Jail Mardan. During that period the Trial Court initiated criminal proceedings against the appellant in the court of District Judge/Zilla Qazi/Judge Special Court Shangla Camp Court at Swat and after completion of the trial appellant was convicted to life imprisonment alongwith fine of Rupees one lac vide order dated 24.11.2016. Benefit of Section 382 CrPC was also extended to him meaning thereby that he was behind the bar since the date of his arrest i.e 18.04.2015. Feeling aggrieved from judgment dated 24.11.2016, appellant filed Criminal Appeal No. 277-M/2016, which came up for hearing on 03.12.2019. Hon'able Peshawar High Court, Mingora Bench allowed the appeal and set aside impugned judgment with further direction to release him from Jail. It took 10 to 14 days for completion of due process of law and formalities after which he made arrival to his duty but he was handed over the impugned order dated 03.09.2015 of dismissal from service. On 08.01.2020 he submitted departmental appeal before respondent

APPELLANT
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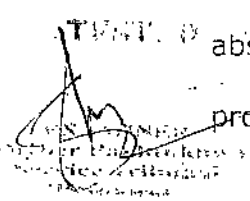
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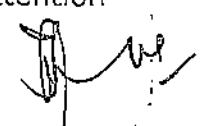
No. 2 which was rejected on 10.02.2020. Feeling aggrieved he submitted the service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

4. The learned counsel for the appellant contended that the appellant was behind the bar since 18.04.2015 and he had informed his office. He further contended that due process was not followed before his dismissal from service; that neither charge sheet and statement of allegations nor any show cause notice was served upon him through the jail administration. He invited the attention to the impugned order dated 03.09.2015 through which the appellant was dismissed from service and stated that the same was neither endorsed to the appellant nor served upon him, rather it was kept in office. He further stated that appellant was acquitted from the baseless charges levelled against him, he should be reinstated in service.

5. The learned Additional Advocate General on the other hand contended that the appellant was dismissed from service after fulfilling all the requirements. A proper departmental inquiry was carried out and all the charges levelled against him were proved. He further contended that conviction from the trial court and willful absence from duty was sufficient proof for initiating departmental proceedings and awarding major punishment. He drew the attention

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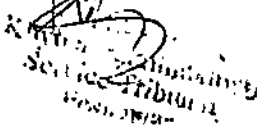
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to the statement of the appellant in which he himself confessed about committing the crime.

6. Record presented before us indicates that departmental proceedings were initiated against the appellant in his absence. It is evident from the given record that the Hon'ble Peshawar High Court, Mingora Bench was convinced that the conviction and sentence of the appellant was not sustainable in the circumstances where prosecution failed to prove the guilt of the appellant/convict and hence acquitted him of the charges leveled against him. This Tribunal feels that the major punishment given by the respondents to the appellant based on FIR lodged against him is not maintainable as he was acquitted of those charges. The appellant had informed his high ups about his arrest and a better course of action would have been to put him under suspension till the final decision of the court of law. Now as the appellant has been acquitted there is no reason to hold the punishment of dismissal from service. Hence the impugned orders dated 03.09.2015 and 10.02.2020 are set aside and the appellant is reinstated into service w.e.f the date of dismissal. The period for which he remained behind the bar shall be treated as under suspension with full pay and the rest of his absence to be treated as leave of the kind. Parties are left to bear their own costs.

7. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 19th day of July, 2022.


(ROZINA REHMAN)
Member (J)



Certified to be a true copy

Peshawar


(FAREEHA PAUL)
Member (E)

بخدمت جناب سینئر سپرنٹنڈنٹ آف پولیس ہیڈ کوارٹر، پشاور
 بخدمت جناب ڈپٹی انسپکٹر جنرل، سی ٹی ڈی پشاور
 بخدمت جناب انسپکٹر جنرل آف پولیس، سی پی او، خیبر پختونخوا، پشاور

درخواست، ہمدردی و داد رسی و بحال کی جانے والی سروس کی درخواست:

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

- (۱) یہ کہ من سائل محکمہ پولیس میں بحیثیت کنسٹیبل ڈرائیور سال 1988ء سے اپنی ڈیوٹی سرانجام دے رہا تھا اور دوران سروس آفسران بالا کو کسی قسم کی شکایت کا کوئی موقع نہیں دیا ہے۔
- (۲) یہ کہ من سائل کو سال 2015ء میں منشیات کے ایک ٹاکروہ جرم کے پاداش میں اپنی سروس سے معطل کیا تھا۔ جرم کے خیبر پختونخواہ سروس ٹرانسپورٹ، پشاور نے من سائل کو بے گناہ ثابت کرتے ہوئے باعزت طور پر بری کر دیا اور من سائل کو دوبارہ اپنی ڈیوٹی پر بحال کرنے کا حکم صادر کیا۔ تائید میں نقولات خیبر پختونخواہ سروس ٹرانسپورٹ، پشاور کا فیصلہ لف درخواست ہے۔
- (۳) یہ کہ جب من سائل دوبارہ اپنی ڈیوٹی پر بحال ہونے کے لیے خیبر پختونخواہ سروس ٹرانسپورٹ، پشاور کے فیصلہ کاپی لے کر آپ جناب کے دفتر ہذا میں حاضر ہوا تو من سائل کو اپنی ڈیوٹی پر دوبارہ بحال نہ کیا گیا۔
- (۴) یہ کہ من سائل نے دفتر ہذا میں کافی منت و ساجت کی کہ من سائل ایک غریب اور شادی شدہ شخص ہوں اور اپنے خاندان کی اکنالت کا واحد ذریعہ ہوں لیکن دفتر ہذا میں اہلکاران ٹال مٹول سے کام لیتے رہے، جس کی وجہ سے بااثر مجبوری درخواست ہذا کی ضرورت لاحق ہوئی۔

لہذا استدعا بمظہوری درخواست / اپیل ہذا کی جاتی ہے کہ سائل کی مندرجہ بالا مجبوریوں کو سہاوتے ہوئے اور سائل کے بحال پر رحم کرتے ہوئے سائل کو اپنی ڈیوٹی پر بحال اور سال 2015ء تا آج یوم تک تمام سابقہ پردوشن، دیگر مراعات و تنخواہیں وغیرہ دیے جانے کے احکامات صادر فرمائیں جس کے لیے سائل اور سائل کا سارا خاندان آپ جناب کی مزید ترقی اور روزگاری کے لیے پیشہ پیشہ دعا گو رہیں گے۔

المقوم: 16/11/2022

سائل



شکل خان ولد طور خان

سابقہ کنسٹیبل ڈرائیور CTD پشاور

شناختی کارڈ: 3-15401-0691488

رابطہ نمبری: 0347-9066998

60280			
Abad Abdul Rehman ایڈووکیٹ	پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ایسوسی ایشن نمبر: 19-1764-bc			
رابطہ نمبر: 03229157227			

BEFORE THE LEARNED K.P SERVICE TRIBUNAL, PESHAWAR: بعد اٹ جناب

Deeue Holder/APPLICANT مخایب	Implementation/COC دعویٰ
Misal-Klan نام S. S.P.C.D. Bolus	علت نمبر:
	مورخہ
	جم:
	تھانہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کاروائی متعلقہ
 آن مقام پشاور کے لیے Abad Abdul Rehman کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زرین بردست خط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرداخت منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

پشاور 2023-02-01
 PESHAWAR BAR ASSOCIATION
 KHYBER PAKHTUNKHWA

شاہ ایوب محمد سعید
 خان
 Advocate
 اضواء
 ایڈووکیٹ

Accepted
 T.A. Memon
 Advocate

"Accepted"
 Abad Abdul Rehman
 Advocate
 Accepted
 Rizwan Ahmed Adv

Accepted
 T.A. Shoab Khan
 Advocate

Misal'Klan 510 Toor Klan Rpo Village Badayya, Tehsil DARBAI, District Malakand
 CNIC: 15401-0691488-3 Contact: 0347-9066998