

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 5894/2020

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

Ali Murtaza, Ex-Constable No. 1016 (Swabi District Police) R/O
Sard China, Tehsil Lahor, Swabi (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Inspector General of Police, Central Police Office, Peshawar.
2. Deputy Superintendent of Police Coordination, Headquarter Central Police Lines, Peshawar.
3. Regional Police Officer, Mardan.
4. District Police Officer, Mardan.
5. Deputy Superintendent of Police Razzar, Swabi. (*Respondents*)

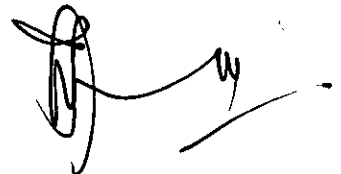
Mr. Munsif Saeed,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney, ... For respondents

Date of Institution..... 19.03.2020
Date of Hearing..... 10.04.2023
Date of Decision..... 10.04.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.07.2017, whereby the appellant was dismissed from service and against the order dated 17.02.2020, whereby his departmental appeal was turned down. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant be reinstated into service with all back benefits.




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2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant had been serving in the Police Department at District Swabi as Constable for 09 years. During the course of service, he was nominated in a criminal case vide FIR No. 350 dated 23.08.2016 u/s 324, P.S Yar Hussain, Swabi. Being threatened by his opponents and feeling insecure, the appellant had no other option but to absent himself from duty. The respondents initiated departmental proceedings against him wherein he was not provided opportunity of hearing nor any notice, as required under the law, was served upon him. After conclusion of the inquiry, he was dismissed from service vide order dated 24.07.2019. Feeling aggrieved from the said order, he preferred departmental appeal which was rejected on 17.02.2020 by respondent No. 3; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the respondents had not treated the appellant in accordance with law, rules, policy on the subject and acted in violation of Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. The respondents had neither served any statement of allegations to the appellant nor followed the required procedure before awarding major penalty of dismissal from service. He further argued that the appellant was behind the bar in the criminal case registered against him and after conclusion of trial, he was acquitted of the



charges in the said criminal case. He further argued that respondent No. 3 while rejecting the departmental appeal had not considered the fact that the appellant was behind the bar for more than one year. He requested that the appeal might be accepted as prayed for.

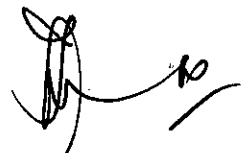
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant argued that on account of involvement of the appellant in criminal case of attempted murder, proper departmental inquiry was conducted. He further argued that the appellant, despite being member of Police force, was involved in criminal case of attempted murder and failed to join the investigation and remained fugitive for a noticeable period. After proper departmental inquiry, he was dismissed from service against which his departmental appeal was also rejected being badly time barred. Learned Deputy District Attorney requested that the appeal might be dismissed.

6. After hearing the arguments and going through the record presented before us, it transpires that the appellant while serving as Constable in Police was involved in FIR No. 350 dated 23.08.2016 u/s 324 P.S Yar Hussain, Swabi. He was arrested on 29.07.2018, as stated by himself in his appeal before the DIG, Mardan. This indicates that the appellant remained an absconder from 23.08.2016 to 29.07.2018. Departmental proceedings were initiated against him on 29.08.2016 and a charge sheet and statement of allegations was issued. Inquiry was conducted and based on its report, the appellant was issued a final show cause notice and later on dismissed from service on 24.07.2017. He was absconder when the entire inquiry



proceedings were conducted which indicates that he was not involved in the entire proceedings and was condemned unheard. On the other hand, when he surrendered on 29.07.2018, and the case was investigated in the court of the learned Additional Sessions Judge-II Lahor, Swabi and decided on 09.10.2019, the appellant was acquitted of the charges leveled against him in the FIR. It has been held by the superior fora that all acquittals are certainly honourable and that there can be no acquittal which may be said to be dishonourable. Involvement of the appellant in the criminal case was the sole ground on which he had been dismissed from service and the said ground was no more when he was acquitted and hence he emerged as a fit and proper person to continue his service. In this respect we have sought guidance from 1988 PLC(CS)179, 2003 SCMR 215 and PLD 2010 Supreme Court-695 and judgments rendered by this Tribunal in Service Appeal No. 1380/2014 titled "Ilam Nawaz Vs. Police Department", Service Appeal No. 616/2017 titled "Mumtaz Ali Vs. Police Department", Service Appeal No. 863/2018 titled "Fateh-ur-Rehman Vs. Police Department", Service Appeal No. 1065/2019 titled "Naveed Gul Vs. Police Department" and Service Appeal No. 12098/2020 titled "Ali Imran Vs. Police Department".

7. In the light of above discussion, it is clear that the appellant had been acquitted of the charges leveled against him in the FIR and he rightly submitted his departmental appeal, to his competent authority, after his acquittal. The appeal in hand is, therefore, allowed as prayed for. However the period from 23.08.2016 to 29.07.2018 for which the appellant remained

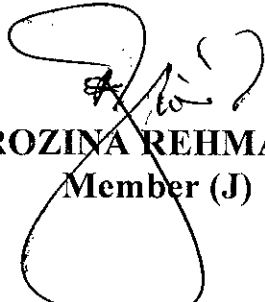


absconder is to be treated as leave without pay. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10th day of April, 2023.*

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Peshawar

(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

Fazal Subhan P.S

10th April, 2023


Mr. Munsif Saeed, Advocate for appellant present. Mr.

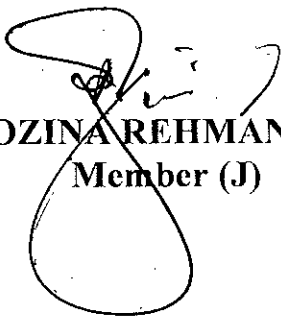
Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment consisting of 05 pages, the appeal in hand is allowed as prayed for. However the period from 23.08.2016 to 29.07.2018 for which the appellant remained absconder is to be treated as leave without pay. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10th day of April, 2023.*

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Peshawar


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)


Fazal Subhan P.S

3rd Nov. 2022

Assistant to counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Request for adjournment was made on behalf of learned counsel for the appellant due to his engagement in Honourable High Court today. Adjourned. To come up for arguments on 02.01.2023 before the D.B.

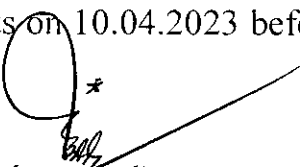

(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

02.01.2023

Junior of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is out of station today. Adjourned. To come up for arguments on 10.04.2023 before the D.B.


(Mian Muhammad)
Member (E)

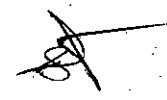

(Salah-ud-Din)
Member (J)

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24.11.2021

Proper D.B is not available, therefore, case is adjourned to

3 / 3 / 2022 for the same as before.



Reader

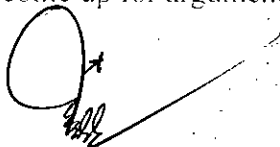
3-3-22

*Due to Retirement of the Hon,ble
Chairman the case is adjourned to come
up for the same as before on 14-6-22*

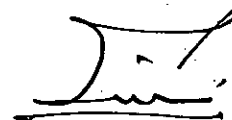
14.06.2022

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak,
Additional Advocate General for respondents present.

Clerk of counsel for the appellant stated that learned counsel for the
appellant is unable to attend the Tribunal today due to strike of Lawyers.
Adjourned. To come up for arguments before the D.B on 16.08.2022.



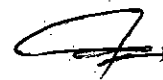
(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

16-8-22

*Due to Summer vacation the case is
adjourned to 3.11.22 for the same*



05.07.2021

None for the appellant present. Mr. Adeel Butt,
Additional Advocate General for respondents present.

Written reply on behalf of respondents No. 1,3,4
and 5 have already been submitted. Learned AAG is
directed to contact respondent No. 2 for submission of
reply/comments within 10 days in office, positively. In
case the respondent No.2 has not submitted
reply/comments within stipulated time, office shall put
up the appeal with a report of non-compliance. To
come up for arguments on 24.11.2021 before D.B.

*Stipulated period has
passed and reply has
not been submitted.*


Chairman

P.S

28.07.2021

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


Chairman

M

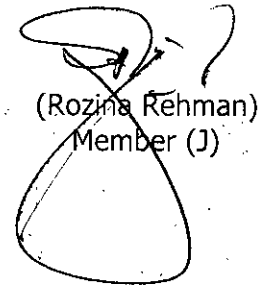
09.12.2020

Appellant present through counsel. Preliminary arguments heard. File perused.

Points raised need consideration. Admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for written reply/comments. To come up for written reply/comments on 08.03.2021 before S.B.

Appellant Deposited
Security Process Fee

7/12/20

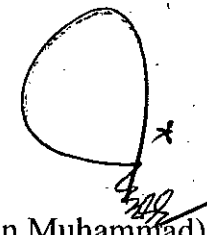

(Rozina Rehman)
Member (J)

08.03.2021

Junior to counsel for the appellant present. Addl: AG for respondents present.

Written reply not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of written reply/comments.

Adjourned to 18.05.2021 before S.B.


(Mian Muhammad)
Member (E)

18.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 05.07.2021 for the same as before.


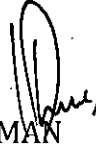
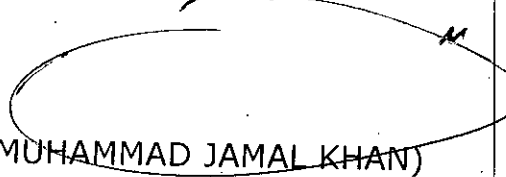


Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 5894 /2020


1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/06/2020	<p>The appeal of Mr. Ali Murtaza resubmitted today by Mr. Munsif Saeed Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	22.07.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22/07/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	01.10.2020	<p>Miss. Mehreen Advocate, junior to Munsif Saeed, Advocate learned counsel for the appellant is present. According to junior counsel her senior counsel has gone to Batkhaila and is not available today. Request for adjournment. Adjourned to 01.10.2020. File to come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER</p>
	01.10.2020	<p>Mr. Arifullah, Advocate on behalf of counsel for the appellant present.</p> <p>Requests for adjournment as learned counsel is not available due to his illness today. Adjourned to 09.12.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Ali Murtaza Ex-constable no. 1016 District Police Swabi received today i.e. on 19.03.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Address of respondent no. 3 is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 4- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 5- Copy of order mentioned in para-1 of the memo of appeal is not attached with the appeal which may be placed on it.
- 6- Two more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 972 /S.T.

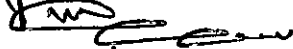
Dt. 19-03 /2020.


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Munsif Saeed Adv. Pesh.

Instant appeal was filed on 19/03/2020,
thereafter due to Covid-19, holidays the
instant filed was not returned to the
counsel. This case request for extension
of time, please
Munsif Saeed Adv.
05/06/2020

15 days time further extended.


5/6/2020

**BEFORE THE HONORABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. **5894** 2020

Ali Murtaza

(Appellant)

V E R S U S

Govt. of KPK through Inspector General of Police Peshawar

(Respondents)

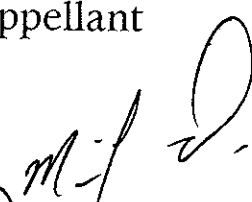
REVISED INDEX

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Appellant

Dated: 18.06.2020

through


Munsif Saeed
Advocate High Court,
Peshawar

**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. **5894**/2020

ALI MURTAZA

(Appellant)

V E R S U S

Govt. of KPK through Inspector General of Police KP, Peshawar

(Respondents)

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Through

Appellant


Munsif Saeed

Advocates High Court,
Peshawar

Dated: 19.03.2020

①

**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. **5894**/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. **2489**

Dated **19/3/2020**

ALI MURTAZA

Ex-Constable No. 1016 (Swabi District Police)

R/o Sard China, The; Lahor, Swabi.

(Appellant)

V E R S U S

- 1) Govt. of KPK through Inspector General of Police KP, Central Police Office, Peshawar
- 2) Deputy Superintendent of Police Coordination, Headquarter Central Police Lines, Peshawar
- 3) Regional Police Officer, Mardan, ~~DSD City, Investigation, Headquarter Central Police Lines, Peshawar~~
- 4) District Police Officer, Mardan.
- 5) Deputy Superintendent of Police Razzar, Swabi.

(Respondents)

Appeal Under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 24.07.2017 whereby imposing major penalty of dismissal from service, the petitioner / appellant was dismissed by respondent No. 4 and against order dated 17.02.2020 where by departmental appeal of the petitioner was also turned down.

Prayer:

On acceptance of the instant appeal, the order dated 24.07.2017 of respondent No. 4 and order dated 17.02.2020 of the respondent

Filed to-day
Registrar/
19/3/2020

Re-submitted to and filed.

Registrar
19/3/2020

no 3 may kindly be set aside, and the appellant be reinstated into service at the police department with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:

- 1) That the petitioner had been serving in the police department at district swabias constable for the last 09 years.
- 2) That during the course of service, unfortunately the appellant was nominated in a so called criminal case vide FIR No. 350 dated 23.08.2020 U/s 324, PSYarHussain, Swabi. 2016
- 3) That being threatened by his opponents and feeling apprehension of life and the petitioner having no other option, absented from duty.
- 4) That the respondents initiated departmental proceedings against the appellant where in the petitioner was not provided opportunity of hearing nor any notice as required under the law was served upon the petitioner.
- 5) That after conclusion of inquiry, the appellant was dismissed form service vide order dated 24.07.2019.
- 6) That the appellant feeling aggrieved form the said order, preferred departmental appeal which was also dismissed vide order dated 17.02.2020 of respondent No 3.
- 7) That the appellant feeling aggrieved from the above impugned orders, actions and enquiry, preferred the present appeal before this hon'bletribunal.

GROUND

- a) That the impugned dismissal order is against the law facts material available on record, hence not tenable in the eyes of law.

- b) That the respondents has not treated appellant in accordance with law, rules, policy on subject and acted in violation of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan and unlawfully issued impugned orders which are unjust, unfair and hence not sustainable in the eyes of law.
- c) That the respondents not made statement of allegation against the appellant and had not followed the required procedure due to which the dismissal order is liable to be set aside.
- d) That the discrimination has been made while issuing the impugned order by the respondents.
- e) That the present appellant was behind the bars in the criminal case registered against him, and after conclusion of trial, the petitioner has been acquitted of the charge in that criminal case, however the respondents have condemned the present petitioner in the present case before trial of the above cited case and has dismissed from service which act of the respondents is against the vested constitutional rights of the petitioner.
- f) That the respondent no 3 has consider the fact while dismissing the departmental appeal of the petitioner that he was behind the bars for almost more than an year, but has dismissed his departmental appeal on the grounds of limitation, which order is against law and justice.
- g) That soon after being acquitted in the criminal case, the petitioner filed departmental appeal but his appeal was

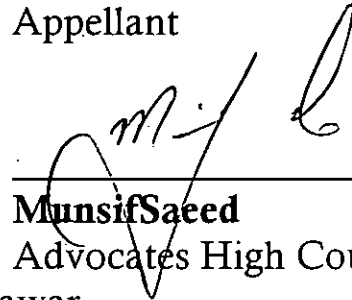
turned down purely on technical grounds which order is against the principals of natural justice.

- h) That any other grounds will be raised with permission during the course of arguments.

It is, therefore, humbly requested that on acceptance of instant appeal, the order dated 24.07.2017 of respondent No. 4 and order dated 17.02.2020 of respondent no 3 may kindly be set aside, and the appellant be reinstated into service at the police department with all back benefits.

Appellant

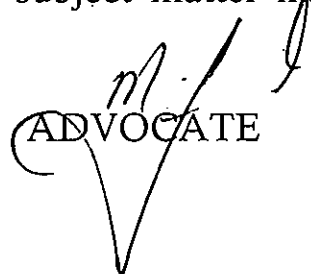
Through



Munsif Saeed
 Advocates High Court,
 Peshawar

Dated: 19.03.20

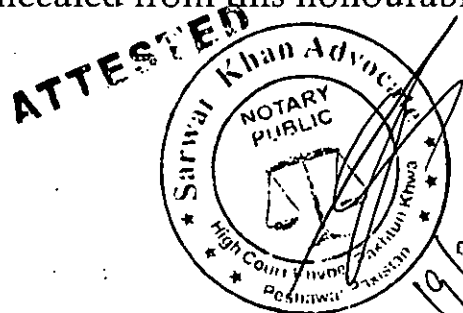
Note: No such service appeal on the same subject matter has earlier been filed before this honourable court.



 ADVOCATE

AFFIDAVIT

I, **ALI MURTAZA** Ex-Constable No. 1016 (Swabi District Police) R/o Sard China, The;Lahor, Swabi,do hereby solemnly affirm and declare on Oath that the contents of instant “**SERVICE APPEAL**” are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable court.





 DEPONENT

19/3/20

(S)

**BEFORE THE HONOURABLE
SERVICE TRIBUNAL, KP PESHAWAR**

Service Appeal No. _____/2020

ALI MURTAZA

(Appellant)

V E R S U S

Govt. of KPK through Inspector General of Police KP, Peshawar

(Respondents)

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth,

- 1) That the above titled Service Appeal is being filed before this hon'ble court in which no date of hearing has yet been fixed.
- 2) That the delaying occurred in filing the instant service appeal is not intentional or deliberate but due to the reasons that the petitioner was not provided with attested copy of the impugned order.
- 3) That the impugned order was not received to the petitioner on the date mentioned on it while the petitioner himself received it from the department and thereafter filed the instant appeal.
- 4) That valuable rights of the petitioner are involved in the instant service appeal, and if the delay is not condoned the petitioner will suffer an irreparable loss.

5) That any other ground will be taken and the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant application, the delay if any occurred in filing of the service appeal may kindly be condoned.

Any other relief which this hon'ble court deem proper and fit in the circumstances of the case may also be granted in favor of the appellant.

Appellant

Through


Munsif Saeed

Advocates High Court,
Peshawar

Dated: 19.03.2020

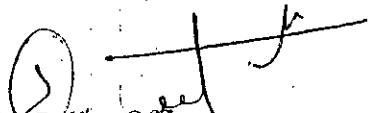
(7)

SUMMARY OF ALLEGATIONS

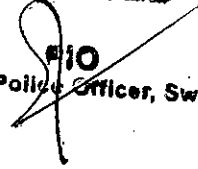
LHC Ali Murtaza No.1016, while posted to Police Lines, Swabi involved himself vide case FIR No.350 dated 23.08.2016 u/s 324 PPC PS Yar Hussain, which is highly against the discipline and amounts to gross mis-conduct under the Police Rules 1975 (amended), hence statement of allegations.

Certified to be True Copy.

Mr. Bashir Dad, DSP Razzar is appointed to conduct proper departmental enquiry against him.


District Police Officer,
Swabi.

No. 89 /CC/PA,
Dated. 29/08 /2016

ATTESTED

District Police Officer, Swabi.

(8)

CHARGE SHEET

Whereas I am satisfied that formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

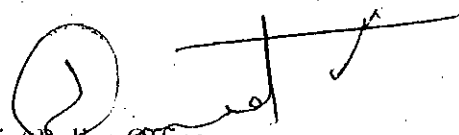
And whereas I am of the view that the allegations if established would call for Major/Minor penalty as defined in Rules 4(b) a & b of the aforesaid Rules.

Now therefore as required by Rules 6(1) of the aforesaid Rules I **Javed Iqbal, PSP**, District Police Officer, Swabi charge you LHC Ali Murtaza No.1016 the basis of statement of allegations attached to this charge sheet.

Continued on 2nd page copy.

In case your reply is not received within seven days without sufficient cause it will be presumed that you have no defence to offer and exparte action will be taken against you.

ATTESTED


District Police Officer,
Swabi.


District Police Officer, Swabi.



9

FINAL SHOW CAUSE NOTICE

Whereas, you LHC Murtaza No.1016, while posted to Police Lines, Swabi involved yourself vide case FIR No.350 dated 23.08.2016 u/s 324 PPC PS Yar Hussain, which is against the discipline and amounts to gross mis-conduct.

In this connection you were charge sheeted and served with summary of allegation and enquiry. The enquiry officer held enquiry and submitted his findings, wherein, he held you LHC Ali Murtaza no.1016 guilty for the mis-conduct.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Certified to be True Copy.

Hence I Javed Iqbal PSP, District Police Officer, Swabi in exercise of power vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to show cause finally as to why the proposed punishment should not be awarded to you.

Your reply should reach to the office of the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to offer.

You are also at liberty to appear for personal hearing before the undersigned.

Date: 27.09.2016

ATTESTED

District Police Officer, Swabi.

**District Police Officer,
Swabi.**

Date of Presentation of Application: 9/6/2020

Copying Fee: Nil

Total Fee: 09

Name of Copying: Rehmat Ali

Date of Completion of Copy: 9/6/2020

Date of Delivery: 9/6/2020

ذیل کے تمام درخواستیں درج ذیل سرکاری نمبر 1016 کے تحت
ارقم جان کوٹھان صاحب کے پاس سونپا کر دی گئیں
جو ان کے ذمہ دار ہیں اور ان کے پاس رہتے ہیں
وہیں ان کے رہنے کے بارے میں پتہ چلے گا۔

ASi/PS/111
6-10-16

Certified to be True Copy.

(Signature)

ارقم جان کوٹھان صاحب کے پاس رہتے ہیں
NIC: 16201-6237585-1
mob: 0348-1917098

ATTESTED

District Police Officer, Swabi.

OFFICE OF THE SUB DIVISIONAL POLICE OFFICER, CIRCLE RAZZA:
KERNAL SHER KELLI, SWABI (TEL. PHONE NO. 0938 312-777)

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To: The District Police Officer,
Swabi.

No. 553 /S, dated Razzar the 27/09/2016.

Subject: DEPARTMENTAL ENQUIRY AGAINST CONSTABLE ALI MURTAZA NO.1016.

Memo:

In compliance with your office letter No.89/CC/PA, dated 29.08.2016 on the subject noted above.

SUMMARY OF ALLEGATION:

Certified to be True Copy.

This is an enquiry against Constable Ali Murtaza No.1016 while posted to Police Lines Swabi involved himself vide case FIR No. 350 dated 23.08.2016 U/S 324 PPC PS Yar Hussain, which highly against the discipline to gross mis-conduct under the Police Rules (amended), hence statement of allegations. The defaulter Constable was called through this office for so many times to attend the office to record his statement in connection with his departmental enquiry on the following dates.

S#	Memo No.	Date of issue	Appearing date
1.	497	31.08.2016	03.09.2016.
2.	499	02.09.2016	05.09.2016
3.	509	06.09.2016	06.09.2016
4.	510	08.09.2016	09.09.2016

Constable Ali Murtaza No. 1016 failed to attend this office for recording his statement in connection with his departmental, due to which ex-part action was also initiated against him vide this office Memo No. 512/S, dated 09.09.2016. All the relevant contents are attached herewith.

RECOMMENDATION:

I have gone through this enquiry and statements of the OII of PS Yar Hussain, the defaulter constable is still proclaimed offender and his History Sheet is prepared according to OG-10. Therefore the defaulter constable Ali Murtaza NO.1016 is recommended for Major punishment, please.

Enclosed: (13 pages)

ATTESTED

District Police Officer, Swabi.

Sub Divisional Police Officer,
Razzar Circle, Kernal Sher Kelli.

1016

111

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI

ORDER

It is alleged that Constable Ali Murtaza No.1016, while posted to Police Line Swabi involved himself in case vide FIR No.350 dated 23.8.2016 U/S 324 PPC Police Station Yar Hussain. He also absented himself from duty with effect from 25.8.2016 till date. His this act is highly against the discipline and amounts to gross misconduct.

Certified to be true Copy.

Therefore, he was served with Charge Sheet and Summary of allegations and DSP, Razzar was appointed as Enquiry Officer. The Officer conducted proper departmental enquiry, collected evidence and recorded statements of all concerned. He submitted his findings, wherein he found Constable Ali Murtaza No.1016, guilty for the mis-conduct and recommended him for major punishment. The undersigned perused the enquiry papers, findings and by agreeing with the Enquiry Officers, served him with Final Show Cause Notice on 6.10.2016 through local Police. He was clearly directed to submit his reply within seven days of the receipt of final show cause notice, otherwise ex-parte action will be taken against him, but he did not submit. Moreover, from the perusal of his case, it came into light that he is still absconding and has been declared as Proclaimed offender.

Therefore, I, **Muhammad Sohaib Ashraf, PSP**, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Ali Murtaza No.1016 Major Punishment of dismissal from service from the date of his absence i.e. 25.8.2016.

G.R No.

Dated: /2017

District Police Officer
Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI

No. 406-10 /PSO, dated Swabi, the 24/07 /2017.

Copies to the: -

1. DSP, H.Qrs, Swabi.
2. Pay Officer.
3. Establishment Clerk.
4. Nauji Missal Clerk.
5. Official Concerned

ATTESTED

District Police Officer, Swabi.

✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓

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الحجرت مناه ڈی آئی جی صوابہ سردان

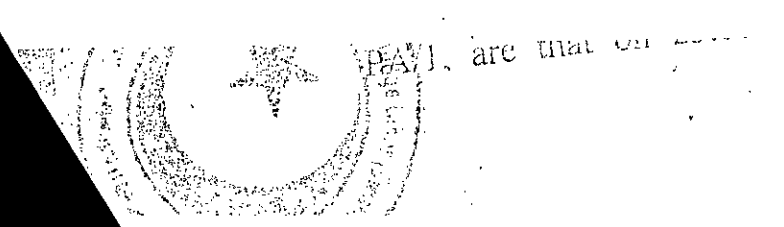
سے مالک ا
گزارش کی جاتی ہے۔ یہ سائل 27/7/2007 کو علم پولیس میں
ہوا تھا۔ اس سال 2016 میں کوئٹہ پولیس کے سیکرٹری سے
بعد از افتتاح کورس دوران چھٹی ماہ 23/8/16 کو عروج
ناحیہ FIR درج رجسٹر ہوا۔ اسی دوران میں 23 ماہ
رہوش رہا اور بعد میں ایسی جائزہ گرفتاری سے محالہ
ہو گیا۔ 29/7/18 کو میں سے صاحبہ گرفتار ہوا۔ دوران
سماعت ایڈووکیٹ سیشن جج صاحبہ نے فیصلہ لاہور
کے گناہ سے بری کرنے کا حکم صادر فرمایا
اور 11/11/19 کو میں سے بری ہو گیا۔ عدالت نے اس فیصلے
کو نظر رکھتے ہوئے آپ صاحبان کے بحال کرنے کا حکم صادر فرمایا
شکر ہے

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لکھنؤ
الحق موم - 18/11/19

ی آئی جی صوابہ 10/6/19
LHC



ORDER.

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This order will dispose-off the departmental appeal preferred by Ex-Constable Ali Murtaza No. 1016 of Swabi District Police against the order of District Police Officer, Swabi, whereby he was awarded major punishment of dismissal from service vide OB No. 645 dated 24.307.2017. The appellant was proceeded against departmentally on the allegations that he while posted to Police Lines, Swabi remained involved in case vide FIR No. 350 dated 23.08.2016 u/s 324 PPC Police Station, Yar Hussain. He was also absented himself from his lawful duty with effect from 25.08.2016 till date of his dismissal.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Deputy Superintendent of Police, Razzar Swabi was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities, submitted his findings wherein he recommended the delinquent official for major punishment.

He was issued Final Show Cause Notice with the directions to submit his reply within the stipulated time. Hence, he did not submit his reply. Moreover, the appellant remained absconder who was also declared as proclaimed offender.

Keeping in view the recommendations of enquiry officer and other material available on record, the appellant was awarded major punishment of dismissal from service from the date of absence vide OB: No. 645 dated 24.07.2017 by the District Police Officer, Swabi.

Feeling aggrieved from the order of District Police Officer, Swabi, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 11.02.2020.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. Besides, the appellant after involvement in the aforementioned case went into hiding in order to evade his lawful arrest which resulted in his absence. Moreover, the appellant approached this forum at a belated stage without advancing any cogent reason regarding such delay. Hence, order passed by the competent authority does not warrant any interference.

Keeping in view the above, I, Sher Akbar, PSP S.St Regional Police Officer, Mardan, being the appellate authority, finds no substance in the appeal, therefore, the same is rejected and filed, being badly time barred.

Order Announced.

*attested to be
true copy advised.*

2
Regional Police Officer,
Mardan.

No. 1770 /ES,

Dated Mardan the 17-02- /2020.

ATTESTED

Copy forwarded to District Police Officer, Swabi for information and necessary w/r to his office Memo: No. 02/Insp: Legal dated 03.01.2020. His Service Record is returned herewith.

مدونہ نمل بحسبہ از عدالت آئی ایس آئی (ایس آئی)
نمبر قضا / برقم حال / نیلہ
7-10-19 27-9-19 22-10-18 166/19
سرکار / بنام علی مرتضیٰ

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**IN THE COURT OF MUHAMMAD AAMIR NAZIR
ADDITIONAL SESSIONS JUDGE-II, LAHOR, SWABI**

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[Signature]

Session Case.....No.166/ of 2019
Date of Institution.....22.10.2018
Date of institution in this court.....27.09.2019
Date of Decision.....09.10.2019

The State, through Zakir Hussain alias Bilal son of Shah Jehan,
resident of village Sard Cheena, Tehsil Lahor, District
Swabi **Complainant.**

Versus

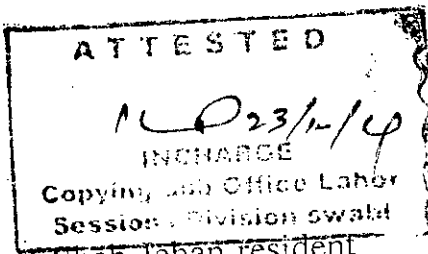
Ali Murtaza son of Shah Jehan resident of Sard Cheena, Tehsil
Lahor, District Swabi **Accused facing trial.**

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**CHARGED VIDE CASE FIR NO. 350 DATED:
23.08.2016 U/S 324 PPC P.S YAR HUSSAIN**

M. F. Advocate
ATTESTED

DISTRICT SWABI



JUDGMENT

Accused namely Ali Murtaza son of Shah Jehan resident
of Sard Cheena, Tehsil Lahor, Swabi, faced trial before this court,
after having been charged in case FIR No.350 dated 23.08.2016, U/S
324 PPC of Police Station Yar Hussain, District Swabi.

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09.10.19



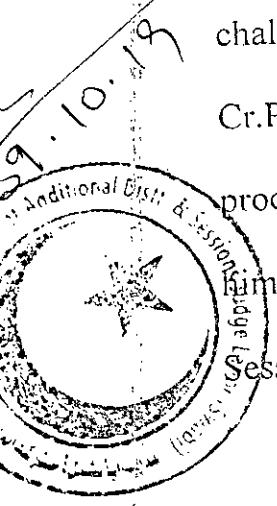
Abstract of the prosecution case, as set out in the FIR Ex
1, are that on 23.08.2016, at 19:55 hours, Complainant Zakir

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Hussain alias Bilal along with his brother Ijaz, were present at Sard Cheena in front of their Hujra when the accused Murtaza son of Shahjehan came in motor car, stopped the car deboarded from it duly armed and fired at the complainant with the intention to kill him. As a result of firing of accused the complainant got hit and sustained injuries. The accused decamped in his motor car after the occurrence; the occurrence was witnessed by brother of complainant Ijaz and one Sher Rehman son of Sher Bahader. Motive for the occurrence was previous oral altercation. The complainant reported the matter to the local police at Casualty of RHC Yar Hussain in shape of FIR mentioned above which was also verified by one Aurang Zeb son of Taj Malook.

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3- After registration of case and completion of investigation, challan against the accused was submitted for proceedings u/s 512 Cr.P.C. On completion of proceedings, the accused was declared proclaimed offence and perpetual warrant of arrest was issued against him vide order dated 16.09.2017 by the court of learned Additional Sessions Judge, Lahor, Swabi.



The accused facing trial was arrested on 29.07.2018 under the perpetual warrant of arrest vide arrest card EXPW-3/1. On completion of necessary investigation, prosecution submitted supplementary challan against accused facing trial. Accused Murtaza was summoned, who put appearance before the Court. Copies of the

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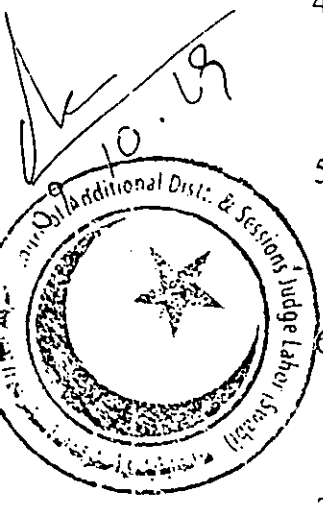
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relevant documents, as required U/S 265-C.Cr.P.C were supplied to the accused. Formal charge was framed against the accused, who denied it and claimed trial. The prosecution in order to prove its charge against the accused facing trial, produced and examined as many as eleven (11) witnesses. Resume of the prosecution evidence is ad under:-

PW-1 Dr. Irtaza Ajmal, on 23.08.2016 at about 8:30 PM, he had examined the injured Zakir Hussain son of Shah Jehan and found the following injuries on his person:

1. Firearm entry wound about 1/4 X 1/4 inches in size on the right side of chest.
2. Firearm exit wound about 1/2 X 1/2 inches in size on the right side of chest back side.
3. Firearm entry wound on the right side of thigh laterally about 1/4 X 1/4 inches in size.
4. Firearm exit wound on the right side of thigh medially about 1/2 X 1/2 inches in size.
5. Firearm entry wound about 1/4 X 1/4 inches in size on left thigh medially.
6. Firearm entry wound about 1/2 X 1/2 inches in size on left thigh laterally.

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The patient was referred to LRH for further management.

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After operation discharge slip was attached showing operation of chest and other conservative surgery.

Nature of Injuries: Jurh Ghyre Jaifah Muthalahima.

Probable duration of injury: within half hour.

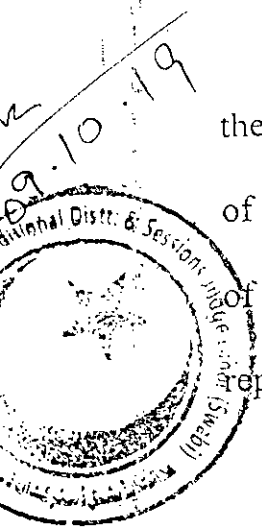
He verified the MLR report Ex.PM to be in his handing right and under his signature. He also verified the discharge slip of LRH Ex.PM/1 and endorsement on injury sheet Ex.PM/2.

PW-02 Shahenshah Khan S.I stated that on 23.08.2016 he reached RHC Yar Hussain where the complainant injured condition reported the matter to him in presence of CMO at 20:25 hours and he recorded the report in shape of murasila Ex.PA/1. He also prepared the injury sheet of the injured Ex.PM/2.

PW-03, Shah Nawaz SI stated that on 29.07.2018 he arrested the accused facing trial Murtaza in the instant case and issued his card of arrest Ex.PW3/1. He also recovered a Kalashnikov from possession of the accused regarding which a case was registered u/s 15 AA on his report.

PW-04, Muhammad Iqba. DFC executed warrant u/s 204 Cr.P.C Ex.PW4/1 issued against the accused vide his report Ex.PW4/2 and also complete the proceedings of proclamation u/s 87 Cr.P.C Ex.PW4/3 in view of his report overleaf Ex.PW4/4.

PW-05, Hayat Khan ASI stated that on the receipt of murasila he registered the subject FIR Ex.PA.



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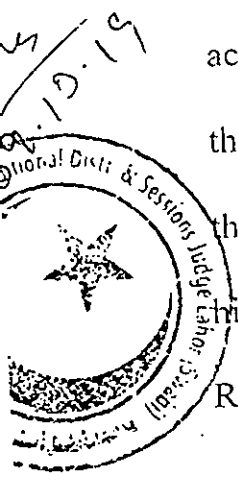
PW-06, Mazhar Ali SI stated to have conducted investigation of the present case, i.e. produced the accused before the court for obtaining his police custody vide application Ex.PW6/1, prepared the pointation memo Ex.PW6/2 at the instance of accused, vide application Ex.PW6/3 he produced the accused before the court for confessional statement but the accused refused and was remanded to judicial lockup. After completion of investigation he handed over the case file to the SHO Jawad Khan for submission of challan.

PW-07, Zakir Hussain, being complainant of the instant case, almost narrated the same story about the occurrence, as mentioned in his initial report/FIR Ex PA/1.

PW-08, Ijaz Muhammad S/O Shah Jehan, is another eye witness of the present occurrence. He also furnished the same ocular account of the occurrence in her examination in-chief as mentioned by the complainant Zakir Hussain in his initial report. He added that after the occurrence he took the victim/complainant to RHC Yar Hussain in his motorcar and at the arrival of I.O to the spot he alongwith Sher Rehman pointed out the spot to the I.O.

PW-09, Awal Sher S/O Abdur Rehman, stated that he is marginal witness to the recovery memo Ex.PW9/1 vide which the I.O took into possession blood through cotton from the place of injured. He has also witnessed the recovery memo Ex.PW9/2 whereby the I.O recovered 04 empties of 30 bore giving fresh smell of discharge from

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place of accused. Similarly, he is also marginal to the recovery memo EXPW-9/3, whereby the I.O. took into possession blood stained garments of the injured. He verified the recovery memos and his signatures thereon.

PW-10, Mira Khan Inspector being Investigation Officer of the case visited the spot; prepared the site plan EXPB at the instance of eye witnesses, recovered some blood through cotton from the place of injured vide recovery memo EXPW-9/1, recovered and took into possession 04 empties of 30 bore vide recovery memo EXPW-9/2, took into possession blood stained garments of injured. He conducted raid upon the house of accused and prepared the search memo EXPW-10/1, vide his application EXPW-10/2, he sent the parcels to FSL, vide application EXPW-10/3, he sent the empties of 30 bore to FSL for safe custody, vide applications EXPW-10/4 and EXPW-10/5, he applied for issuance of warrant under section 204 Cr.P.C and proclamation u/s 87 Cr.P.C respectively, received and placed on file report of FSL EXPK. He recorded the statement of Pws under section 161 Cr.P.C and after completion of investigation he handed over the case file to the SHO for submission of challan against the accused within the meanings of section 512 Cr.P.C.

PW-11, Aurang Zeb son of Taj Malook stated to have verified report of complainant at RHC Yar Hussain by putting his thumb impression thereon.

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Sessions Division swabi



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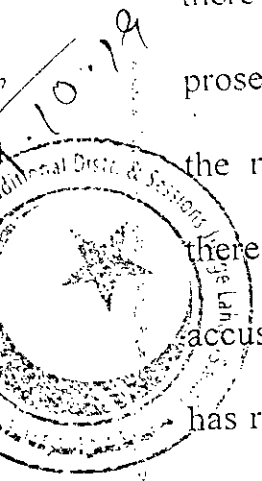
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At the end of prosecution evidence, statement of accused U/S 342 Cr.P.C was recorded. Accused professed his innocence, but neither wished to be examined on Oath, nor desired to produce evidence in his defence.

5- I have heard the arguments, advanced by the learned counsel for complainant assisted by APP for the State as well as learned counsel for the accused facing trial and gone through the record carefully.

Learned counsel for complainant and APP for the State argued that the accused facing trial has been directly charged by the complainant in his report, after due satisfaction. That the case of prosecution has been supported by the ocular evidence, furnished as well as circumstantial evidence, in shape of various recoveries. That there are no major contradictions between the statements of prosecution witnesses, while minor discrepancies are ignorable. That the medical evidence fully supports the prosecution version. That there was no motive of the complainant to falsely implicate the accused facing trial in the present case. That the accused facing trial has remained fugitive from law for considerable period, for which no explanation has been advanced by him. That sufficient material exists on record to connect the accused with the commission of offence. It was prayed that the accused facing trial may be awarded maximum punishment.

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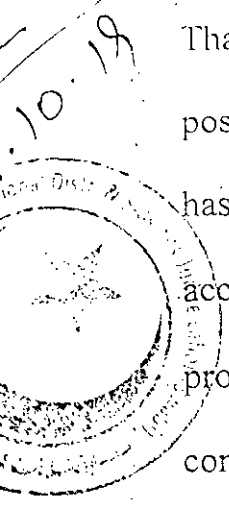
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On the other hand, while refuting the argument of the prosecution, learned counsel for the accused facing trial contended before the court that the accused facing trial is totally innocent and falsely implicated in the present case with malafide intention, because he was not present at all on the spot at the time of alleged occurrence. That the alleged occurrence has taken place in dark hours. That the complainant has not disclosed any source of satisfaction, regarding the involvement of accused facing trial in the commission of offence. That the prosecution witnesses are contradicting each other on the material aspects of the case. That no independent corroboration has been brought on record by the I.O, in support of prosecution case. That no incriminating article has been recovered, either from the possession of accused facing trial or at his instance and similarly, he has not confessed his guilt before the Court. That abscondance of the accused facing trial is of no avail to the prosecution because the prosecution otherwise has not been able to produce any cogent and confidence inspiring evidence against him. That the prosecution has failed to prove the charge leveled against the accused facing trial beyond shadow of doubt. Learned defence counsel requested for the acquittal of accused facing trial.

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6- As per record available on case file, it is clear that the alleged occurrence had taken place in front of hujra of complainant at 19:55 hours in the month of August 2016. It means that at the time of

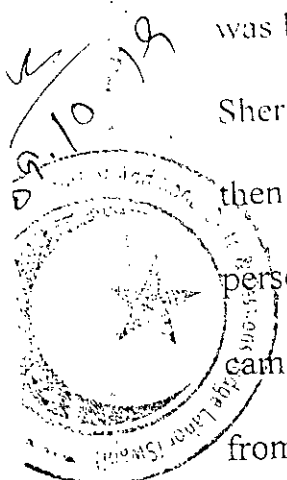
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occurrence the darkness might has prevailed but any source of light has not been mentioned by the complainant in his report.

7- The perusal of record further reveals that during the course of trial, the prosecution examined the most important witness, i.e. the injured complainant Zakir Hussain as PW-7. Although, in his examination in-chief, he supported the prosecution version, but in cross examination, the injured complainant negated his report by stating that the motorcar was having two persons in front and two on its rear seats. He also stated that there was no reasoning between him and the accused facing trial and that too neither before the present occurrence nor after the occurrence. He further stated that when he was hit of the fires he started towards his house and first he met Awal Sher after the occurrence and in second Awal Sher attended him and then took him near to his house where he was attended by a number of persons from the hujra and from the hujra PWs Sher Rehman and Ijaz came out after the occurrence. He stated that the fire was made at him from an open field within the graveyard. He also stated that he had covered the distance from the place of occurrence to his hujra whereon he was placed on a cot by people in the hujra for a distance of about 50 paces. He denied the charge against him by Jehan Taj son of Bacha Gul in a case; however, he admitted that a quarrel/fight had taken place between him and Fazal Bacha as a result of which the said Fazal Bacha had seriously been injured and the same matter had been



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patched up through compromise. It denied the suggestion that he was also having a fight with one Shaukat of his village which is still lying not patched up. He also admitted that he was having a dispute with Patwari namely Mohabat Khan of his village.

8. Similarly the other eyewitness Ijaz when entered the witness box as PW-08 supported the version of prosecution in his examination in chief; however, during his cross examination he stated that the complainant is his brother; that he had given his statement to the local police in his hujra as well as in the police station. He admitted that he had not accompanied the complainant to the arhat on the day of occurrence and that the complainant was all alone on his return from arhat to the home. He further stated that the persons who attended the complainant first were Sher Rehman and Awal Sher besides him. He stated that the firing was made from the road side and not from anywhere in the graveyard. He also negated the complainant regarding the issue and quarrel/fight of his brother/complainant with Shaukat and Mohabat Khan and also negated the complainant in respect of reasoning between the accused and his brother/complainant Bilal prior to the present occurrence.

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9. Awal Sher PW-09, as marginal witness to certain recoveries made by the I.O from the spot. He stated in his cross examination that he is not an eyewitness of the occurrence, he further

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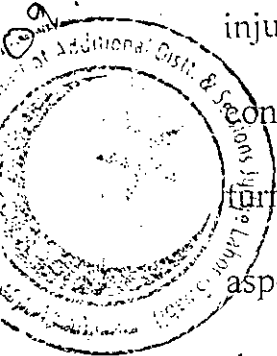
stated that there were blood trails on the spot leading up to the house of the injured.

10. It is necessary to mention that the eyewitness Sher Rehman has not been produced by the prosecution. Moreover, on 14.09.2019 Shah Jehan (father of complainant/injured) and Zar Sher (brother of complainant/injured) appeared before the court and recorded their joint statement to the effect that complainant Zakir Hussain had charged the accused facing trial in the instant case on suspicion; that the complainant of the present case is an idiot having lucid intervals and almost out of mind at times; therefore, they are completely satisfied regarding the innocence of accused facing trial.

11- In the light of the statements of above mentioned prosecution witnesses, it can be safely inferred that the star prosecution witnesses namely Zakir Hussain alias Bilal complainant/injured (PW-7) and Ijaz Muhammad (PW-8) have badly failed to give confidence inspiring and believable evidence. Both of them have furnished inconsistent and contradictory evidence on all the material aspects of the case which has made the spot and mode and manner of the occurrence highly doubtful. Admittedly, the other eyewitness as mentioned in the report namely Sher Rehman has not be produced. Motive for the occurrence shrouded in mystery because both the complainant and his brother PW-8 Ijaz Muhammad are not supporting each other and have given contradictory versions regarding this fact.

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True Copy
M. J.
A. d.

(21)
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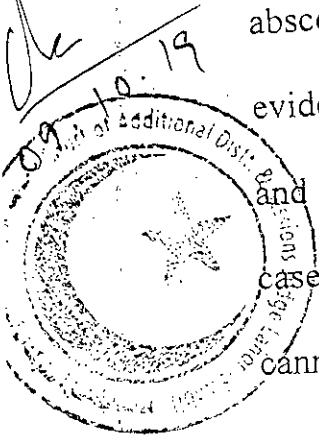
From the evidence of complainant it could be observed that he has got numerous enmities in the area but this fact has denied by the eyewitness Ijaz Muhammad, being real brother of the complainant which has further made the complainant of dubious behavior.

12- As far as the collection of blood is concerned, this is only corroborative and confirmatory piece of evidence, but when the ocular account furnished by the complainant (PW-7) and eyewitness (PW-8) is being disbelieved in the present case, then the corroborative evidence of recoveries, even if plausible, is of no avail to the prosecution.

13- As far as, the alleged abscondance of the accused facing trial is concerned, though he has remained fugitive from law for noticeable period, yet it is well settled principle of law that the abscondance of an accused person is the weakest type of prosecution evidence, until and unless it is corroborated by any unimpeachable and confidence inspiring evidence, which is lacking in the present case, hence mere abscondance on the part of accused facing trial cannot be made basis for his conviction, as the accused could run away due to fear even if he has falsely been charged.

ATTESTED
M. J.

14- In the light of what has been observed and discussed above, it is held that the prosecution has miserably failed to prove its case against the accused facing trial beyond shadow of reasonable doubt. It is well established principle of criminal jurisprudence and if



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Sessions Division

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H.d.

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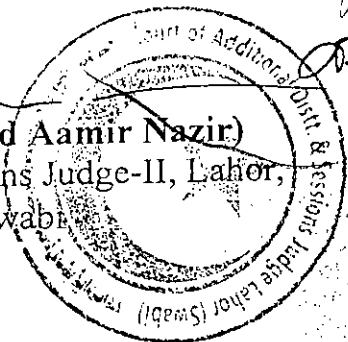
during trial some doubt is created by the defence then the accused will be acquitted not as a matter of grace but will be acquitted as a matter of right. Hence, by extending the benefit of doubt, accused facing trial namely Ali Murtaza is hereby acquitted of the charges leveled against him in the instant case. Accused is in custody, he be release/set free forthwith if not required in any other case

The case property be kept intact, till the expiry of period provided for appeal/ revision, and thereafter, be disposed off in accordance with law.

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

Announced.
09th October 2019

(Muhammad Aamir Nazir)
Addl: Sessions Judge-II, Lahor,
Swabi



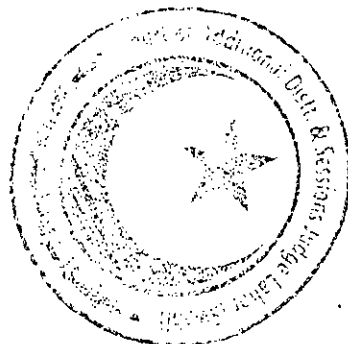
ATTESTED

CERTIFICATE.

Certified that this judgment consists of thirteen (13) pages. Each page has been read, corrected and signed wherever necessary.

ATTESTED
12/23/10/19
INCHARGE
Copying Sub Officer Lahor
Session Division Swabi

(Muhammad Aamir Nazir)
Addl: Sessions Judge-II, Lahor,
Swabi



قیمت 50 روپے	47033			
ایڈوکیٹ: منصف سعید		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 60-11-1916				
رابطہ نمبر: 0345-9429198				

بعدالت جناب: سر و سٹریٹیجیوں نل ایسٹ

منجانب: ایڈیٹر	دعویٰ: سر و سٹریٹیجیوں نل
علی مرتضیٰ	علت نمبر:
بنام	مورخہ:
گورنمنٹ K.P.K. عدالت	جرم:
حکم	تھانہ:

باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام ایڈیٹر کے منصف سعید ایڈیٹر 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 برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط 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 با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تازین پیشی مقام دورہ یا حصہ سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
 المرقوم: 19/03/2020
 PESHAWAR BAR ASSOCIATION
 KHAYBER PAKHTUNKHWAH
 مقام شاور کے لیے منظور ہے۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 5894/2020.

Ali Murtaza Ex-Constable 1016..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar

& Others..... Respondents.

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24/10/2020

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 5894/2020

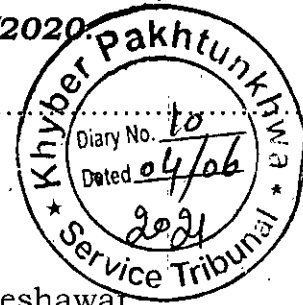
Ali Murtaza Ex-Constable 1016.....

Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar

& Others..... Respondents.



WRITTEN REPLY BY RESPONDENTS.

Respectfully Sheweth:

Preliminary Objections.

1. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is barred by law & limitation.
4. That the appellant has not come to this Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

REPLY ON FACTS.

1. Para No. 01 of appeal is correct to the extent that the appellant was employee of respondent department.
2. Para No. 02 of appeal to the extent of involvement in a criminal case of attempted murder is correct on account of which, proper departmental enquiry was conducted.
3. Para No. 03 of appeal is misleading and not based on sound footing. Appellant being member of Police force involved in a criminal case of attempted murder and failed to join investigation and remain fugitive from law for a noticeable period.
4. Para No. 04 of appeal is incorrect. After proper departmental enquiry during which the allegations against appellant was proved, hence he was dismissed from service.
5. Para No. 05 of appeal to the extent of dismissal vide order dated 24.07.2017 on recommendation of Enquiry Officer is correct.
6. Para No. 06 of appeal to the extent of filing departmental appeal is correct, however the same was rejected having no substance, baseless and being badly time barred.


7. Para No. 07 of appeal is incorrect. The appellant has got no cause of action and the instant appeal is groundless, which needs to be dismissed with cost.

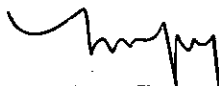
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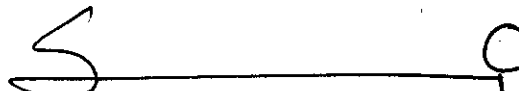
- A. Incorrect. The orders of respondents are quite legal in accordance with law/rules.
- B. Incorrect. The respondents have treated appellant in accordance with law/rules and not violated the constitutional rights of appellant.
- C. Incorrect. After fulfillment of codel formalities, appellant was dismissed from service.
- D. Incorrect. The respondents have not committed any discrimination.
- E. Incorrect. The appellant involved himself in attempted murder case and remain fugitive from law for a noticeable period and did not join investigation and got absented himself on account of which after proper departmental proceeding dismissed from service, moreover it is well established jurisprudential principles of administrative law that the findings of criminal case has got no bearing on the departmental proceedings.
- F. Incorrect. The respondent No. 3 has rightly dismissed the departmental appeal having no ground and being time barred.
- G. Incorrect. The appeal of appellant was dismissed on merit.
- H. That the respondents also seeks permission to advance further grounds at the time of arguments/hearing.


Prayer.

Keeping in view the above narrated facts, it is humbly prayed that the instant appeal being devoid of merits may very kindly be dismissed with costs, please.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)**


**Deputy Inspector General of Police,
Mardan Region-I Mardan
(Respondent No. 3)**


**District Police Officer Swabi,
(Respondent No. 4)**


**Sub Divisional Police Officer Razzar,
(Respondent No. 5)**

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 5894/2020.

Ali Murtaza Ex-Constable 1016.....Appellant


VERSUS


Inspector General of Police, Khyber Pakhtunkhwa, Peshawar

& Others.....**Respondents.**

AFFIDAVIT:-

We the respondents do hereby solemnly affirm and declare on oath that the contents of the written reply are correct/true to the best of our knowledge / belief and nothing has been concealed from the honorable Tribunal.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)**


**Deputy Inspector General of Police,
Mardan Region-I Mardan
(Respondent No. 3)**


**District Police Officer Swabi,
(Respondent No. 4)**


**Sub Divisional Police Officer Razzar,
(Respondent No. 5)**



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 1588 /ST Dated 07/06 /2023

All communications should
be addressed to the Registrar
KPK Service Tribunal and
not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The District Police Officer, Mardan.

**SUBJECT JUDGMENT IN SERVICE APPEAL NO. 5894/2020 TITLED ALI
MURTAZA VERSUS INSPECTOR GENERAL OF POLICE AND
OTHERS**

I am directed to forward herewith a certified copy of judgment dated
10.04.2023, passed by this Tribunal in the above mentioned appeal for compliance.

Encl. As above.

(AAMIR FAROOQ)
ASSISTANT REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR.