



The appeal of Mr. Jawad Ex Foot Constable No. 910 District Court Ghallanai Moh. and received today on 08.08.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal is not attached with the appeal be placed on it.
- 2- Annexure-J of the appeal is illegible which may be replaced by legible/better one.

No. 3013 /S.T.

Dt. 09/08 2023.



REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Taimur Ali Khan Adv.  
High Court Peshawar.

Respected Sir,

- 1- ~~copy~~ The appellant did not keep the copy of departmental appeal, therefore he is unable to annex with the appeal.
- 2- Annexure-J is replaced by legible copy.

Resubmitted after compliance.



11/08/2023.

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

SERVICE APPEAL NO. 1656/2023

Jawad

VS

Police Department

**INDEX**

S.No.	Documents	Annexure	P. No.
1	Memo of Appeal	-----	01-04
2	Affidavit	-----	05
3	Copies of FIR and order dated 16.08.2021	A&B	06-08
4	Copies of order dated 28.09.2021 and order dated 11.11.2021	C&D	09-13
5	Copies of charge sheet, statement of allegations and dismissal order dated 14.01.2022	E&F	14-16
6	Copies of order dated 13.06.2022, revision and order dated 21.07.2023	G,H&I	17-21
7	Copy of judgment dated 24.06.2022	J	22-30
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THROUGH:

APPELLANT

  
TAIMUR ALI KHAN  
(ADVOCATE HIGH COURT)

Cell# 0333-9390916

- BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

SERVICE APPEAL NO. 1656 /2023

Jawad, Ex-FC No.910,  
Posted at District Court Ghallanai Mohmand.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region, Mardan.
3. The District Police Officer, Mohmand Tribal District.

(RESPONDENTS)

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APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974  
AGAINST THE ORDER DATED 14.01.2022, WHEREBY  
MAJOR PUNISHMENT OF DISMISSAL FROM  
SERVICE WAS IMPOSED UPON THE APPELLANT  
AND AGAINST THE ORDER DATED 13.06.2022,  
WHEREBY THE DEPARTMENTAL APPEAL OF THE  
APPELLANT HAS BEEN REJECTED AND AGAINST  
THE ORDER DATED 21.07.2023, WHEREBY THE  
REVISION OF THE APPELLANT WAS ALSO  
REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE  
ORDER DATED 14.01.2022, 13.06.2022 AND 21.07.2023  
MAY KINDLY BE SET ASIDE AND THE APPELLANT  
MAY BE REINSTATED INTO HIS SERVICE WITH ALL  
BACK AND CONSEQUENTIAL BENEFITS. ANY  
OTHER REMEDY, WHICH THIS HONORABLE  
TRIBUNAL DEEMS FIT AND APPROPRIATE THAT,  
MAY ALSO, BE AWARDED IN FAVOUR OF  
APPELLANT.

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. That the appellant was working in the respondent department as FC and was performing his duty with great devotion and honesty, whatsoever assigned to him and no complaint has been filed against him regarding his performing.
2. That FIR-No.683 dated 12.08.2021 u/s 377-PPC/48/50/53-CPA was registered against some person, however, the appellant was not directly charged in that FIR and on the basis of that FIR the appellant was placed under suspension with immediate effect vide order dated 16.08.2021. **(Copies of FIR and order dated 16.08.2021 are attached as Annexure-A&B)**
3. That the appellant was arrest in the above mentioned criminal case and his bail application was declined by the Honorable Additional District & Session Judge Tangi on 28.09.2021. then appellant filed bail application in the Honorable Peshawar High Court, which was accepted on 11.11.2021. **(Copies of order dated 28.09.2021 and order dated 11.11.2021 are attached as Annexure-C&D)**
4. That on the basis of above criminal case, the appellant was dismissed from service vide order dated 14.01.2022 without communicating charge sheet to the appellant and without associating him with the inquiry proceeding as the appellant was in jail at the time of inquiry proceeding if so conducted and charge sheet along with statement of allegations were handed over to the appellant along with the dismissal order. **(Copies of charge sheet, statement of allegations and dismissal order dated 14.01.2022 are attached as Annexure-E&F)**
5. That the appellant filed departmental against dismissal order dated 14.01.2022, which was rejected on 13.06.2022, however, the appellant did not keep the copy of departmental appeal which may be requisite from the department. The appellant then filed revision on 05.07.2022, which was also rejected on 21.07.2023 for no good grounds. **(Copies of order dated 13.06.2022, revision and order dated 21.07.2023 are attached as Annexure-G,H&I)**
6. That the appellant has no other remedy except to file the instant appeal in this Honorable Tribunal for redressal of his grievance on the following grounds amongst others.

## GROUND:

- A) That the impugned orders dated 14.01.2022, 13.06.2022 and 21.07.2023 are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That the appellant was never associated with the inquiry proceeding as the appellant was in jail during the inquiry proceeding "if so conducted" and on this ground alone the impugned orders are liable to be set aside.
- C) That charge sheet was not communicated to the appellant as the appellant was in jail and charge sheet along with statement of allegations were handed over to the appellant along with the dismissal order and not communicating charge sheet to the appellant before passing the impugned dismissal order dated 14.01.2022 is violation of law and rules.
- D) That no show cause was issued to the appellant before passing the impugned order of dismissal from service, which is against the norms of justice and fair play.
- E) That even the inquiry report was not provided to the appellant "if so conduct" against the appellant and not providing the inquiry report to the appellant is violation of rule.
- F) That the appellant was placed under suspension with immediate effect vide order dated 16.08.2021 on the base of criminal case vide FIR No.683 dated 12.08.2021 u/s 377-PPC/48/50/53-CPA and the department should continue his suspension till the conclusion of criminal case pending against the appellant under Police Rules 1934 and CSR 194-A, but he was dismissed from service before conclusion of his criminal case pending against him, which is clear violation of Police Rules 1934 and CSR-194-A and as such the impugned orders are liable to be set aside.
- G) The appellant was dismissed from service on the basis of criminal case vide FIR No.683 dated 12.08.2021 u/s 377-PPC/48/50/53-CPA, but he acquitted by the competent court of law on 24.06.2022 in that criminal case, therefore, there remain no ground to penalize the appellant on the basis of that criminal case. **(Copy of judgment dated 24.06.2022 is attached as Annexure-J)**
- H) That the appellant has not been treated in accordance with law and rules and has been condemned unheard throughout.
- I) That the appellant seeks permission of this Honorable Tribunal to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that on the acceptance of this appeal, the order dated 14.01.2022, 13.06.2022 and 21.07.2023 may kindly be set aside and the appellant may be reinstated into his service with all back and consequential benefits. Any other remedy, which this honorable tribunal deems fit and appropriate that, may also, be awarded in favour of appellant.

  
APPELLANT

Jawad

THROUGH:

  
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT

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

SERVICE APPEAL NO. \_\_\_\_\_/2023

Jawad

VS

Police Department

**AFFIDAVIT**

I, Jawad, Ex-FC No.910, Posted at District Court Ghallanai Mohmand, (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honorable Tribunal.

  
DEPONENT









OFFICE OF THE  
DISTRICT POLICE OFFICER  
MOHMAND TRIBAL DISTRICT GHALLANAI

Email: dpomohmand@gmail.com


0924-290179 0924-290056

B 8

**OFFICE ORDER:**

Constable Jawad No.910 of this district police while posted at District Court Security, Ghallanai involved/charged in case FIR No.683 dated 12-08-2021 u/s 377-PPC/48/50/53-CPA PS Tangi District Charsadda is hereby placed under suspension with immediate effect.

His departmental proceedings will be initiated separately

  
District Police Officer  
Mohmand Tribal District

OB No 632

Dated 16/08/2021

No. 1850-52 /HC, dated Mohmand, the 16 /08/2021.

**Cc:**

- The SP Investigation Mohmand.
- SDPO Upper/DSP HQrs
- EC/OASI/PA/PO

99 (12)

COURT OF SYED ALIRAZA, ADDITIONAL SESSIONS JUDGE,  
CHARSADDA AT TANGI.

Serial No. of order of proceedings.	Date of order of proceeding	Order or other Proceedings with Signature of Judge or Magistrate & that of parties or counsel when necessary.
1.	2.	3
.....04	28.09.2021	<p>Counsel for the accused/petitioners and APP for the state assisted by learned counsel for the complainant present. Arguments heard and record gone through.</p> <p>2. By this single order I intend to dispose of 05 bail petitions i.e. BA No.918 moved by accused/petitioner Ramdad, BA No.919 moved by accused/petitioner Kashif Khan, BA No.920 moved by accused/petitioner Gul Aman, BA No.921 moved by accused/petitioner Jawad and BA No.923 moved by accused/petitioner Sulaiman Shah as all were the outcome of one and same FIR No.683 dated 12.08.2021 u/s 377 PPC/48/50/53 CPA of PS Tangi District Charsadda.</p> <p>3. As per brief facts of FIR. at 1830 hours on 09.08.2021 complainant Talha reported the matter to the local police to the effect that some 05 months prior, accused Ramdad and Kashif had taken the complainant to the vacant house of one Bacha Khan and there the above named accused alongwith Gul Aman, Sulaiman and one unknown person was already present there. The complainant further reported that accused Kashif and one unknown person committed sodomy with the complainant and thereafter, the complainant fled away from the spot. The accused named above also threatened the complainant to make viral his videos on social media. The complainant narrated whole the story to the elders of his family and the local elders patched up the matter but even</p>

*[Handwritten signature]*

ATTESTED  
Examiner/ Muharrir  
C.I. Agency  
28/9/21

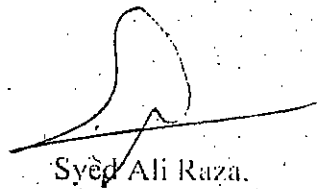
10 (17)

subsequent thereto the accused shared his video on social media/messenger. Hence the present FIR.

4 After hearing the pro & contra arguments and going through the available record this court was driven to conclude that irrespective of all the other facts or circumstances of the case no mala fide was pointed out on the part of the complainant to charge all the present accused/petitioners and most importantly the factum of compromise arrived at between the elders of both the sides also confirmed the commission of the offence. As regarded the distinction of role of any of the accused/petitioners who were charged as initially or subsequently could only be distinguished during the trial. Another factor of which this court took notice was that in a "PUKHTOON" society none would attempt to destroy his own life, career and future by charging any one for any such like act as baseless as it would first of all cause an irreparable loss to the person or family of the one attempting to do so.

5 In circumstances all the accused/petitioners were not found entitled to the concession of bail at least at this stage and the same was declined. Requisitioned record be returned while file of this bail petition be consigned to the record room after completion and compilation.

Announced:  
28.09.2021



Syed Ali Raza,  
Additional District & Sessions Judge,  
Charsadda at Tangi.

ATTESTED  
EX. JUDGE, Muzaffargarh  
28/9/21  
Tangi

(28)      D      (11)

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**

Cr. Misc. (BA) No. \_\_\_\_\_/2021

1. Kashif S/O Ameer Gulab
2. Ramdad S/O Rehman Gul

R/O Spinky Sily Tangi Distict Charsadda----- **P**etitioners

**V**ersus

1. Talha S/O Ayaz  
R/O Spinky Sily Tangi District Charsadda

2. The State----- **R**espondents

**Case FIR No. 683, dated: 12-08-2021**  
**Registered U/Ss: 377 PPC r/w 48/50/53 CPA**  
**Police Station: Tangi**

**PETITION U/S. 497 CR.P.C. FOR RELEASE OF THE**  
**PETITIONERS ON BAIL TILL DECISION OF THE CASE**

**Respectfully Sheweth:**

A. **T**hat, the petitioners have been arraigned as co-accused in the captioned case registered at PS. Tangi on 12-08-2021 U/S. 377 PPC r/w 48/50/53 CPA vide FIR No. 683.

*FIR with better copy is annexed-"A"*

B. **T**hat, the petitioners surrendered before the law and after their committal to jail, applied for release on bail which was declined by the learned ASJ, Tangi vide order dated 28-09-2021.

*Copy of bail application is annexed-"B"*

*Copy of order dated 28-09-2021 is annexed-"C"*

**N**ow, the petitioners beg leave to seek their bail in this august Court, inter-alia on the following grounds;

**G****R****O****U****N****D****S**:

I. **B**ecause, the record depict that no offence, whatsoever, has been committed and for long run and grinding his own axe, a false story has been on aired by the complainant party.

II. **B**ecause, the petitioners are quite innocent and have been dragged in the instant frivolous charge for ulterior motives and scoring domestic grudges.

BA3474-2021 KASHIF VS TALHA.pdf

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

12

*Judgment Sheet*  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
*(Judicial Department)*

Cr.M/BA No.3454-P/2021

Jawad..Vs..Talha & The State



Date of hearing: 11.11.2021.

Mr. Muhammad Waqar, Advocate, for the petitioner.

Mr. Kamran Murtaza, AAG, for the State.

Mr. Arif Ullah, Advocate, for the complainant.

**JUDGMENT**

\*\*\*\*\*

**SYED ARSHAD ALI, J.** Through this common order, this Court shall decide the instant Cr.M/BA No.3454-P/2021 filed by petitioner, namely, Jawad son of Fazal Wadood and connected Cr.M/BA No.3457-P/2021 filed by petitioners, namely, Suleman Shah son of Liaqat Shah and Gul Aman son of Mustaqeem, Cr.M/BA No.3474 filed by petitioners, namely, Kashif son of Ameer Gulab and Ramdad son of Rehman Gul, as all the petitions have arisen out of case FIR No.683 dated 12.08.2021 under section 377 PPC r/w section 48/50/53 CPA registered at Police Station Tangi District Charsadda.

2. Accused/petitioners have been charged for committing sodomy on minor Talha aged about 13/14 years for which the FIR ibid was registered against them.

3. Arguments heard and record gone through.

**QUESTED**  
**EXAMINER**  
Peshawar High Court.

13

4. Perusal of record shows that complainant Talha lodged report against the accused/petitioners on 12.08.2021 whereas the occurrence has taken place five (05) months before the registration of the FIR. Moreover, there is no medico-legal report to support the version of the complainant. Thus, the evidentiary value of the oral testimony of the complainant is to be determined by the trial Court after recording the evidence. The investigation in the case is complete and the accused/petitioner is no more required for further investigation in the case. Besides the above, learned counsel for the complainant stated at the bar that the matter has been compromised between the parties and they have no objection on the release of the accused/petitioners.

5. Keeping in view the above, all the bail applications are accepted and accused/petitioners are admitted to bail provided they furnish bail bonds in the sum of Rs.300,000/- (rupees three lac) each with two sureties each in the like amount to the satisfaction of *Illaga/Duty* Judicial Magistrate who shall ensure that the sureties are local, reliable and men of means.

6. These are the reasons of my short order of the even date.

**Announced**  
11.11.2021

  
JUDGE

3955

(M. Taha, S.S.S) (SB) Hon'ble Mr. Justice Syed Arshad Ali

Date of Presentation of Application..... 02-08-2023

No. of Pages..... 6-8

Copying fee..... 24-00

Total.....

Date of Preparation of Copy..... 02-08-2023

Date of Delivery of Copy..... 02-08-2023

Uk'3

CERTIFIED TO BE TRUE COPY

EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 8, 7 of  
the Qanun-e-Shahadat Act 1984

02 AUG 2023



E (14)

**CHARGE SHEET UNDER KPK POLICE RULES, 1975**

I, **Mr. Salah-ud-Din Kundi**, District Police Officer, Mohmand, as competent authority hereby charge you **Constable Jawad No. 910**, as follows.

That you **Constable Jawad No. 910** of the District Police while posted at District Court Security Ghallanai involved/charged in case FIR No. 683 dated 12-08-2021 u/s 377-PPC/48/50/53-CPA PS Tangi District Charsadda. Your such act is highly objectionable, against norms of discipline force and earning bad name for the department.

II) Being a part of a uniform force this act shows gross misconduct on this part.

Being a member of discipline force, such act is highly objectionable and against the norms of discipline force.

This amount to grave misconduct on your part, warranting Departmental action against you as defined in section-6(l)(a) if the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section 02(III) of the KPK Police Rules 1975 and das render hour self-liaible to all or any of the penalties as specified in section 04(l) a & b of the said rules.
2. You are therefore, directed to submit your written defense within (07) days of the receipt of the Charge Sheet to the Enquiry Officer.
3. Your written defense, if any should reach to the enquiry officer within the specified period, in case of failure, it shall be presumed that you have no defense to put-in and in that case an ex-parte action shall follow against you.
4. Intimate, whether you desired to be heard in person.

  
**District Police Officer,  
Mohmand.**



OFFICE OF THE DISTRICT POLICE OFFICER  
MOHMAND

PHONE NO. 0924-290179 FAX 0924-290056

15

**DISCIPLINARY ACTION UNDER KPK POLICE RULES-1975**

I, Mr. Salah-ud-Din Kundi, District Police Officer, Mohmand, as competent authority am of the opinion that Constable Jawad No. 910 has rendered himself liable to be proceeded against as he has committed the following acts/omissions within the meaning of section-02 (iii) of KPK Police Rules-1975.

**STATEMENT OF ALLEGATIONS:**

That Constable Jawad No. 910 of the District Police while posted at District Court Security Ghallanai involved/charged in case FIR No. 683 dated 12-08-2021 u/s 377-PPC/48/50/53-CPA PS Tangi District Charsadda. His such act is highly objectionable, against norms of a disciplined force and earning bad name for the department.


ii) Being a part of a uniform force this act shows gross misconduct on this part.

Being a member of discipline forced, such act is highly objectionable and against the norms of discipline force.

This amounts to grave misconduct on his part, warranting departmental action against him.

For the purpose of scrutinizing the conduct of the said official Mr. Sp Shakeel Ahmad, hereby deputed to conduct proper departmental enquiry against the aforesaid official, as contained in section -5 (i)(a) of the afore mentioned rules. The enquiry officer after completing all proceedings shall submit his verdict to this office within stipulated period of (10) days.

Constable Jawad No. 910 is directed to appear before the enquiry officer on the date, time and place fixed by the (enquiry officer). Charge sheet is attached herewith.

  
District Police Officer,  
Mohmand.

No. 2467-69 /PA: dated Mohmand the 19 / 10 / 2021.

**Copies for information to the:**

1. Enquiry Officer of the District Mohmand Sp Investigation is directed to initiate departmental proceedings against the accused under the police Disciplinary Rules, 1975 read with amendments 2014.
2. FC- Jawad No: 910 to appear before the Enquiry officer on the date, time & Place fixed by the Enquiry Officer for on the date, time & fixed by the enquiry for the purpose of enquiry proceedings.



OFFICE OF THE  
DISTRICT POLICE OFFICER  
MOHMAND TRIBAL DISTRICT GHALLANAI  
Email: dpomohmand@gmail.com  
Ph: 0924-290179 Fax: 0924-290056

F 16

**ORDER:**

This order will dispose-off the inquiry proceeding against **FC Jawad No. 910** with the allegations that he while posted at District Court Ghallanai was charged vide FIR No. 683, dated 12.08.2021 u/s 377PPc-48-50-53CPA PS Tangi District Charsadda.

To scrutinize the conduct of the delinquent official, he was issued charge sheet together with statement of allegation & inquiry was entrusted to Mr. Shakeel Ahmad (SP Investigation) vide this office letter No. 2467-69/PA, dated 19.10.2021. The inquiry officer after fulfilling all legal and codal formalities, the alleged constable was found at fault, however, recommended for **Major Punishment**.

Based on the above I **Salah-ud-Din Kundi**, **District Police Officer, Mohmand** being the competent authority and exercise of power vested in me under the Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) rules 2011, hereby awarded him **Major Punishment of Dismissal from the service with immediate effect.**

District Police Officer,  
Mohmand Tribal District

OB No. 1132

Dated 14/01/2022

No. 61-63 /PA, dated Mohmand the: 14/01/2022

**Copy forwarded to the:**

- Regional Police Officer, Mardan for favor of kind information please.
- HC/EC/FMC
- Pay Officer

G (17)

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Constable Jawad No. 910 of Mohmand District Police against the order of District Police Officer, Mohmand, whereby he was awarded major punishment of dismissal from service vide OB: No. 1132 dated 14.01.2022. The appellant was proceeded against departmentally on the allegations that he while posted at District Court Ghallani was charged in case FIR No. 683 dated 12.08.2021 U/S 377/48/50/53-CPA Police Station Tangi District Charsadda.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and the then Superintendent of Police Investigation, Mohmand was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings wherein he found the delinquent Official guilty of misconduct and recommended him for major punishment.

He was issued Final Show Cause Notice to which his reply was received and found unsatisfactory. Hence, he was awarded major punishment of dismissal from Service vide OB: No.1132 dated 14.01.2022 by the District Police Officer, Mohmand.

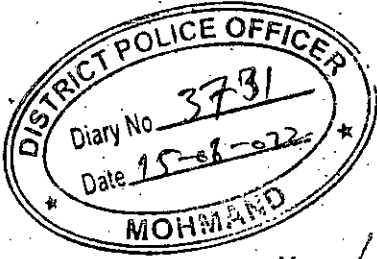
Feeling aggrieved from the order of District Police Officer, Mohmand, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 08.06.2022.

From the perusal of the enquiry file and service record of the appellant, it has been found that the allegations against the appellant have been proved beyond any shadow of doubt. Being a member of disciplined/uniformed force, the involvement of the delinquent Officer in such like immoral activities brought a bad name for entire Police force in the eyes of general public, besides affecting other members of Police force. Moreover, the appellant was under obligations to safeguard/protect the honor/dignity of the public irrespective of their gender but in the instant case the appellant himself indulged in immoral activities which is totally against the norms of disciplined force. Hence, the retention of appellant in Police Department will stigmatize the prestige of entire Police Force. Besides, the case of the appellant is sub-judice before the trial court and during the course of personal hearing, he could not present any cogent justification to warrant interference in the order passed by the competent authority. Hence, the very conduct of appellant is

unbecoming of a disciplined Police Officer. Therefore, the order passed by the competent authority does not warrant any interference.

Keeping in view the above, I, Yaseen Farooq, PSP Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit.

Order Announced.



*Yaseen Farooq*  
Regional Police Officer,  
Mardan.

No. 4112 /ES, Dated Mardan the 13 / 06 /2022

Copy forwarded to District Police Officer, Mohmand for information and necessary w/r to his office Memo: No. 679/DPO/M dated 01.04.2022. His service record is returned herewith.

(\*\*\*\*\*)

*gic Legal Branch*

*PC*

*n/d*

*DPO Mohmand*  
*15-6-2022*

10005/SB

H (19)

Revision Petition Before AIG Khyber Pakhtunkhwa

1. That the petitioner constable Jawad No. 910 was posted at District Court Security at Ghallania Mohmand Agency and was falsely involved/implicated in Case FIR No. 683 Dated. 12-08-2021 U/S 377 PPC, 48,50/53 CPA PS Tangi District Charsadda.

2. That thereafter DPO Mohmand Suspended him and initiated departmental proceeding and later on constable Jawad was dismissed from service vide order dated 14-01-2022.

(Copy Of order and proceeding are Attached)

3. That the petitioner Challenged the order of DPO before DIG Mardan through Departmental appeal but the same was rejected vide order Dated. 13-06-2022.

(Copy of DIG order Attached)

4. That the FIR was registered by the complainant with delay of 5 month without any explanation for delay.

(Copy of FIR is attached)

5. That the petitioner namely Jawad Was Not charged in the FIR.

6. That the statement of complainant/Victim Talha

~~A. J. J. J.~~  
05/07/22

S.B  
05/07/22

20

during Cross Examination that Accused Jawad was not charged in the FIR nor later on he was charged and on the strength of these statement Accused Jawad was acquitted from the charged leveled against him by the court of Additional Session Judge Tangi Vide order Dated 24-06-2022.

7. That the petitioner was dismissed from service before the acquittal order and after acquittal from competent court, now he is entitle to be reinstated.

It is therefore respectfully Prayed that on acceptance of this revision petition the order of DPO and DIG may kindly be set aside and the petitioner may kindly be re instated in to service with all back benefits.

Petitioner

Jawad FC No. 910

جوادر

cell# 0333-0916557

0335-9086357



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
PESHAWAR.

I  
21

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted Ex-FC Jawad No. 910. The petitioner was He was dismissed from service by DPO Mohmand vide OR No. 1132, dated 14.01.2022 on the allegations that he while District Court Ghallani was charged in case FIR No. 683, dated 12.08.2021 u/s 377/48/50/53-CPA PS Tangi District Charsadda.

The Appellate Authority i.e. RPO Mardan rejected his appeal vide order Jndst: No. 4112/ES, dated 13.06.2022.

Meeting of Appellate Board was held on 02.06.2023 wherein petitioner was heard in person. Petitioner contended that he was innocent.

Perusal of enquiry papers reveals that the allegations leveled against the petitioner have been proved. During hearing, petitioner failed to advance any plausible explanation in rebuttal of the charges. The Board sees no ground and reasons for acceptance of his petition; therefore, the Board decided that his petition is hereby Rejected.


Sd/-

RIZWAN MANZOOR, PSP  
Additional Inspector General of Police,  
HQrs: Khyber Pakhtunkhwa, Peshawar.

dt: 18.06.23, dated Peshawar, the 21-07-2023.

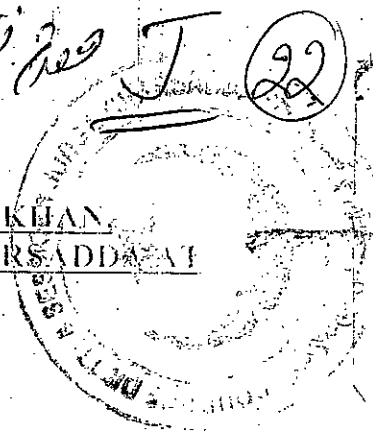
Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan, Service Roll and One Fuji Missal of the above named Ex-FC received vide your office Memo: No. 5796/ES, dated 30.08.2022 is returned herewith for your office record.
2. District Police Officer, Mohmand.
3. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to Registrar, CPO Peshawar.
7. Office Supdt: F-IV CPO Peshawar.

  
(DR. ZAMIR HUSSAIN) PSP  
AIG/Establishment,  
Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar



IN THE COURT OF SHAH WALI KHAN  
ADDITIONAL SESSIONS JUDGE, CHARSADDA AT  
TANGI



Case File No.02/SC of 2022

Date of Institution ..... 03.01.2022

Date of Decision ..... 24.06.2022

State through Talha S/o Ayaz R/o Spinky Silly Tehsil Tangi  
District Charsadda ..... (Complainant)

*Versus*

(1). Kashif S/o Amir Gulab, (2). Sulaiman S/o Liaqat, (3) Jawad  
S/o Fazal Wadood and (4). Gul Aman So Mostaqem R/o Spinky  
Silly Tehsil Tangi District Charsadda ..... (Accused)

CASE FIR NO.683 dated 12.08.2021 u/s 377 PPC OF POLICE  
STATION TANGI DISTRICT CHARSADDA.

Order  
24.06.2022

1. Accused Kashif, Gul Aman, Sulaiman Shah and Jawad on  
bail present. Sr.PP for the state present.

2. Through this Order, I intend to dispose of an application u/s  
265-K Cr.PC submitted by the accused Kashif, Gul Aman,  
Sulaiman Shah and Jawad for their acquittal in the instant case  
registered against him vide F.I.R No.683 dated 12.08.2021 u/s 377  
PPC of PS Tangi District Charsadda.

3. The prosecution story as per contents of F.I.R is that on  
09.08.2021 at 18:50 hours, complainant Talha reported the matter to  
the local police to the effect that some 05 months prior, juvenile co-  
accused Ramdad and Kashif had taken the complainant to the

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vacant house of one Bacha Khan and therein the accused Gul Aman, Sulaiman and one unknown accused was already present there; that the accused Kasfi and one unknown accused committed sodomy with the complainant and thereafter, the complainant fled away from the spot; that the accused named above also threatened the complainant to make viral his video on social media and the accused were taunting the complainant for the commission of sodomy; that the complainant got fed up and under the compulsion narrated the whole story to the elders of his family; that upon which the situation aggravated and he local elder patched up but even subsequent thereto, he accused shared his video on social media messenger, therefore, FIR was registered. Later on, accused Jawad was nominated by the complainant. Talib of his supplementary statement recorded u/s 161 Cr.PC on 17.02.2022. However, no statement was recorded u/s 164 Cr.PC in this respect before the learned Judicial Magistrate as on record no such statement is available.

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4. After completion of investigation, S.F.O submitted complete challan under section 173 Cr.PC which was entrusted to this Court. Accused on bail appeared before the Court and after compliance of provision of Section 265-C Cr.PC, charge against the accused was framed on 23.02.2022 to which they pleaded not guilty and claimed trial. Thereafter, case was fixed for prosecution evidence.

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Prosecution till date produced only two witnesses i.e. complainant

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Talha and Muhammad Riaz and were examined as PW-1 & 2. The gist of PW is as under:-

Muhammad Riaz was examined as PW-01, who stated that on victim Talha is his paternal nephew; that they have dispute with one Ramdad and Rahmat Gul and the elders of the locality patched up the matter between them on the condition that whoever violate the compromise will be fined Rs.500,000/-; that the son of Rahmat Gul namely Ramdad has committed sodomy with the son of Avaz namely Talha and uploaded the same through messenger video, due to which they defamed them and mentally disturbed them; that for this purpose he and father of Talha submitted an application to the DPO for proceedings against the above said accused; that his application is EXPW-1/1 placed on file; that in his presence Talha handed over his used garments to the police, which he was worn at the time of occurrence, which was taken into possession through recovery memo; that he charged the accused facing trial for the commission of offence.

Talha (complainant) was examined as PW-2. He stated that for about five months prior to the making application by his uncle, the occurrence had taken place; that accused Kashif and Ramdad took him to the vacant house of one Bacha Khan through deceitful means, where the said accused Ramdad and Rahman Gul and other accused namely Amir, Sultanman Shah and one unknown person were also present over there; that accused Ramdad committed sodomy with him and when the turn of other accused came, he run away from there; that later on accused Ramdad and Rahman Gul threatened him for uploading his naked video and compelling him for unnatural lust, upon which he narrated

the whole story to their elders and then the elders of the locality patched up the matter but inspite of compromise the accused Ramdad and Rahman Gini uploaded his and naked video on net, that he therefore, along with his wife namely, Muhammad Rizq, has submitted application for legal action against the accused; that he also made report to the police, which was incorporated into Naqul Mad No. 18 and later on the instant case. FIR was registered against the accused; that the police official also prepared the site plan at his instance and pointation; that he also handed over his washed garments to the police, which he had worn at the time of occurrence; that he charged the accused facing trial for the commission of offence.

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5. During the course of evidence, learned counsel for the accused submitted an application u/s 265-K Cr. P.C. on 23.06.2022 for the acquittal of accused, notice of said application was given to the prosecution. Arguments of the learned counsel for accused and Senior PP for the State have been already heard and record perused.

6. From the perusal of the record, it transpires that accused facing trial were charged by the complainant Talha for committing sodomy with him and for uploading naked video on social mediate/messenger.

7. Record reveals that FIR was lodged on 09.08.2021 while the occurrence has been shown to have taken place some 05 months prior to lodging FIR without any explanation in this respect.

Admittedly, accused Jawad was not directly charged for the commission of offence of sodomy/unnatural offence, rather he was charged by the complainant later on, in his statement recorded u/s

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161 Cr.P.C on 13.08.2021 without any source of satisfaction. No statement u/s 164 Cr.P.C of the complainant in this respect is available on case file. PW-1 Muhaimmad Riaz during his cross examination admitted that in his application he has not charged the accused Jawad for the commission of offence. He further admitted that later on he has not also charged accused Jawad. Similarly, complainant Talha during cross examination also admitted that he has not charged the accused Jawad for the commission of offence. He further admitted that the application submitted by his uncle to the DPO, Charsadda, they had not charged accused Jawad and similarly he has not charged him later on. No identification parade in respect of accused Jawad was conducted.

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9. PW-1 Muhammad Kraz during cross examination also admitted that all accused facing trial were charged on the basis of suspicion. He further stated during cross examination that the accused facing trial through jirga satisfied them regarding their innocence. PW-1 during cross examination also stated that they have get no objection on the acquittal of accused, as they have satisfied them for their innocence. He further stated that they are no more interested in pursuing the case for the reason of compromise as they were satisfied by the accused regarding their innocence.

10. In the same way complainant Talha PW-2 during cross examination admitted that all accused facing trial were charged on the basis of suspicion. He further stated during cross examination that the accused facing trial through jirga satisfied them regarding

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Dy. Insp. & S.O.  
Charsadda

their innocence. Complainant PW-2 during cross examination also stated that they have got no objection on the acquittal of accused, as they have satisfied them for their innocence. He further stated that they are no more interested in pursuing the case for the reason of compromise, as they were satisfied by the accused regarding their innocence.

11 Admittedly, there is no eye witness of the alleged occurrence except complainant who also resiled from his statement and stated that the accused were charged on the basis of suspicion. Now there is no evidence is available against the accused to be connect them with the commission of offence. The garments of the complainant were also not sent to FSL, as the same were washed. No report of medical examination before of the victim/complainant is available on case file, wherein offence of commission of sodomy or attempt to commit sodomy is under investigation, the victim shall be examined by a registered medical practitioner, in the case of female victim by female registered practitioner immediately after the commission of offence. The registered medical practitioner to whom such victim is sent shall without delay examine the victim and prepared the report of the examination. Wherein offence is PPC is committed or attempt to have been committed or is alleged to have been committed Deoxyribo Nucleic Acid (DNA) samples, where practicable, shall be collected from the victim, with his consent or with the consent of his natural or legal guardian. The DNA samples shall at the earliest be sent for investigation Forensic

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Laboratory where these shall be properly examined and preserved, however confidentiality of such examination at all time shall be observed. Admittedly no DNA report is available on case file. No evidence available on case file to connect the accused with the commission of offence on case file.

12. Record reveals that FIR was lodged on 09.08.2021 while the occurrence has been shown to have taken place some 05 months prior to lodging FIR without any explanation in this respect, after delay of more than 05 months.

13. The prosecution was supposed to establish guilt against the accused beyond shadow of reasonable doubt by bringing trustworthy, convincing and cogent evidence for the purpose of awarding conviction. The prosecution is under statutory obligation to furnish the 1<sup>st</sup> degree of proof through high quality evidence reasonable creating nexus of accused with the commission of crime/offence.

14. Prosecution is duty bound to prove its case beyond any reasonable doubt and if any single and slightest doubt is created, benefit of the same must go to the accused and it would be sufficient to disbelieve the prosecution story and acquit the accused. Reliance in this regard is placed on case titled "Ataullah vs. The State", reported in PLD 2019 Balochistan 75.

*Benefit of doubt--Prosecution is duty bound to prove its case beyond any reasonable doubt and if any single and slightest doubt is created, benefit of the same must go to the*

24/06/22

accused and it would be sufficient to disbelieve the prosecution story and held the accused for acquitted--main doubts were not needed in the production case; rather any reasonable doubt arising out of the prospective evidence, pricking the judicial mind, was sufficient for a acquittal of accused--Accused, was always considered as the most favourite child of law and every benefit of doubt would go to him, regardless of fact whether he had taken any such plea or not

Reliance in this regard is placed on case titled "Riaz Ahmad vs. The State and another", reported in 2016 P Cr. LJ 114 [Peshawar]

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15. From the statement of complainant and available record there is no probability of conviction of accused even if the statements of all PWs be recorded. The accused can be acquitted under Section 265-K Cr.PC when there is no probability of his conviction and the further trial of the case will bear no fruitful purpose.

16. Section 265-k Cr. PC empowers the court to acquit accused at any stage of trial, which is reproduced as under for ready reference:

*"265-K. Power of Court to acquit accused at any stage: Nothing in this Chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the case, if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is not probability of the accused being convicted of any offence."*

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07 Aug 2023  
District Sessions Judge  
District Court  
Peshawar

Use of expression 'at any stage' of the case is indicative enough of intention that any stage could be very initial stage, after taking cognizance or it could be a middle stage after recording some




statement or even it could be later stage as well. Provisions of S. 265-K, Cr. PC are to be used with great care and caution.

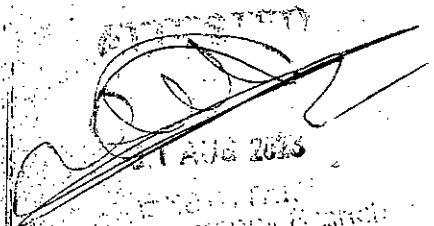
Reliance in this regard is placed on case titled "Naseer Khan vs. The Chairman, National Accountability Bureau, Islamabad and 4 others", reported in PLD 2020 Peshawar 74

17. Keeping the above discussion in the view, while accepting the application u/s 265-K Cr.PC, the accused facing trial namely Kashif, Gul Aman, Sulaiman Shah and Jawad are hereby acquitted from the charges levelled against them. Accused are on bail, they and their sureties are discharged from the liabilities of bail bonds. Case property be kept intact till disposal of appeal or revision, if preferred/ filed.

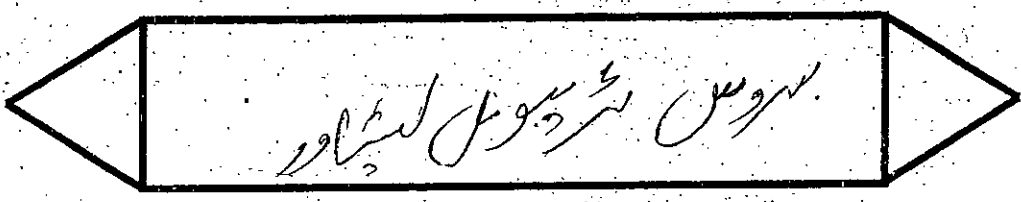
18. Copy of this order be also sent to the learned DPP, Charsadda for information. File be consigned to DRR after its necessary completion & compilation.

Announced  
24.06.2022

  
(Shah Wali Khan)  
Additional Sessions Judge,  
Charsadda at Tangi

  
21 AUG 2022  
Office of the  
Additional Sessions Judge  
Charsadda

بعدالت



جوائنٹ 2ء منجانب  
جواد بنام حکمہ پوریل

مورخہ  
مقدمہ لاہور  
دعویٰ  
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لسیا اور کیلئے (محمود علی خان امڈو کمپنی

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکور با اختیار انت حاصل ہوں گے اور اس کا ساختہ پر داختمنظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Accepted & Attested  
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ماہ

المرقوم

العبد د گ د العبد واہ العبد  
حجہ ۱۴