

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1629 /ST.

Dated 16/08 /2021


To,

The Registrar,
Supreme Court of Pakistan,
Islamabad.

Subject:- CIVIL APPEAL NO.201 OF 2021

Dear Sir,

I am directed to acknowledge the receipt of your letter No. C.A.
201/2021-SCJ dated 4/8/2021 alongwith its enclosure.


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

Ph: 9214461
Fax: 9220406

REGISTERED
No. C.A.201/2021 - SCJ
SUPREME COURT OF PAKISTAN

Islamabad, dated 04-8- 2021

From The Registrar,
Supreme Court of Pakistan,
Islamabad.

To The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.



Subject: CIVIL APPEAL NO. 201 OF 2021

Azizullah Jan
Versus

District Education Officer (M), Elementary & Secondary Education, Lakki
Marwat & others

**On appeal from the Judgment/Order of the K.P.K. Service Tribunal,
Peshawar dated 18/10/2018 in S.A.464/2015.**

Dear Sir,

In continuation of this Court's letter of even number dated 22-03-2021,
I am directed to enclose herewith a certified copy of the Order of this Court dated
06/07/2021 dismissing the above cited case in the terms stated therein for information
and further necessary action.

I am further directed to return herewith the original record of the Service
Tribunal, received under the cover of your letter No.620 dated 01/04/2021.

Please acknowledge receipt of this letter along with its enclosure
immediately.

**Encl: Order:
2. O/Record:**

Yours faithfully,

(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Seen
[Signature]

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

CIVIL APPEAL NO.201 OF 2021

[Against the judgment dated 18.10.2018, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, in Service Appeal No.464 of 2015]

Azizullah Jan

...Appellant

Versus

***District Education Officer (M), Elementary
& Secondary Education, Lakki Marwat
and others***

...Respondents

For the Appellant : Mr. Muhammad Shoaib Shaheen,
ASC
Mr. Ahmad Nawaz Chaudhry,
AOR (absent)

For the Respondents : Mr. Zahid Yousaf Qureshi,
(Government) Addl. Advocate General,
Khyber Pakhtunkhwa
Muhammad Aslam, D.S.
Kashif Munir, Litigation Officer

Date of Hearing : 06.07.2021

ORDER

GULZAR AHMED, CJ.- The appellant was employed with the respondents. He remained absent from service and it was learnt that on account of the registration of FIR No.36 under Sections 302/324/148/149 PPC, in Police Station Shah Salim, the appellant has absconded. The appellant was proceeded against departmentally. Notices were issued to him and the same were also published in the newspapers but the appellant did not

WITNESSED

Court Associate
the Court of Pakistan
Islamabad

respond to them. Vide order dated 13.04.2001, the appellant was removed from service with effect from 27.04.1993. The appellant did not surrender himself rather he was arrested on 15.05.2014. The appellant, after obtaining of his acquittal from the criminal case, filed a departmental appeal and then filed a service appeal in the year 2015. Though the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**) has not addressed on limitation but apparently, we find the very service appeal of the appellant before the Tribunal, was suffering from the question of time barred.

2. We note that the Tribunal has noted as a fact that the appellant has remained absent from duty for more than 20 years and thus, was found to be guilty of gross misconduct. The Tribunal by the impugned judgment dated 18.10.2018, has dismissed the service appeal of the appellant.

3. The learned counsel for the appellant has contended that as the case of co-accused Saifullah was decided by the Tribunal by converting the penalty of removal from service to that of compulsory retirement. The appellant may also be dealt with accordingly.

4. We note that the Tribunal has given its judgment on 28.03.2013 in the case of co-accused Saifullah and if the appellant was mindful of obtaining benefit of this judgment, he ought to have cited the same before the Tribunal but incidentally, he did not do so. The second submission of the learned counsel for the appellant is that the removal cannot be effected from back date and in this regard he has relied upon the case of The Vice-

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

President (Admn.), National Bank of Pakistan and others v. Basharat Ali and others (1996 SCMR 201). Though this argument has been raised by the learned counsel for the appellant but he admits that no practical benefit will come to the appellant in case his date of removal is changed to that of 13.04.2001, as nothing is going to be paid to the appellant. He admits that no prejudice is caused to the appellant while making a removal order effective from 27.04.1993, the date when he absented himself. In this view of the matter, no interference is required in the impugned judgment of the Tribunal, the same is maintained. The appeal is dismissed.

Sd/-HCJ
Sd/-J
Sd/-J

Certified to be True Copy

[Signature]

Court Associate
Supreme Court of Pakistan
Islamabad

Bench
Islamabad
06.07.2021
Mahtab/
[Signature]



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 464/2015

Date of Institution... 19.05.2015

Date of decision... 18.10.2018

Azizullah Jan S/O Gul Rehan, R/o Wanda Faqeeran,
Landiwa, Lakki Marwat, Ex-PTC, Govt. Primary School,
Lakki Marwat.

... (Appellant)

Versus

1. District Education Officer (M) Elementary & Secondary Education, Lakki Marwat and two others. (Respondents)

Mr. Arbab Saif Ul Kamal,
Advocate

... For appellant.

Mr. Ziaullah,
Deputy District Attorney

... For respondents.

MR. AHMAD HASSAN,
MR. HUSSAIN SHAH,

... MEMBER(E)
... MEMBER(E)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. Brief facts of the case are that the appellant was appointed as PTC Teacher on 4.12.1982. That on the allegations of willful absence from duty he was removed from service with effect from 27.04.1993 vide impugned order dated 13.4.2001. He preferred departmental appeal on 26.11.2014 which was not responded, hence, the instant service appeal on 19.05.2015.

ARGUMENTS

3. The learned counsel for the appellant argued that FIR no. 36 dated 27.04.1993 under section 302/324/148/149 PPC was registered in PS Shah Salim against him. He was removed from service w.e.f. 27.04.1993 vide order dated 13.04.2001. He was acquitted by the court of Addl: Sessions Judge Takht Nasrati, Karak vide judgment dated 29.10.2014. Enquiry was conducted at the back of the appellant and was never associated with these proceedings. His case was dealt with under E&D Rules as well as RSO-2000. Neither show cause notice was served on him nor opportunity of personal hearing was provided to him. He was condemned unheard. Reliance was placed on case law reported as 2012 Tr.C (Services)6 and 2007 SCMR 229.

4. On the other hand, the learned Deputy District Attorney argued that FIR was lodged against him on 27.04.1993, while he was arrested on 12.5.2014. He remained fugitive from law for more than 20 years which was a gross misconduct on his part. As a government servant he should have surrendered to law and immediately informed his parent department about registration criminal case. He further contended that entire appeal was silent on the whereabouts of the appellant. Reliance was placed on 2011 PLC (CS)990, 2004 PLC 675, 2017 SCMR 965, 2010 SCMR 354 and appeal no. 685/2016 decided by this Tribunal on 09.02.2018.

CONCLUSION.

5. Having gone through the record, it transpired that FIR NO. 36 under Section 302/324/148/149 PPC was registered in PS Shah Salim against the appellant on 27.04.1993. Instead of surrendering to law he remained absconder for more than two decades. Finally he was arrested on 15.05.2014. As a government

servant/law abiding citizen of the country he should have surrendered to law and informed his parent department accordingly. He was guilty of gross misconduct. When learned counsel for the appellant was confronted on this point he was unable to give any convincing reply. In the absence of any justification, we have no hesitation to conclude that absence from duty on the part of the appellant was willful, deliberate and intentional. It would be mockery of justice, if any leniency is shown towards the appellant by taking shelter under mere technicalities.

6. So far as claim of the learned counsel for the appellant regarding initiation/finalization of disciplinary proceedings under two set of laws was concerned, he was unable to point out any prejudice caused to him as result of these proceedings. This issue has already been decided by this Tribunal in Appeal no. 685/2016 vide judgment dated 09.02.2018.

7. As a sequel to above, the appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.



(HUSSAIN SHAH)
Member



(AHMAD HASSAN)
Member

ANNOUNCED
18.10.2018

27.07.2018

Clerk to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Clerk to counsel for the appellant seeks adjournment as counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 13.09.2018 before D.B.

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

13.09.2018

Learned counsel for the appellant and Mr. Kabirullah Khattak Learned Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.10.2018 before D.B

(Hussain Shah)
Member

(Muhammad Hamid Mughal)
Member

Order

18.10.2018

Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
18.10.2018


(Hussain Shah)
Member


(Ahmad Hassan)
Member

464/15

02.03.2018

Counsel for the appellant and Addl. AG for the respondents present. Learned counsel for the appellant seeks adjournment. To come up for arguments on 30.03.2018 before the D.B.



(Ahmad Hassan)
Member


Chairman

30.03.2018

Counsel for the appellant and Addl; AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 04.05.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

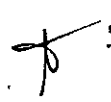
04.05.2018

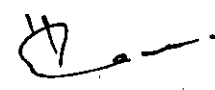
Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on ~~12.07~~ 2018 before D.B


Reader

12.06.2018


Junior to counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned by way of last chance. To come up for arguments on 27.07.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

06.12.2017

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for respondent also present. Counsel for the appellant requested for adjournment. Adjourned. To come up for such record and arguments on 23.01.2018 before the D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)

23.01.2018

Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Addl. AG for the respondents present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for such record/rejoinder, if any, arguments on 27.02.2018 before D.B.


Member


Chairman

27.02.2018

Counsel for the appellant and Addl. AG for the respondents present. In this appeal, the order of removal is from retrospective date. Since the judgment of Larger Bench is awaited on this point. To come up for arguments on 02.3.2018 before the D.B.

Member


Chairman

16.03.2017

Counsel for appellant and Mr. Kabirullah Kattak, Assistant AG for respondents present. Rejoinder not submitted. Learned counsel for appellant requested for adjournment. Adjournment granted. To come up for rejoinder and arguments on 23.05.2017 before D.B.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

23.05.2017


Mr. Noor Muhammad Khattak, Advocate submitted Wakalatnama on behalf of the appellant and requested for adjournment. Wakalatnama placed on record. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Adjourned. To come up for rejoinder and arguments on 02.08.2017 before D.B.


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

02.08.2017

Counsel for the appellant and Asst: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.12.2017 before D.B.


Member


Chairman

11.05.2016

Counsel for the appellant, M/S Sharifullah, ADO, Hameed-ur-Rehman, AD (lit.) and Khurshid Khan, SO alongwith Addl: AG for respondents present. Written reply by respondents not submitted despite extension of last opportunity subject to payment of cost of Rs. 1000/- Learned Addl: AG requested for further time for submission of written reply on behalf of respondents. Last opportunity further extended subject to payment of further cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost of Rs. 2000/- on 09.09.2016 before S.B.



Member

09.09.2016

Appellant with counsel, M/S Sharifullah, ADO, for respondent No. 2, Hameed-ur-Rehman, AD (lit.) for respondent No. 2 and Khurshid Khan, SO for respondent No. 3 alongwith Additional AG for all respondents present. Written reply on behalf of respondents No. 1 to 3 submitted. Cost of Rs. 2000/- also paid and receipt thereof obtained from learned counsel for the appellant. The appeal may be placed to the worthy Chairman for assigning the appeal to appropriate D.B for rejoinder and final hearing for 12.12.2016.



Member

12.12.2016

Since 12th December, 2016 has been declared as a public holiday an account of 12th Rabi-ul-awal. Case is adjourned to 16.03.2017 before D.B.



10.11.2015

Appellant with counsel, M/S Sharifullah, ADO, Hameed-ur-Rehman, AD (lit.) and Khurshid Khan, SO alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 22.12.2015 before S.B.


Chairman

22.12.2015

Appellant with counsel, M/S Sharifullah, ADO, Hameed-ur-Rehman, AD (lit.) and Khurshid Khan, SO alongwith Assistant AG for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 500/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 2.3.2016 before S.B.


Chairman

02.03.2016

Appellant with counsel and Mr. Sharifullah, ADO alongwith Addl: A.G for respondents present. Cost of Rs. 500/- paid and receipt thereof obtained. Learned Addl: AG requested for further adjournment. One more opportunity is extended subject to payment of further cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 11.5.2016 before S.B.


Chairman

3

27.05.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was appointed as PTC Teacher on 4.12.1982. That vide impugned order dated 13.4.2001 he was removed from service on the ground of wilful absence from duty with effect from 27.4.1993. That appellant was charged in a criminal case and acquitted of the same vide order dated 29.10.2014 by the court of learned Additional Sessions Judge, Karak. That a copy of the judgment was delivered to the appellant on 21.11.2014 where-after he preferred departmental appeal on 26.11.2014 which was not responded and hence the instant service appeal on 19.5.2015.

That the absence of the appellant was not wilful and, furthermore, the inquiry was not conducted in the prescribed manners. Places reliance on case law reported as PLD 2010 SC 695.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for 24.8.2015.

Appellant Deposited
Security & Process Fee




Chairman

4

24.08.2015



Appellant in person, M/S Sharifullah, ADO and Javed Ahmed, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 10.11.2015 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 464/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19.05.2015	<p>The appeal of Mr. Aziz Ullah Jan resubmitted today by Mr. Saadullah Khan Marwat Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>27-5-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>

This is an appeal filed by Mr. Azizullah Jan today on 24/03/2015 against the order dated 13.4.2001 against which he preferred/made a departmental appeal on 17.2.2015 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

- 1- Annexures of the appeal may be attested.
- 2- Annexure-F/I (Page No. 30) of the appeal is illegible which may be replaced by legible/better one.
- 3- Two more copies/sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 371 /ST,

Dt. 24/3 /2015

Leg
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Tariq Qureshi Adv.

Sir

Resubmitted after completion of alterations.

by

N.W.F. Province
Service Tribunal
Diary No. 512
Dated 19-5-2015

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 464 /2015

Azizullah Khan Versus & others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Appeal		1-3
2.	Appointment order, 04.12.1982	"A"	4
3.	Removal Order, 13.04.2001	"B"	5
4.	Judgment of A.S.J, 29.10.2014	"C"	6-24
5.	Representation, 28.11.2014	"D"	25
6.	Judgment of S.T, 25.01.2007	"E"	26-29

Appellant

Through



Dated: 03.2015

(Saadullah Khan Marwat)
Advocate
21-A Nasir Mension,
Shoba Bazar, Peshawar.
Ph: 0300-5872676
0311-9266609

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWARS.A No. 464 /2015

Azizullah Jan S/o Gul Rehan, R/o Wanda Faqeeran,
Landiwa, Lakki Marwat, Ex-PTC, Govt. Primary School,
Lakki Marwat. Appellant

Versus

1. District Education Officer (M), Elementary
& Secondary Education, Lakki Marwat.
2. Director Education, E&SE, KP, Peshawar.
3. Secretary, Government of KP, Elementary
& Secondary Education, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
1974 AGAINST ENDST: NO. 1047-52/F.NO.
312/130(M), DATED 13.04.2001 OF R. NO. 1
WHEREBY APPELLANT WAS REMOVED FROM
SERVICE WITH EFFECT FROM 27.04.1993 FOR NO
LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

Short facts giving rise to the present appeal are as under:-

1. That on 04.12.1982, appellant was appointed as P.T.C now P.S.T and was posted in G.P.S, Landiwa. (Copy as annex "A")
2. That during service period, appellant was transferred/posted in various schools and his services were highly appreciated.

3. That misfortune of appellant came into surface when F.I.R No. 36, dated 27.04.1993, under Section 302/324/148/149 PPC was registered in PS Shah Slaim by the complainant, Khwaja Ahmed Khan. Seven persons were charged for the commission

re-submitted to-3
and filed.

Registrar

19/10/15

of the offence but appellant was assigned no effective role in the matter.

4. That on 13.04.2001, appellant was removed from service under E&D Rules, 1973 and Removal From Service (Special Powers) Ordinance, 2000 with effect from 27.04.1993 retrospectively. (Copy as annex "B")
5. That appellant faced the trial before Additional Session Judge, Takht Nusrati, Karak and after recording evidence in pro and contra, he was honorably acquitted from the baseless charges vide judgment dated 29.10.2014. (Copy as annex "C")
6. That on 28.11.2014, appellant submitted representation before R. No. 1 which was marked for detail report but the same met dead response till date. (Copy as annex "D")
7. That similar case came up for hearing before this Hon'ble Tribunal in Ghulam Rasool versus EDO & others and after hearing, the Hon'ble Tribunal was pleased to accept the same vide judgment dated 25.01.2007. (Copy as annex "E")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That since the year 1982, appellant served the department for more than 11 years without any complaint and with efficiency.
- b. That appellant was implicated in a criminal case but no effective role was attributed to him, so he was acquitted by the competent court of law honorably from the baseless charges.
- c. That neither any charge sheet was served on appellant nor any enquiry was conducted, being mandatory, so the impugned order is of no legal effect.
- d. That appellant was dealt with under two different enactment, E&D Rules, 1973 as well as Removal From Service Ordinance,

2000, so no one can be booked under double enactment as per the judgment of the Supreme Court of Pakistan.

- e. That the impugned order was passed on 13.04.2001 but the same was effected with 27.04.1993, so no order be given retrospective effect.
- f. That when appellant was acquitted from the charges honorably, then respondents were legally bound to reinstate him in service with all service benefits.
- g. That the impugned order is neither mandated by law nor any enquiry was conducted nor appellant was afforded opportunity of final show cause notice and personal hearing, so the impugned order is ab-initio-void and illegal.
- h. That in similar circumstances, similarly placed incumbent was reinstated in service.
- i. That appellant has more than 11 year service in his credit but no benefit of the same was ever extended to him.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 13.04.2001 of R. No. 1 be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

OR

In the alternate, appellant be allowed pensionary benefits of the rendered services.

Through

Azizullah Jan
Appellant

Saadullah Khan Marwat

Arbab Saif-ul-Kamal

&

Miss Robina Naz,
Advocates,

Dated: 09/03/2015

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4.12.82

OFFICE OF THE Agency EDUCATION OFFICER, ORAKZAI AGENCY, HANGU.Transfer /Appointment.

The following transfer/appointment of PTC Teachers are hereby ordered in NPS No. 6 (Rs. 315-PM plus usual allowance in the interest of public service with immediate effect from the date of taking over charge.

S N	Name of Candidate	From	To	Remarks
1.	Mir Qadam Khan	GPS Sialkot	GPS Hangu Sishti	Against Vacant Post
2.	Latif Ali	Do	GPS Zauli	-Do-
3.	Aziz Hussain	Do	GPS Bahadar Tarkhi	Against leave Vacancy
4.	S. Wali Ullah	Do	GPS Kalkot	Against S. No. 1
5.	Afsar Khan	Do	GPS Kurdi Neerhathi	Against Vacant Post
6.	Hameed Ullah Khan	Do	GPS Mamoondzai	Do
7.	Abdul Hassan	Do	GPS Shalman	Against Leave Vacancy
8.	Mohammad Jalil	Do	GPS Hangu	Qudratullah Zarmeen
9.	S. Afzal Abbas	Do	GPS Tanda	Against Vacant Post
10.	Islam Gul	Do	GPS Sian Khan, Chapar	Vice Afsar ud Din
11.	Azizullah Jan	do	GPS Zareen	Against S. No.
12.	M. Afsar ud Din	GPS Tor Chapar	GPS Dulatan	Against Vacant Post

Note:

1. Charge report should be submitted in duplicate to this office.
2. They should produced age and health certificate from Agency Superintendent Concerned.
3. Their age must be between 18 years and 25 years.
4. Their appointment will be purely on temporary basis and their service are liable to termination any time without assigning any reason procedure.

Sd/-
Agency Inspector of Schools
Orakzai Agency Camp, Hangu.

Endst: No. 1794-1806-10,

Dated: 04.12.1982.

- 1-11. Candidate concerned.
- 12-14. Office concerned.
15. Pay Clerk of the local office.

Attested
by

Sd/-
Agency Inspector of Schools
Orakzai Agency Camp, Hangu.

B

S

13.4.01

OFFICE OF THE DISTRICT EDUCATION OFFICER, (M) PMY, LAKKI MARWAT.

OFFICER ORDER.

Where as M/S Saifullah Khan, PTC GPS Wanda Faqiran and Azizullah Khan PTC GPS Wanda Faqiran S/o Gul Rehman are charged in criminal case under section 302/ /148/149/PPC/Police Station Shah Salim (Karak) vide FIR No. 36, dated 27.04.1993.

And they were called to attend the school vide SDEO (M) Lakki Marwat Notice No. 2305-07 dated 31.08.2000.

And where as their continuous absence was printed in daily "MASHRIQ" dated 27.09.2000.

But they did not report to their schools and they are still absconders and avoiding their lawful arrest. Their cases were referred to the Director Primary Education N.W.F.P. Peshawar vide this office No. 3035 dated 13.11.2000 for final approval of their removal from service under E&D Rules 1973. The Director Primary Education N.W.F.P. Peshawar has been pleased to allow their removal from service under special power ordinance 2000, vide No. 455554/F.No.7/DPE/M&A/Absenteeism of Teacher/AD(M&A), dated 12.12.2000.

Now being competent authority, I hereby orders their removal from service from the date of their involvement in criminal cases dated 27.04.1993 keeping in view their long absence from their duties assigned to them.

Sd/-
(BAKHT BAIDAR KHAN)
District Education Officer,
(M) PMY: Lakki Marwat.

Endst: No. 1047-52 F.No.312/DEO(M)LMT,

Dated: 13.04.2001.

1. The Director Primary Education N.W.F.P. Peshawar for information please.
2. The Sub-Divl: Education Officer, (M) Lakki Marwat for n/a.
3. The District Account Officer, Lakki Marwat for n/a please.
4. The Assistant Account for similar action.
5. M/S Safiullah Khan and Azizullah Khan PTC Teachers GPS Wanda Faqiran c/o Head teacher GPS Wanda Faqiran.
6. The ADEO (Accounts) Local office.



Sd/-
District Education Officer,
(M) PMY: Lakki Marwat.

C 6

**IN THE COURT OF SYED OBAID ULLAH SHAH
ADDITIONAL SESSIONS JUDGE, TAKHT-E-NUSRATI,
KARAK**

SESSIONS CASE # 57/VII OF 2013

DATE OF SUBMISSION OF CHALLAN 27.04.1993

DATE OF DECISION 29.10.2014

CASE FIR # 36; DATED: 27.04.1993

U/S 302/324/148/149 PPC

Police Station: Shah Salim

THE STATE

..VERSUS...

1. Aziz Ullah Jan son of Gul Rehan, resident of Faqiran
Banda, District Lakki Marwat.

(Accused facing trial)

2. Naqeeb Ullah son of Taus Khan resident of Banjakh
Banda,

3. Nabi Sarwar son of Nawab Khan resident of Ghari Wala
Banda,

4. Saif Ullah son of Gul Rehan and

5. Muhammed Subhan son of Sardar Ali resident of
Faqiran Banda, District Lakki Marwat.

(Acquitted co-accused)

6. Noor Shah Ali son of Sardar Ali, resident of Faqiran
Banda, District Lakki Marwat.

(Absconding Accused)

JUDGMENT

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DATED
Exam. 11/10/14
B-2 Karak

Vide this judgment I intend to fix the fate of accused
Aziz Ullah Jan, who is facing trial in case FIR No. 36 dated

27.04.1993 under section 302/324/148/149 PPC registered at Police Station Shah Salim District Karak.

Short but relevant facts of the case are that on 27.04.1993 complainant Khwaja Ahmad Khan, Mohammad Rasool, Mir Payo Khan, Fazal Subhan, Mohammad Ayaz and Afsar Khan were busy in reaping the wheat crop in their land known as Lachi Wala situated in the limits of Jarasi Banda when at about 12.45 hours, Saif Ullah Khan, Gul Rehan, Raqibullah alias Qibi, Nabi Sarwar, Mohammad Subhan (acquitted co-accused), Noor Shah Ali Khan (absconding co-accused) and Aziz Ullah Jan (accused facing trial), while duly armed with topaks, arrived there and opened firing at the complainant party as a result of which Mir Payo Khan was hit and died on the spot with the fire shot of accused Saif Ullah. The complainant received injuries with the fire shot of accused Nabi Sarwar while Mohammad Rasool received injuries at the fire shot of accused Noor Shah Ali and Raqib Ullah Khan. Motive behind the occurrence was blood feud enmity and Sharam Mastoorat. The occurrence was witnessed by the complainant and his companions, hence the present case.

After registration of case FIR and completion of investigation, complete challan against accused was put in court. The accused were summoned, out of whom accused Nabi Sarwar and Naqib Ullah (Raqeebullah) appeared before court who were later on acquitted on the basis of compromise



S. Ullah
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from the charges u/s 302/324/149 PPC vide order dated 13.12.1994; however, they were found guilty of an offence u/s 148 PPC and, as such, were convicted and sentenced to pay a sum of Rs: 500/- as fine each, while co-accused Noor Shah Ali Khan, Saif Ullah, Aziz Ullah Jan and Mohammad Subhan were declared as proclaimed offenders with further direction to issue perpetual non-bailable warrant of their arrest. Later on, accused Mohammad Subhan was arrested and supplementary challan against him was put in court. After conclusion of trial against him, he too was acquitted from the case vide order dated 11.11.2003. Subsequently, accused Saif Ullah was arrested and accordingly supplementary challan against him was sent up for trial. My learned predecessor in office, after conclusion of trial, found the accused Saif Ullah guilty of the offence and ultimately convicted him under section 302 (b) PPC, but the accused being aggrieved of the orders of conviction filed an appeal before the august Peshawar High Court, Banna Bench which was allowed vide order dated 28.04.2014 by setting aside the conviction and sentence recorded by this court and the accused was acquitted accordingly.

Now, after the arrest of accused facing trial Aziz Ullah Jan supplementary challan against him was put in court.

The accused was summoned; who was produced from prison in police custody on 03.06.2014, so he was supplied with the



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copies of relevant documents within the meaning of section 265-C Cr.PC. Charge against the accused was framed on 09.06.2014 to which he accused pleaded not guilty and claimed trial, so the case was posed for prosecution evidence.

The prosecution in order to establish its case against the accused facing trial produced and examined as many as fifteen PWs. The gist of the prosecution evidence is given below:-

PW-1 is the statement of Mohammad Alam. He stated that during those days he was posted in police station Shah Salim. He was entrusted with the warrant of arrest u/s 204 Cr.PC issued against accused facing trial Aziz Ullah Jan. He searched for the accused in his village as well as in the surrounding area but the accused was avoiding his lawful arrest; therefore, he returned the warrant unexecuted alongwith his report ExPW 1/1. Likewise, he was also entrusted with the proclamation notice u/s 87 Cr.PC issued against accused which he served in accordance with the prescribed procedure by pasting one copy of the same on the notice board of the issuing court, the second copy was pasted on the outer door of the house of accused and returned third copy of the notice to the judicial file alongwith his report ExPW 1/2.

Yarub Khan
29/10/2014

PW-2 is the statement of Gul Zaef HC No. 22. He in his statement stated that he escorted the dead body of

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deceased and injured PW Khwaja Ahmad Khan from police station to Civil Hospital, Takht-e-Nasrati. No body interfered with the dead body or injured during his escort. After examination, the doctor handed over to him the blood stained shalwar of the injured, which he produced to the I.O on the spot.

PW-3 is the statement of Abdul Nawaz (Retired Police Constable) resident of Khadda Banda. He stated that during those days he was posted at police station Shah Salim. He accompanied the injured Mohammad Rasool from police station to the hospital Takht-e-Nasrati. The doctor handed over to him blood stained shirt of the injured which he produced to the I.O on the spot.

PW-4 is the statement of Dr. Fida Mohammad, Medical Officer DHQ Hospital, district Hangu. During those days he was posted as M O at C.H Takht-e-Nasrati. He had conducted the postmortem examination on the dead body of deceased Mir Payo Khan, son of Khan Muhammad aged about 55/60 years on 27.04.1993 at about 05.15 P.M and found the following.

EXTERNAL:

1. Firearm entry wound 1" below the occiput, size 1/2" x 1/2".

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2. Firearm exit wound, which had blown right eyeball size 2" x 2".

INTERNAL:

CRANIUM, SCLAP, SKULL and VERTEBRAE:

The firearm entry wound on the occiput size 1/2" x 1/2" with corresponding exit wound size 2" x 2" had fracture the occipital bone and frontal bone.

MEMBRANE, BRAIN AND SPINAL CORD:

There is injury to the brain on the right side with its membrane and meninges are injured on the right side.

THORAX:

Normal and intact.

ABDOMEN:

Stomach had semi-digested food in it. Small and large intestine are full of gases and faces and all other intra-abdominal organs are normal and intact.

REMARKS:

The firearm entry wound, which is 1" below the occiput, had injured the occipital temporal and frontal lobes of the brain. The injury to the brain had caused the death of deceased. Probable time between injury and death is 5 to 10 minutes between death and P.M examination 4 to 6 hours.

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The P.M report consisting of six sheets is already exhibited as Ex.PM.

He also examined on the same date at 03.00 PM Muhammad Rasool son of Mir Sahib Khan aged about 20/25 years r/o Jarasi Banda and found the following:

1. Firearm entry wound right side chest posteriorly size 1/4" x 1/4".
2. Firearm exit wound right upper arm laterally size 1" x 1/2" with fracture of right humorous bone.

Advised X-ray chest and X-ray right upper arm and the patient was sent to DHQ Hospital, Karak for further management by surgeon.

NATURE OF INJURY: Grievous.

Portable duration of injury 3 to 6 hours.

Kind of weapon used: Firearm.

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On the same date at about 03.45 P.M I also examined Khawaja Mat Khan, son of Gul Payo Khan aged about 24/25 years resident of Jarasi Banda and found the following injuries on his person.

1. Firearm entry wound right thigh 4" below the perineum posteriorly size 1/4" x 1/4".
2. Firearm exit wound right thigh posteriorly, size 1" x 1/2".

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3. Advised X-Ray right tight (A.P and lateral view, and no fracture was seen). The patient was referred to DHQ Hospital, Karak for further management.

NATURE OF INJURY: Simple.

Probable duration of injury: 3 to 6 hours.

Kind of weapon used: Firearm.

PW-5 is the statement of Mirza Ali Khan s/o Biland Khan aged about 52 years r/o Nara Banda. In his presence, the I.O took into his possession blood stained earth from one place P1, one saw P2 and from another place P3, and blood stained earth from another place, one another Sickle from another place P6. Similarly, the I.O took into his possession 6 empties of Kalashnikov P7, from one place, 5 empties P8 from another place and 13 empties of the same bore P-9 from another place giving fresh smell of discharge from the spot. Similarly, one blood stained shirt P-10 was brought by police official from the hospital, which was took into possession by the I.O in his presence having corresponding cut marks; belonging to injured Muhammad Rasool. A shalwar bloodstained P11 having corresponding cut marks was taken into possession by the I.O, which was produced by police official being brought from hospital.

PW-6 is the statement of Hidayatullah Khan Lashari SHO. Police Station Ghodwan District D.I Khan. In



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January 2002, he was posted as SHO Police Station Shah Salim. On getting information about arrest of accused Muhammad Subhan, he submitted an application Ex.PW 9/1 and sent Sattar Khan MHC for collecting the accused from Police Station Dhadi Wala where he was detained so when he was brought, he produced him before the court. He recorded his statement and submitted supplementary challan against accused, which is already Ex.PW 9/2.

PW-7 is the statement of Gul Raees Inspector Police Lines Kohat. In June 1993 he was posted as SHO Police Station Shah Salim. He arrested accused Nabi Sarwar and Naqib Ullah (since acquitted) on 19.06.1993 and had prepared their card of arrest accordingly. He had received FSL report already Ex.PW 10/1. Which is in positively.

PW-8 is the statement of Amir Nawab Khan Inspector (SHO) Police Station City Kohat. In those days, he was posted as SHO Police Station Shah Salim. On 27.04.1993 he recorded the report of Khowaja Ahmed Khan injured in Police Station Shah Salim in shape of FIR Ex.PA who thumb impressed the same as token of its correctness. He prepared the injury sheet of injured. He prepared the injury sheet of injured Muhammad Rasool, which is already exhibited as

Pio Khan, which is Ex.PW 11/4. He dispatched the deadbody of deceased Muhammad Rasool and injured Khowja Ahmed Khan under the escort of constable Abdul Nawaz 40 and Gul Zaif No.22., Takht-e-Nasrati for PM/medico-legal reports etc. He proceeded to the spot prepared the site plan Ex.PB at the instance of Fazal Subhan and Afsar Khan PWs which he admitted to be correct with all its footnote. He then picked up blood stained earth P1, from the place of deceased and Sickle P2 and similarly blood stained earth P3, and a sickle P4 from the place of injured Muhammad Rasool, Similarly blood stained earth P5, and a sickle from the place of Khowja Ahmed injured PW in presence of marginal witnesses vide recovery memo Ex.PC (already exhibited). Similarly, he took into his possession 6 empties of 7.62 bore P8 giving fresh smell of discharge from points 9 and 10. Similarly 13 empties of same bore fresh discharge was recovered from point No11 and 12 vide recovery memo Ex.PC/1 in presence of PWs. Likewise, he took into his possession blood stained shirt P10, having corresponding cut marks being produced by Abdul Nawaz FC belonging to injured Muhammad Rasool sent by M.O vide recovery memo Ex.PC/2 already exhibited. He also took into possession a Shalwar blood stained having cut marks P11, being sent by the M.O through Gul Zaif LHC vide recovery memo Ex.PC/3 already exhibited in presence of PWs. All the memos are correct and bear his signatures. He also recorded the statements of concerned PWs as well as statement of

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eyewitnesses Afsar Khan, Muhammad Riaz, Subhan, Malik Mirza Ali, Malik Mir Khawas, Gul Rais and Salim Khan and Muhammad Nazeer etc. He then conducted the house search of the accused but in vain. He recorded the statement of Muhammad Rasool on 28.04.1993. He had sent the clothes blood stained of injured/ deceased, blood stained earth of concerned deceased and injured and recovery from spot. As Saifullah accused and Azizullah (accused facing trial) were Govt. servants; therefore, he applied vide his application Ex.PK available on police file and is placed on the Judicial file of this case. As all the accused were avoiding their arrest; therefore, he initiated proceedings against them under section 204/87 Cr.PC. Vide my application. Ex.PK/1 and Ex.PK/2. As accused Saifullah, Azizullah, Noor Sali Khan, Muhammad Subhan were residing within the jurisdiction of Police Station Dadiwala District Lakki Marwat; therefore, he submitted an application for preparing their history sheet through SHO Police Station Dadiwala. Carbon copy is available on police file and original was sent to Police Station concerned. After completion of investigation he submitted complete challan under section 512 Cr.PC against the accused.

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Shah Salim
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✓ PW-9 is the statement of Abdul Saeed SHO police station Shah Salim. He stated that the accused facing trial was arrested by the police station Dhadiwala in connection with case FIR No. 92 dated 12.05.2014 u/s 13 AO alongwith case

FIR No. 95 dated 13.07.2001 u/s 7Act/1991 and was confined in Sub Jail, Lakki Marwat. He vide his application ExPW 5/1 applied for transfer of accused to District Karak in the instant case ~~in this case~~ and accordingly vide letter No. 761 dated 13.05.2014 from the office of learned District & Sessions Judge, Karak to learned District & Sessions Judge, Lakki Marwat he transferred the accused to Karak in the instant case. He vide his application ExPW 5/2 applied for summoning of accused from Sub Jail, Lakki Marwat before the court of Magistrate concerned which was allowed and accordingly one day transit custody was also allowed vide his application ExPW 5/3. He arrested the accused in the in the present case vide card of arrest ExPW 5/4. He vide his application ExPW 5/5 had applied for physical custody of accused which was allowed and accordingly two days custody was granted. He interrogated the accused and recorded his statement u/s 161 Cr.PC. On 17.05.2014 he again produced the accused before the court concerned on judicial remand vide his application ExPW 5/6 and the accused was sent to judicial lock. After completion of investigation, he submitted supplementary challan against the accused.

PW-10 is the statement of Nazir Khan S.I./KBI Police Station Shah Salim. Stated that he interrogated accused ~~Nazir Ullah Jan~~ and recorded his statement u/s 161 Cr.PC. On 17.05.2014 he produced the accused on judicial remand before

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the court who was sent to judicial lock up accordingly. After completion of investigation, he submitted the case file to the SHO concerned for submission of supplementary challan against the accused.

PW-11 is the statement of Muhammad Nazir s/o Salim Khan aged about 56 years resident of Jarasi Banda. He stated that he had identified the dead body of deceased before the doctor as well as before the police.

PW-12 is the statement of Khwaja Ahmad Khan son of Gul Payo Khan aged about 53/54 years, resident of Jarasi Banda. He stated that accused Azizullah and Saifullah are brothers inter se whereas accused Muhammad Subhan and Noor Sali Khan are also brothers inter se. Accused Nabi Sarwar and Naqibullah are friends and they are acquitted on the basis of compromise. On the day of occurrence at about 12.45 hours he alongwith Mir Payo Khan, Muhammad Rasool, Muhammad Ayaz, Fazal Subhan and Afer Khan was harvesting wheat crop in a land known as Lachi Wala. In the meantime, accused Naqibullah, Nabi Sarwar alongwith Noor Sali Khan, Muhammad Subhan, Saifullah and Aziz Ullah (facing trial) duly armed started firing at them. With the fire shot of accused Saifullah, Mir Payo got hit and died on the spot. Whereas with the fire shot of Nabi Sarwar and Muhammad Subhan, he got hit and injured with the fire shot of Noor Sali Khan accused and Naqibullah accused. PW Muhammad Rasool was injured.

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He then made the report in Police Station Shah Salim the report is Ex.PA. The motive for occurrence is previous blood feud and sharam Masturat. He was then sent to C.H Takht-e-Nasrati for treatment and from there he was then referred to CH Karak for treatment where he remained under treatment for about 8 days. PW Muhammad Rasool was sent to Peshawar Hospital for final treatment. He charge the accused for commission of the offence.

PW-13 is the statement of Muhammad Rasool son of Mir Sahib Khan aged about 42/43 years resident of Jarasi Banda, Tehsil Takht-e-Nasrati, District Karak. He stated that on the day of occurrence he alongwith Khowaja Ahmad Khan (complainant), Mir Payo Khan (deceased) Afsar Khan, Fazal Subhan and Muhammad Ayaz was busy in cutting wheat crop in their land known as Lachiwala. It was 12:45 hours, that accused Saifullah Azizullah, Noor Sali Khan, Naqibullah, Nabi Sarwar and Muhammad Subhan came duly armed with Topak and started firing at them. With the fire shot of Saifullah, Mir Payo got hit and fell down and died while he was hit with the fire shots of Noor Sali Khan and Naqibullah. Khowaja Ahmad Khan was hit with fire shot of Nabi Sarwar. After the occurrence the accused decamped from the spot as all the accused had fired at them with intent to kill them. He charge the accused mentioned above. Motive for the offence is over Sharam Mastorat and previous blood feud enmity. He

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remained under treatment for above 4/5 days in Karak Hospital and he was referred to LRH, Peshawar.

PW-14 is the statement of Fazal Subhan s/o Mir Sahib Khan aged about 44/45 years r/o Jarasi Banda, Tehsil Takht-e-Nasrati, District Karak. Stated that on the day of occurrence he alongwith PW Khowja Ahmad Khan, PW Muhammad Rasool, PW Afser Khan and Mir Paio now dead alongwith PW Muhammad Ayaz was busy in cutting wheat crops in a land known as Lachi Wala. At about 12.45 hours when Saifullah, Azizullah, Noor Sali Khan, Muhammad Shubhan, Naqibullah and Nabi Sarwar came duly armed and opened fires with intent to kill them. With the fire shots of Nabi Sarwar, Muhammad Subhan, PW Khowaja Muhammad Khan was hit and injured. PW Muhammad Rasool was hit with the fire shot of accused Noor Sali Khan and Nabiullah. The accused decamped from the spot after the occurrence. They shifted the injured and the deceased to the Police Station. Motive for the offence is over Sharam Mastorate and blood feud enmity. He has pointed out the spot to the I.O alongwith PW Afser Khan. He charge the accused for the commission of offence.

PW-15 is the statement of Afsar Khan who stated that on the eventful day he alongwith Khwaja Ahmad Khan, Fazal Subhan, Mohammad Rasool, Mohamad Ayaz and Mir Payo had gone to their land known as Lachi Wali for harvesting of wheat crop. They were busy in harvesting when at about

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12.45 hours Aziz Ullah Jan (accused facing trial), Saif Ullah, Naqeeb Ullah alias Kibay, Mohammad Subhan, Nabi Sarwar (acquitted co-accused) and Noor Shah Ali Khan (absconding co-accused) came duly armed with topaks and started firing at them. With the fire shot of acquitted co-accused Saif Ullah, Mir Payo Khan got hit and died on the spot, while with the firing of accused Noor Shah Ali Khan and Naqeeb Ullah, Mohammad Rasool was hit and injured and with the fire shot of acquitted accused Nabi Sarwar the complainant Khwaja Ahmad Khan got hit and injured. He, Fazal Subhan and Mohammad Ayaz were fired by accusec Aziz Ullah Jan (facing trial) and Mohammad Subhan and Naqeeb Ullah, but they escaped unhurt luckily. Motive for the offence was Sharma Mastoorat. The occurrence was witnessed by him with his own eyes. He had also pointed out the spot to the I.O. He charged the accused facing trial along with other accused for the commission of offence.

After the closure of prosecution evidence, statement of accused were recorded u/s 342 Cr.PC but neither the accused was ready to be examined on oath u/s 342 (2) Cr.PC nor wished to produced defence evidence.

Arguments of learned APP for the state assisted by private counsel for complainant and that of accused heard and file gone through.

Perusal of record would transpire that in all six accused had been charged by the complainant in his report,

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wherein each of the accused has been attributed with specific rôle in the commission of offence i.e. accused Saif Ullah was charged for killing Mir Payo Khan, accused Nabi Sarwar was attributed with the rôle of effective firing at Khwaja Ahmad Khan while accused Raqib Ullah and Noor Shah Ali Khan were charged for injuring Mohammad Rasool (PW). Out of the accused charged in the FIR for the commission of offence, accused Nabi Sarwar, Reqeeb Ullah, Mohammad Subhan and Saif Ullah have been acquitted while accused Noor Shah Ali is still absconding. As far as the rôle of present accused facing trial Aziz Ullah Jan is concerned, he is charged for ineffective firing at the complainant party. The evidence of prosecution has once been disbelieved by the august Peshawar High Court, Bannu Bench against the accused of capital charge, so how the same set of evidence could be used against the accused charged just for ineffective firing and by acquitting co-accused on the basis of same evidence, accused facing trial too is entitled to same treatment on the ground of rule of consistency. Though, besides the above, the prosecution produced and examined one Afsar Khan as an eye witness of the occurrence against the accused facing trial but he too did narrate the same story as by his other companions alleging themselves to be the eyewitnesses of the occurrence and nothing new was brought on record to justify the presence of accused on the spot at the time of occurrence. Testimony of alleged eyewitnesses is also belied by medical evidence and material contradictions.

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statements of alleged eyewitnesses and the medical evidence has made the prosecution case highly doubtful. The possibility of false implication of accused being relative of the other accused and the complainant party by widening the net, could not be ruled out. Motive as alleged has not been proved from the record. Under criminal dispensation of justice, a single doubt appearing in the mind of the court would be sufficient to discard the entire evidence on record and benefit of the same would go to accused. The only thing which goes against the accused facing trial is his long-long unexplained abscondance, but mere abscondance of accused alone could not be substitute for real evidence and could not be considered sufficient to sustain conviction. Abscondance could equally be consistent with the innocence of accused and that abscondance as a piece of conduct of accused is to be judged in the light of other evidence on record.

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21-11-2014
Karak

✓ In the wake of above discussion, it can safely be concluded that the case of prosecution is full of doubts and it is clear from the record that the prosecution has badly failed to prove its case beyond any shadow of doubt. Therefore, by extending benefit of doubts of the prosecution in favour of accused facing trial, he is honourably acquitted from the charges leveled against him in the present case. He is in custody, be set free forthwith, if not required in any other case.



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

Announced
29.10.2014

Syed Obaid Ullah Shah
29/10/14

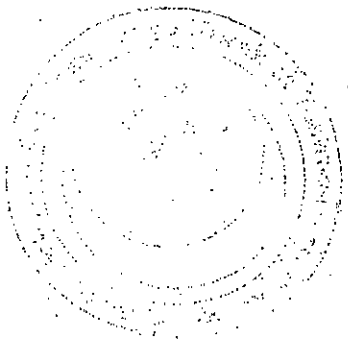
Syed Obaid Ullah Shah
Additional Sessions Judge,
Takht-e-Nasrati, Karak

CERTIFICATE

It is certified that above judgment consists of nineteen (19) pages, each of which has been signed and corrected, wherever necessary.

Syed Obaid Ullah Shah
29/10/14

Syed Obaid Ullah Shah
ASJ Takht-e-Nasrati, Karak



Accepted by

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Examined
Branch Karak

C D No	<u>5573</u>
Date of Presentation of Application	<u>21-11-14</u>
Number of Ward	<u>19</u>
Copy	<u>19</u>
Verdict No.	<u>19</u>
Name of Copy	<u>57</u>
Date of Completion	<u>21-11-14</u>
Date of Delivery of Copy	<u>21-11-14</u>
Date of Despatch of Copy	<u>21-11-14</u>

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Certified True Copy
Examiner's Branch

خدمت طلبہ و سرگندہ ایجوکیشن افسر (مردانہ) ملکی سروس

بوسالنتہ DEO (مردانہ) ضلع ملکی سروس -

DEO
28.11.14

عنوان :- بجائی ملازمت

گزارش محفوزہ انور ہیکم سائیل کے خلاف قدم نمبر 36 مورخہ 27-11-1993

بحرم 302-324 بجائی سی پولیس سیشن شاہ سلیم غلط دعویداری کی بجائی تھی۔
148-149

دعویٰ داری کی بنیاد پر سائیل نے ایڈیشنل سیشن جج تحت لفٹری ضلع کرک سے رجوع کیا اور مورخہ 14-10-29 کو سائیل کے حق میں فیصلہ جاری ہوا۔

اور سائیل کو فرس کورہ بالا بحرم سے بڑھی کر لیا گیا۔
Discussion with Accountant
28.11.14

اس لئے نذر لید درخواست نذر ایشیائی کر سائیل مورخہ 1993 سے

لیکر اب تک جتنے بھی جوابیا حیات وغیرہ تہہ سائیل کو ملازمت کی بجائی سے اٹھاتا صادر فرما دینا سائیل انکو اور انکو اپیل و میٹیل کو دھماؤ و ریگام

عین نواز ہوگی -
مورخہ 14-11-26

سکرٹری ایڈمنسٹریشن اور عدالتی فیصلہ
درخواست نذر آسائیل سے
الہ آباد

سائیل عزیز اللہ جان دلا گل ریگان سکند و اولادہ نجران درانیانہ نذر لید
PST
ضلع و تحصیل تلمیرات

DEO (M)
Lahri Maswat
For detail report
Director
Elementary & secondary education
Khyber Pakhtunkhwa, Peshawar
19.2.

SDEO
Detail report is
required in the
light of worthy
Director's direction
for onward submission.

Attested
by

sd/
Dise Education Office
(M) Lahri Maswat
21.2.

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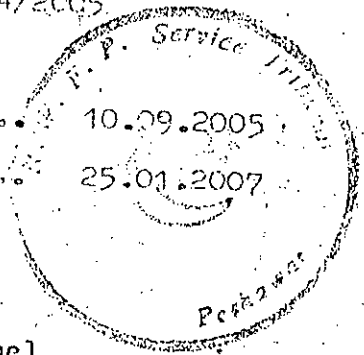
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BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 734/2005

Date of institution ... 10.09.2005

Date of decision ... 25.01.2007



Ghulam Rasool S/o Ghulam Saeed,
R/O Jabo Khel, Lakki Marwat,
Ex-PTC Teacher, GPS, Khelil Jabo Khel,
Lakki Marwat.

.. Appellant

VERSUS

1. E.D.O(S&L) Lakki Marwat,
Ex-DEO(M) Primary, Lakki Marwat.

2. Director of Education,
Schools & Literacy, Peshawar.

3. Secretary, Schools & Literacy,
NWFP, Peshawar.

4. D.C.O, Lakki Marwat.

.. Respondents

Mr. Saadullah Khan Marwat,
Advocate.

.. For appellant

Mr. Zafar Abbas Mirza,
Acting Govt. Pleader.

For respondents.

Mr. Abaul Sattar Khan,
Mr. Adalat Khan.

Chairman
Member

JUDGMENT

ANDUL SAEMER KHAN, CHAIRMAN: This appeal arises

against an order dated 13.04.2001 of respondent No.1,
whereby the appellant was removed from service, with
effect from 09.04.95 retrospectively and also against
an order dated 22.07.05, whereby the appeal of the
appellant was turned down with no legal reason.

2. The facts of the case necessary for the disposal

- 2 -

of this appeal briefly stated are that the appellant while serving as PTC teacher in the Education Department was charged in a case u/s 11 of the Z.O vide FIR No. 75 dated 02.04.95 of P.S Saddar D.I.Khan. The accused/appellant ^{became} absented himself from duty as well as fugitive from law. He was suspended by the DEO(M) Primary, Lakki Marwat vide order dated 31.5.95. The appellant, as is gleaned from the record, vide order dated 13.3.2002, ^{was} admitted to bail by the Court of Addl: Sessions Judge, D.I.Khan and also earned acquittal in the case on 17.3.04 from the Court of Sessions Judge, D.I.Khan, but before acquittal vide order dated 13.4.2001, he was removed from service, with effect from 9.4.95 keeping in view his long absence from duty assigned to him. After earning acquittal, the appellant ^{his} submitted a representation for reinstatement into service to E.D.O, Education, Sports & Culture, Lakki Marwat which was turned down vide order dated 22.07.2005, communicated on 22.8.05 to the EDO(S&L) Lakki Marwat, & others. Hence this appeal.

3. Notices were sent to the respondents. They turned up and contested the appeal by filing a joint written reply, wherein it was alleged that all the codal formalities were fulfilled by the respondent department on account of his involvement in criminal case on 9.4.95 and keeping in view his - long absence from duty, he was removed from service. No replication was filed in rebuttal by the appellant.

4. Arguments heard and record perused.

5. Learned counsel for the appellant argued that the only charge against the appellant was his involvement in the criminal case from which he has earned acquittal, there-

fore, the appellant is entitled to be reinstated into service; that codal formalities were not observed while removing the appellant from service; that u/s 8-A of the ELD Rules, the department was bound to have issued proclamation against the appellant in two leading dailies, whereas there is mentioning of only one daily i.e. 'Daily Mashriq' in the impugned order dated 13.4.01; and that the case pertains to 1995, whereas the appellant was removed from service under the NJFP Removal from Service (Special Powers) Ordinance, 2000. Regarding limitation, it was argued that since the representation of the appellant was replied, therefore, in view of the authority reported as 2003 SCMR 326, the instant appeal is within time.

6. In reply it was urged by the learned AGP that the appellant was involved in a case of moral turpitude; that he remained fugitive from law for a considerable long time; that the publication was also issued against him, but he failed to turn up and that the appeal is not within time, hence liable to be dismissed.

7. The Tribunal holds that the claim of the appellant is bonafide. Admittedly, he was involved in a criminal case, but codal formalities were not observed as proclamation was not issued against him in two leading dailies as required under the law. Further, the case pertains to 1995, whereas the appellant was removed from service under the NJFP Removal from Service (Special Powers) Ordinance, 2000. The august Supreme-Court has always encouraged decision of cases on merits instead of deciding cases on technical grounds including limitation. In view of the above, the appellant has made

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out a case for indulgence of the Tribunal. Accordingly, this appeal is accepted to the extent that the appellant be re-adjusted against any vacant post in District Lakki. No order as to costs. File be consigned to the record.

ANNOUNCED

25.01.2007

(ABDUL SATTAR KHAN)
CHAIRMAN
NWFP SERVICE TRIBUNAL,
PESHAWAR.

(ADALAT KHAN)
MEMBER

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Date of Presentation of Applicant..... 1-2-07
Name..... 1600
Code..... 10
Ur..... 2
To..... 12
Name of.....
Date of..... 1-2-07
Date of..... 1-2-07

Attested
by

باعت جناب سرسٹریٹریٹ صوبہ سرحد پشاور

بمجاہب ایڈوانٹ

عزیز اللہ خان بنام محمد نسیم دہریہ

دعویٰ اصل

باعث شکریمہ اینکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے سعید اللہ خان مروت سے ایڈوکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے رضی نامہ و تقریر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست بر قسم کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری بیکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا اور صاحب مقدمہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

المرقوم

العبد

العبد

العبد

سعید اللہ خان مروت
ایڈوکیٹ
ارباب سید اسماعیل
ایڈوکیٹ

Azizullah Khan

Arina
س روینہ ناز
ایڈوکیٹ

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BEFORE THE SERVICE TRIBUNAL GOVT; OF KPK PESHAWAR

Service Appeal No: 464 / 2015

Aziz Ullah Jan Ex-PST

..... **Appellant**

Versus

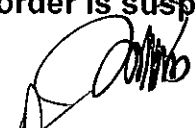
District Education Officer(Male) Lakki & Two others..... Respondents

Joint Para Wise Comments On Behalf Of Respondent 1,2&3

**Respectfully Sheweth;
Preliminary Objections: -**

- 1). That the appellant has no cause of action and locus standi to bring the present appeal .
- 2). That the appeal of the appellant is not maintainable.
- 3). That the appellant has not come to the Honourable Service Tribunal with clean hands as he conceals material facts like Service Book, pay slip, personnel NO. Posting/Transfers order copies and appointment in FATA etc.
- 4). That the appeal of the appellant is bad for mis-joinder and non-joinder of necessary parties as he has purposely ignored District Accounts Officer/ Agency Accounts officer Orak Zai Agency in the penal of Respondents.
- 5). That the appellant has come to the court with malafide intention as his annextures "A","B" & "D" are not verifiable documents.
- 6). That legal procedure can be proceeded on valid and verifiable documents.
- 7). That the appeal is badly time barred.

FACTS:-

1. Incorrect. As per annexture "A" appellant was appointed in orak zai Agency instead of District Lakki.
 2. Incorrect. Nothing is available on official record,hence para denied.
 3. No comments.
 4. Incorrect , concocted , the removal order is suspicious.
 5. Pertains to court.
 6. Incorrect, concocted hence denied.
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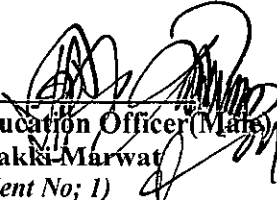


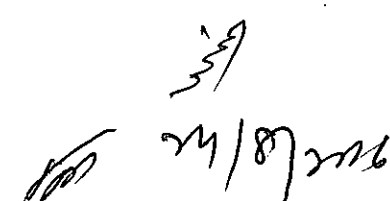
- 2
7. Pertains to court however, each and every case is decided in the light of its own facts and circumstances.

GROUNDS:-

- a. Para is not related to Respondents.
- b. No comments.
- c. Incorrect. The very appointment of the appellant is in question because the whole story of the appellant is based on imaginations . The appellant has badly failed to prove himself as a teacher through verifiable documentary proofs, hence denied.
- d. Incorrect, concocted hence denied.
- e. As per Para No. 4.
- f. Incorrect as per para NO. C.
- g. As per para NO.4 & C.
- h. Incorrect. Every case has different nature & circumstances from other case.
- i. Incorrect as per para NO.4 & C, hence denied.

It is therefore humbly prayed that on acceptance of these para-wise comments this Honourable Court of Service Tribunal may very graciously be pleased to dismiss with costs through out.


District Education Officer (Male)
District Lakki-Marwat
(Respondent No; 1)


Director (E&SE) KPK
(Respondent No; 2)


Secretary E&SED KPK
(Respondent No; 3)

AFFIDAVIT

I, Sharif Ullah Khan ADEO Education Lakki Marwat, do hereby solemnly affirm and declare that the contents of the instant reply are true and correct to the best of my knowledge and belief.

Dated: -09.September' 2016.

DEPONENT SHARIF ULLAH KH
A.D.E.O Education Lakki