


FORM OF ORDER SHEET

Court of _____

Appeal No. 1956/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/09/2023	<p>The appeal of Mr. Jehandad Khan presented today by Mr. Kabir Ullah Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>28-09-2023</u>.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

Service Appeal No **1956** 2023

Jehandad Khan(Appellant)

VERSUS

The Provincial Police Officer (PPO) and others.....(Respondents)

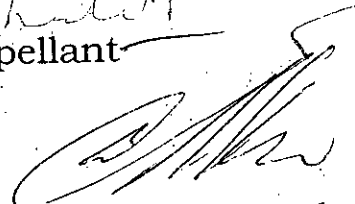
I N D E X

S.No	Description of Documents		Pages
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Appellant

Through

Dated: 25/09/2023


Kabir Ullah Khattak
Cell No. 0300-5842247

&


Roeeda Khan

Advocates High Court,
Peshawar.

①

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

Service Appeal No. **1956**/2023

Jehandad Khan (Ex-Constable Belt No. 2127) S/o Imdad Khan
R/o Suliman Khel, Badh Bair, Tehsil and District
Peshawar.....(Appellant)

VERSUS

1. The Provincial Police Officer (PPO) Government of Khyber Pakhtunkhwa.
2. Capital City Police Officer (CCPO), Peshawar.
3. Superintendent of Police (SP) Headquarter, Peshawar.....(Respondents)

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974, AGAINST IMPUGNED ORDER DATED
16/11/2022 WHEREBY THE APPELLANT
HAS BEEN REMOVED FROM SERVICE
AGAINST WHICH THE APPELLANT FILED
DEPARTMENTAL APPEAL ON 28/04/2023
WHICH WAS REJECTED ON 23/08/2023
AGAINST THE SAID REJECTION ORDER
THE APPELLANT FILED REVISION
PETITION WHICH WAS ALSO REJECTED ON
05/09/2023 ON NO GOOD GROUNDS.

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PRAYER:

On acceptance of this appeal, the impugned orders dated 16/11/2022, 23/08/2023, 05/09/2023 passed by respondents may very graciously be set aside and the appellant may kindly be reinstated in service along with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of appellant.

Respectfully Sheweth:

1. That the appellant joined the service of the Police Department as Constable in the year 2007 he was performing his duty with great zeal, zest and devotion but unfortunately he was falsely involved in criminal case F.I.R No. 125, dated 12/12/2021, u/s 9D CNSA, 2019, Police Station Levy Post, District Malakand, he is arrested on the spot and sent to judicial lockup.
2. That after the registration of F.I.R the appellant was dismissed from service on 16/11/2022. (Copy of dismissal order is attached as annexure "A").
3. That the appellant was convicted by the learned Sessions Judge/ Judge Special Court Malakand at

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Batkhela dated 03/09/2022 whereby the appellant was convicted and sentenced for life imprisonment.

4. That the appellant felt aggrieved by said order involved the jurisdiction of Peshawar High Court Mingora Bench by way of filing Criminal Appeal No. 243/2022 praying therein that the instant appeal may please be allowed and the impugned judgment may kindly be set aside and the appellant may very graciously be acquitted of the charges leveled against him so as to need the ends of justice.
5. That the Hon'ble High Court Mingora Bench vide judgment dated 15/03/2023 accepted the appeal, conviction and sentence by the learned Trial Court/ Judge Special Court vide judgment dated 03/09/2022 was set aside and the appellant was acquitted from the charges leveled against him forthwith. (Copy of judgment dated 15/03/2023 is attached as annexure "B").
6. That after acquittal the appellant filed Departmental Appeal/ Representation on 28/04/2023 before the respondent No. 2 which was rejected on

(4)

23/08/2023. (Copies of departmental appeal and order dated 23/08/2023 is attached as annexure "C" & "D").

7. That the appellant filed Revision Petition against the appellate order dated 23/08/2023 which was rejected on 05/09/2023. (Copies of revision petition and rejection order dated 05/09/2023 are attached as annexure "E" & "F").

8. That feeling aggrieved the appellant prefers the instant Service Appeal before this Hon'ble Tribunal, inter-alia on the following grounds:

GROUND:

A. That respondents have not treated the appellant in accordance with law, rules and policy on the subject and acted in violation Article 4 of the Constitution of Islamic Republic of Pakistan, 1973m therefore, the impugned orders are not sustainable in the eye of law.

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- B. That no charge sheet and statement of allegations has been served or communicated to the appellant in this respect the appellant relied upon a judgment reported on "2009 SCMR Page-615".
- C. That no regular or departmental inquiry has been conducted by the respondent department against the appellant and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment reported on "2008 SCMR Page-1369".
- D. That no final Show Cause Notice has been issued and communicated to the appellant by the respondents department before imposing the major penalty in this respect the appellant relief upon a judgment reported on "2009 PLC (CS) 176".
- E. That when the conviction of appellant was set-aside by the Hon'ble Peshawar High Court Mingora Bench, thereafter, no ground exists to remain the punishment awarded to him by the respondent No.
3. It is well settled law that where the criminal charges were not proved against the accused Civil

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Servant before the Competent Court of jurisdiction and the civil servant was acquitted on these charges then the Departmental Proceedings exactly based on the same charges, would be wholly irrelevant and undusted. Reliance can be placed on judgment of against Supreme Court of Pakistan reported in 2001-PLC-(SC)-Page-316 (Citation-d).

F. That the respondent department should waited for the decision of the criminal cases above which is a clear cut violation of CSR 194-A.

G. That is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the appellant relied upon a judgment reported on "2008 SCMR Page: 678".

H. That no opportunity of cross examination has been provided to the appellant.

I. That any other ground not raised here may graciously be allowed to be raised at the time of full arguments on the instant Service Appeal.

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It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned orders dated 16/11/2022, 23/08/2023, 05/09/2023 passed by respondents may very graciously be set aside and the appellant may kindly be reinstated in service along with all back benefits.


Any other relief not specifically asked for may also graciously be extended in favour of appellant.


Appellant

Through

Dated: 25/09/2023


Kabir Ullah Khattak

& 
Roeda Khan
Advocates High Court,
Peshawar.

NOTE:

As per information furnished by my client, no such like appeal for the same appellant, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.


ADVOCATE

8

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

Service Appeal No. ____/2023

Jehandad Khan(Appellant)

VERSUS

The Provincial Police Officer (PPO) and others.....(Respondents)

AFFIDAVIT

I, Jehandad Khan (Ex-Constable Belt No. 2127) S/o Imdad Khan R/o Suliman Khel, Badh Bair, Tehsil and District Peshawar, do hereby solemnly affirm and declare, that all the contents of accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.


DEPONENT

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**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.**

Service Appeal No. ____/2023

Jehandad Khan(Appellant)

VERSUS

The Provincial Police Officer (PPO) and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Jehandad Khan (Ex-Constable Belt No. 2127) S/o Imdad Khan
R/o Suliman Khel, Badh Bair, Tehsil and District Peshawar.

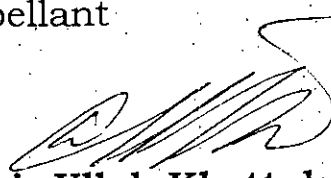
RESPONDENTS:

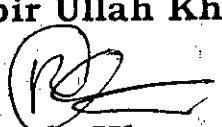
1. The Provincial Police Officer (PPO) Government of Khyber Pakhtunkhwa.
2. Capital City Police Officer (CCPO), Peshawar.
3. Superintendent of Police (SP) Headquarter, Peshawar.

Appellant

Through

Dated: 25/09/2023


Kabir Ullah Khattak


& **Roeda Khan**
Advocates High Court,
Peshawar.

9A

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

C.M. No. _____/2023

In

Service Appeal No. _____/2023

Jehandad Khan(Appellant)

VERSUS

The Provincial Police Officer.(PPO) and others.....(Respondents)

APPLICATION FOR CONDONATION
OF DELAY.

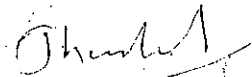
Respectfully submitted:

1. That the above tiled Service Appeal is being filed before this Hon'ble Tribunal in which no date of hearing has yet been fixed.
2. That the appellant was acquitted by the Hon'ble Peshawar High Court Mingora Bench on 15/03/2023 and the appellant filed departmental appeal after acquittal on 28/04/2023.
3. That there are so many judgments of Superior Courts that cases should be decided on merit rather technicalities.

T.B.

4. That if the any delay occurred in filing of the instant Service Appeal the same may kindly be condoned in the interest of justice.
5. That this Hon'ble Tribunal has got ample powers to condoned the delay "if any" in the filling of the instant Service Appeal.


It is, therefore, humbly prayed that on accepting this application, delay if any may kindly be condoned in the larger interest of justice.


Appellant

Through

Dated: 25/09/2023


Kabir Ullah Khattak


& **Rozeeda Khan**
Advocates High Court,
Peshawar.

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BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

C.M. No. _____/2023

In

Service Appeal No. _____/2023

Jehandad Khan(Appellant)

VERSUS

The Provincial Police Officer (PPO) and others.....(Respondents)

AFFIDAVIT

I, Jehandad Khan (Ex-Constable Belt No. 2127) S/o Imdad Khan R/o Suliman Khel, Badh Bair, Tehsil and District Peshawar, do hereby solemnly affirm and declare, that all the contents of accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.


DEPONENT

ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Jehandad No.2127 on the allegation that he was arrested by Malakand Levies with illegal substance & FIR No.125 dated 11.12.2021 u/s 9(D)KPCNSA, Levy Post Thana was registered against him as reported by DC/Commandant Malakand Levies Malakand vide letter No.9487/LC dated 14.12.2021.

In this regard, he was placed under suspension & issued charge sheet & summary of allegations. DSP Complaints & Enquiry was appointed as E.O. He conducted the enquiry & submitted his report/findings that the alleged official did not attend the enquiry proceedings. The E.O further recommended for taking ex-parte decision against the alleged official vide Enquiry Report No.46/PA dated 19.01.2022.

Upon the findings of E.O, he was issued final show cause notice and delivered to him through local Police PS Badaber but he failed to submit reply of the said notice or appear before this office as yet.

The Enquiry papers were again referred to E.O for re-enquiry into the matter. The Enquiry Officer conducted re-enquiry & submitted his report/findings that the alleged official confessed the offence during interrogation. The E.O further recommended that the alleged official found guilty of the charges leveled against him dated 05.09.2022.

On receiving the findings of E.O, the alleged official has been called time & again through Parwanas. The Moharrir Staff (Police Lines) has returned all parawans with reports that defaulter official was called on Phone Cell No.0302-5582683 but he did not attend his phone. lastly he was forwarded message so many times for O.R but he failed as yet.

Keeping in view the recommendations of the E.O and circumstance of the entire case, I the undersigned, being competent authority do hereby impose major punishment against Constable Jehandad No.2127 and he is dismissed from service under Police Rules-1975 with immediate effect.

**SUPERINTENDANT OF POLICE
HEADQUARTERS, PESHAWAR**

No. 3521-1/PA/SP/dated Peshawar the 16/11/2022.

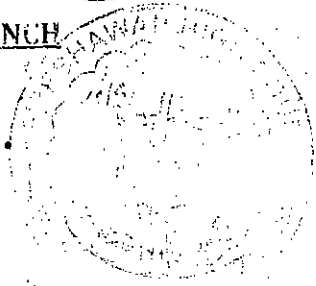
Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. PA to W/CCPO, Peshawar
5. Pay Officer,
6. OAST, CRC & FMC along-with complete departmental file.



Amara (B) (11)

**BEFORE THE HON'BLE PESHAWAR HIGH COURT MINGORA BENCH
DARULOAZA SWAT.**



Cr. Appeal No: 243-M/2022

Jehandad Khan S/O Imdad Khan R/O Mohallah, Allah Dad Khel, Suliman
Khel Badhbair Peshawar.

..... APPELLANT

VERSUS

The State through AAG..... RESPONDENT

APPEAL U/S 410 Cr.P.C R/W SECTION 24 OF KP- CNSA,
2019 AGAINST THE ORDER/JUDGMENT OF SESSIONS
JUDGE/ZILLA QAZI JSC MALAKAND AT BATKHELA VIDE
ORDER DATED: 03.09.2022, WHEREBY THE APPELLANT
WAS CONVICTED AND SENTENCED U/S 9-(D) R/W 17 KP
CNSA-2019 FOR LIFE ALONG WITH FINE OF RS. FIVE LACS
(500,000/-) OR IN DEFAULT OF PAYMENT OF FINE TO
UNDER GO FURTHER SIX MONTH S.I, AND U/S 171 , R/W
SECTION 34 PPC CONVICTED AND SENTENCED FOR SIX
MONTHS S.I AND U/S 420 R/W SECTION 34 PPC
CONVICTED AND SENTENCED FOR 5 YEARS R.I WITH FINE
OF RUPEES 50000/-, AND U/S 468 R/W SECTION 34 PPC
CONVICTED AND SENTENCED FOR 5 YEARS R.I WITH FINE
OF RUPEES 50000/-, AND U/S 471 R/W SECTION 34 PPC
CONVICTED AND SENTENCED FOR 2 YEARS R.I WITH FINE
OF RUPEES 5000/- IN DEFAULT OF PAYMENT OF FINE TO
UNDER GO FURTHER SIX MONTH S.I IN EACH BENEFIT OF
SECTION 382-B CR.P.C HAS ALSO GRANTED TO THE
APPELLANT.

FILED TODAY

06 SEP 2022

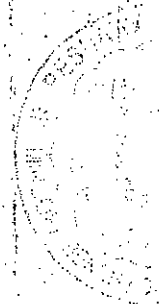
Additional Registrar



25-9-23

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JUDGMENT SHEET
PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)



✓ **Cr.A No. 243-M/2022**
Jehandad Khan son of Imdad Khan (Appellant)
Versus
The State through A.A.G. (Respondent)

Present: *M/S Kamran Ahmed and Noor Alam Khan*
Advocates, for the appellant.
Hafiz Ashfaq Ahmad, Asstt. A.G for the State.
&

Cr.A No. 259-M/2022
Farhan Khan son of Sher. Jan (Appellant)
Versus
The State through A.A.G. (Respondent)

Present: *Mr. Said Hakim, Advocate, for the appellant.*
Hafiz Ashfaq Ahmad, Asstt. A.G. for the State.

Date of hearing: 15.03.2023

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Appellants

namely Jehandad Khan and Farhan Khan have called in question the order/judgment passed by the learned Sessions Judge/Judge Special Court Malakand at Batkhela dated 03.09.2022, vide which the appellants were convicted and sentenced as follows;

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U/S 9 (d) R/W section 17 CNSA to life imprisonment along with fine of Rs. 500,000/- (five hundred thousand) each, or in default of the payment of fine they shall further undergo six months simple imprisonment.

U/S 171 R/W section 34 PPC to six months simple imprisonment.

U/S 420 R/W section 34 PPC to five years rigorous imprisonment along with fine of Rs.50,000/- (fifty thousand).

U/S 468 R/W section 34 PPC to five years rigorous imprisonment along with fine of Rs. 50,000/- (fifty thousand)

U/S 471 R/W section 34 PPC to two years rigorous imprisonment along with fine of Rs. 5,000/- each in default whereof they shall undergo six month simple imprisonment in each.

All the sentences awarded to both the appellants were ordered to concurrently.

Both the appellants were also extended the benefit of section 382-B Cr.P.C.

2. The appellants faced trial in a criminal case registered against them vide case FIR No. 125 dated 12.12.2021 under section 9 (d) of The Control of Narcotic Substances Act, 2019 R/W sections 171/420/468/471 PPC at levy post (Fazli Subhan Shaheed) Thana District Malakand. As per contents of the FIR, the complainant namely Ubaid Khan along with other police 'Nafri' during routine patrolling of the area, found a motorcar parked on the roadside with green official number plate bearing No.AA1018 Peshawar. On query, the



NAWAB

(D.B)

Hon'ble Mr. Justice Muhammad Naeem Anwar
Hon'ble Mr. Justice Muhammad Ijaz Khan

person seated on the driving seat disclosed his name as Jehandad Khan and during search of the motorcar, the police recovered a plastic sack (بوری) bearing label "CHAND" having 18 packets of Chars total weighing 11,340 grams, lying in the trunk (ڈبکی) of the said motorcar. Accused was arrested on the spot, samples were separated for the purpose of F.S.L and all the incriminating articles were taken into possession and sealed in the respective parcels. The motorcar was also taken in possession. Later on, during the course of investigation the appellant namely Farhan Khan was also arrayed as an accused in the instant case, hence, the *ibid* FIR was registered against the appellants at police station concerned.

3. The accused were summoned by the learned trial Court and charge was framed against them on 15.02.2022, to which they pleaded not guilty and claimed trial. The prosecution was invited to produce its evidence, who accordingly examined as many as five (05) witnesses in support of its case. Thereafter

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statements of accused were recorded under section 342 Cr.P.C. On conclusion of the proceedings in trial, the accused/appellants were convicted and sentenced vide the impugned order/judgment dated 03.09.2022 of the Court of learned Sessions Judge/Judge Special Court Malakand at Batkhela, as stated hereinabove. The appellants have now challenged the aforesaid judgment by filing the instant criminal appeals bearing No. 243-M of 2022 and 259-M of 2022 before this Court.

4. Arguments of learned counsel for the appellants as well as learned Astt. A.G. appearing on behalf of the State were heard in considerable detail and the record perused with their able assistance.

5. It is the case of prosecution as reported by PW-5 namely Ubaid Khan through 'Murasila' Ex.PW-5/2 that on the relevant date and time of occurrence he along with other police personnel were busy in routine Ghast of the area when they found a motorcar standing aside on the road and in which the appellant namely Jehandad Khan was sitting on the

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NAWAB

(D.B) Hon'ble Mr. Justice Muhammad Naeem Anwar
 Hon'ble Mr. Justice Muhammad Ijaz Khan

driving seat and as such on search of the said motorcar, a white/red-colour polythene bag with the writing of "چشم نائن مینوہ" CHAND was found in the trunk of the said motorcar and on search of the same 18 packets of Chars each weighing 630 grams total 11,340 grams were recovered and out of each packet 10/10 grams were separated for the chemical analysis of F.S.L and 18 samples were sealed in parcels No.1 to 18 whereas the remaining stuff was sealed in parcel No. 19 and the other materials i.e. two number plates and other belongings of the appellant were sealed in parcels No. 20 & 21 with monogram of "U.N". Subsequently, the co-appellant namely Farhan Khan was also nominated as an accused in the instant case.

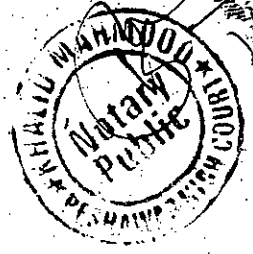
6. It may be noted that in criminal cases in order to bring home charge against an accused person the prosecution is bound to prove their case beyond any shadow of doubt and as such in the narcotics cases too, in order to bring conviction or to maintain conviction they are bound to prove the safe custody of the

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parcels containing samples and the contraband and in the process they have to prove that the parcels were safely transmitted from the spot to the police station, and that they remained safe and secure in the police station and the samples were transmitted from the police station to the FSI, and vice-versa, however, in the present case it is PW-5 namely Ubaid Khan who is the seizing officer and as per the contents of the 'Murasila' after the recovery of the alleged contraband and separation of the samples/ parcels and arrest of the accused, he only sent the 'Murasila' to the police station through constable namely Noor Rehman and the 'Murasila' is completely silent that as to what happened to all the parcels which were allegedly prepared on the spot. The seizing officer not only remained mum in the 'Murasila' regarding the sending of samples to the police station but when he appeared in the Court as PW-5 there too, he has not uttered a single word that in-fact it was he who brought the parcels from the spot and deposited the same in the Mall Khana, therefore, on the available record, the

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prosecution has not been able to establish that as to who has brought the parcels of the samples as well as the contraband from the spot to police station. In the statement of the recovery witness namely Abu Zar Ghaffar Muharir, who appeared in Court as PW-2, he too has not uttered a single word that as to who took the parcels/samples containing contraband from the spot to the police station, therefore, in view of such lacuna in the case, the prosecution has not been able to prove that as to who brought the sample from the spot to the police station.

7. It is also relevant to mention here that though as per the 'Mursila' report the alleged recovery has been made on 11.12.2021 at 10:30 p.m., however, the extracts of register No. 19 which were exhibited as Ex.PW-2/1 does not show that as to when these parcels were deposited in the *Mall Khana*. The record further shows that as per the extracts of register No. 19 the case property was taken by the seizing officer-cum-Investigating Officer namely Ubaid Khan on 14.12.2021 for the purpose of producing the same in the Court.

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however, the record would show that the present appellant was produced before the local Magistrate on 12.12.2021 and then on 14.12.2021, however, the order sheets of the local Magistrate would show that on none of date, the case property was produced before him, therefore, the aforesaid entry in the register No. 19 goes a long way to doubt the safe custody of the contraband inside the police station, allegedly recovered from the appellant. In view of the above the prosecution has not been able to establish the safe transmission of the samples/ parcels from the spot to the police station and within the Police Station.

8. The record also shows that after the alleged recovery of the contraband, the Deputy Commissioner Malakand has held a press conference and the pictures of the same were uploaded on the official website of the D.C and the aforesaid picture and the extracts from the website were confronted to PW-2 namely Abdu Zar Ghaffar which were exhibited as Ex.PW-2/X-1 to Ex.PW-2/X-3, the aforesaid exhibits manifestly shows that in-fact a press

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conference has been held by the Deputy Commissioner along with the levy officials including the seizing officer, however, the foot notes on the aforesaid exhibits present a totally different story by stating therein that on the previous nights the In-charge namely Noor-ul-Hussain while acting on the information of D.S.P Malakand has found the motorcar on the roadside and from where the contraband has been recovered. These exhibits further show that the case property is lying on the table and the In-charge namely Noor-ul-Hussain are being awarding two honorary badges. It merits to mention here that the aforesaid movement of the case property all around to different offices cast a serious doubt on the safe custody of the same which also find support from the fact that it was allegedly recovered on 11.12.2021 at 10:30 p.m. and as per the entries in register No.19 the same has been deposited in the *Mall Khana* but with no date mentioned therein, which non-mentioning of the date becomes more significance in view of the above holding of a

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press conference and producing the case property to the print and electronic media.

9. As discussed hereinabove that in narcotic cases the prosecution has to prove the recovery of the contraband, taking of samples from it, sending of parcels from spot to police station, inside the police station and from the police station to the FSL and then from the FSL to the police station and during this process its safe custody has to be established, otherwise benefit of any break in the chain has to be given to an accused person, however, in the present case prosecution has not been able to prove the same in a required manner as highlighted in the preceding Paras, therefore, the appellants are entitled for its benefits. In the case of "Javed Iqbal v/s The State"

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reported as 2023 SCMR 139 it was held by the Apex Court that it is duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and transmission of the sample parcels to the concerned

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laboratory. Such chain has to be established by the prosecution and if any link is missing in such like offences the benefit must be extended to the accused. Similarly, in the case of "Muhammad Sohaib & another v/s The State" reported as 2022 SCMR 1006, the Hon'ble Apex Court has held that although Jahangir Khan, H.C. (PW-1) claimed that complainant had handed over the sample parcels to him which he further handed over to Moharrar Investigation for safe custody for sending them to Forensic Science Laboratory, Peshawar. The said Moharrar Investigation who according to Jahangir Khan, H.C. (PW-1) kept the sample parcels in safe custody was never produced by the prosecution. So the safety of sample parcels was not established by the prosecution. Ajmal Khan, Constable, who allegedly took the sample parcels to the concerned Laboratory was also not produced. In that eventuality, prosecution failed to establish safe custody and safe transmission of the sample parcels to the concerned quarter

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and the prosecution could not give any plausible explanation for not producing said important witnesses. The said defect in the prosecution case goes into the root of the case creating serious doubt regarding the narcotics and its recovery. Likewise, in the case of "Ishaq v/s The State" reported as 2022 SCMR 1422, the Hon'ble Supreme Court has held that the most important thing we observe is that neither the safe custody nor the safe transmission of the sealed sample parcels to the concerned laboratory was established by the prosecution because neither the Moharrar nor the Constable concerned (FC-3746) who deposited the said parcels in the concerned laboratory was produced. It is also a circumstance that recovery was effected on 17.07.2010 whereas the sample parcels were received in the said laboratory on 20.07.2010 and prosecution is silent as to where remained these sample parcels during this period, meaning thereby that the element of tampering with is quite apparent in this case In the case

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 Seal
 25/9/21



Per
 Date

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of "Abdul Ghafoor v/s The State & another"

reported as 2022 SCMR 819, the Hon'ble Apex Court has observed that heinousness of the charge and huge quantity of the alleged contraband, notwithstanding, the prosecution was under a bounden responsibility to drive home the charge by proving each limb of its case that essentially included production of the witness, tasked with the responsibility of transmitting the samples to the office of Chemical Examiner. Failure is devastatingly appalling with unredeemable consequences that cast away the entire case. Reliance could also be made on the following judgments:-

(1) "Abdul Ghafoor v/s The State & another" reported as 2022 SCMR 819.

(2) "Zafar Khan v/s The State" reported as 2022 SCMR 864.

(3) "Dilawar Ali v/s The State" reported as 2022 SCMR 1066.

(4) "Subhan Ullah v/s The State" reported as 2022 SCMR 1052.

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10. The record also shows that neither in the 'Murasila' nor in the recovery memo nor

in the application addressed to the F.S.L, the factum that three number of monograms of "U.N" were affixed on the samples are mentioned, however, in the application addressed to the F.S.L Ex. PW-5/1 only bears the entry of 1/1 monogram of "U.N" (جس میں) (ایک/ایک عدد نمونہ مہر سر بہمہر) but when the same was received by the F.S.L authorities, they were carrying 3/3 monograms, which aspect of the case too cast a serious doubt over the authenticity of the FSL report. Under the Rules and as per the judgment of Apex Court in order to ensure the presence of the seizing officer on the spot and to ensure the fairness and impartiality it has been held that the seizing officer should inscribe the abbreviation of his own name and failure to do so the benefit of the same has to be extended to the accused. Such flaw was found fatal by the Hon'ble Apex Court in the case "Khtar Iqbal v/s The State"

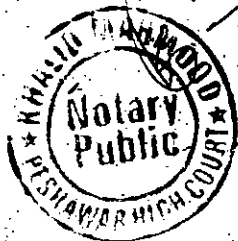
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reported as 2015 SCMR 291 by observing that the most important factor in that connection, which compounded all those doubts and raised a big question mark upon the veracity of the prosecution's case against the appellant, was that after allegedly recovering the contraband substance from the boot of the motorcar driven by the appellant the parcels of the recovered substance were sealed with a monogram reading as SJ and it had been disclosed by Mati-ur-Rehman (P.W.2) before the learned trial Court that the said monogram belonged to one Sameen Jan Inspector who was not even posted at the relevant Police Station at the time of the alleged recovery from the appellant and as a matter of fact at the said time the said Inspector was serving at a Police Station in Quetta. Mati-ur-Rehman (P.W.2) had not been able to advance any explanation whatsoever as to why the recovery officer namely Assistant Director

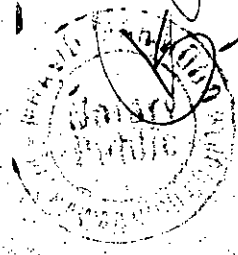
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Rehmat had not put his own monogram on the seals of the parcels prepared by him and as to why he had used the monogram of some other officer who was not even posted at the relevant Police Station at the relevant time. Similarly, this Court in the case of "Usman Shah v/s The State" reported as 2022 YLR 821 has also reiterated the same stance by holding that the seizing officer while appearing before the Court as PW-2, deposed in his Court's statement that after recovery of contraband, he separated samples for FSL purpose and sealed in parcels Nos.1 to 8 and remaining stuff in parcel No.9 with a monogram of "MK" which, he categorically admitted that same is not pertained to his name and in-fact the same stands for Mukhtiar Khan, S.I., who was stated to be present with the complainant. The alleged recovery seems to be doubtful, rather hints at something to be planted by complainant,

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because said Mukhtiar Khan SI was never cited as a witness during proceedings in the instant case. This witness, after few moments, in his cross-examination contradicted his own statement by deposing that "Mukhtiar Khan S.I. was present in the P.S. at that very time. The MK monogram was lying with me in the official van". Be that as it may, the Seizing Officer, pursuant to spy information, should have been required to have his own monogram with the letters "RK" in his possession to have strengthened and substantiated his version, but he disrupted the episode in a casual manner.

11. The record also shows that in this case it was PW-5 namely Ubaid Khan, the seizing officer who got the information regarding the motorcar and it was he who supervised the whole proceedings of the alleged recovery of contraband, however, the 'Murasila' would show that he acted in dual capacity i.e. as complainant of the instant case

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as well as an Investigating Officer. It has been an admitted part of the evidence that he has never been authorized by the competent authority to investigate the instant case and thus he after the preliminary proceedings of the recovery of the contraband, separated and prepared the samples on the spot, also proceeded to prepare the site plan, drafted the application for the purpose of F.S.L and produced accused before the Court, taking case property from the *Mall Khana* and not producing the same before the Court as discussed above, therefore, his this self-assigning investigation goes a long way to defeat the very spirit of a fair and honest investigation. Under the law a complainant and an accused person are considered to be two opponents/rivals and as such they are contesting parties, supporting their respective pleas whereas the role of an Investigating Officer is to unearth the truth. An Investigating Officer cannot be expected to be a party in the case and that is what the relevant law on subject speaks. Rule No. 25.2 (3) of

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The Police Rules, 1934 as well as Article 18 of The Police Order, 2002 being relevant for the present controversy the same are reproduced below;-

25.2 (3) Within the limits of his charge he is the chief investigating officer, and as such he shall conduct all investigations in persons, so far as circumstances permit. His responsibility in this matter must be carefully maintained. Should it be necessary, owing to the absence of the sub-inspector or any other cause, for a subordinate to undertake an investigation, the sub-inspector shall satisfy himself by perusing the case diary and questioning the investigating officer that the investigation has been fully and properly conducted, shall remedy what is defective, and take over the investigation as soon as he is free to do so, except in a case originally investigated by an assistant sub-inspector where he will be guided by rule.

Article 18. Separation of investigation function.-

(1) There shall be separation of investigation from other functions of the Police.

(2) Subject to clause (3), the District Investigation Branch shall investigate, under the supervision of the Head of District Investigation Branch, all cases registered in the District.

(3) The Provincial Police Officer may notify the offences which shall be investigated by the investigation officer in the police station under the supervision of the officer-in-charge of the police station and if an offence in a case is required to be investigated by the District Investigation Branch then the entire case shall be investigated by the District Investigation Branch.

(4) The District Investigation Branch, other than in the Capital City District or a City District, shall be headed by a police officer not below the rank of a Superintendent of Police and shall consist of such other police officers as the Provincial Police Officer may determine.

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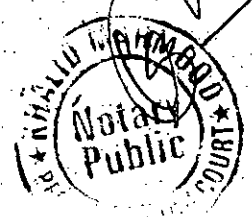


The aforesaid rule unmistakably

requires an Investigating Officer to dig-out the

truth and actual facts of the case and he should not be guilty of a partisan approach. In view of the above legal aspect of the case if applied to the case of the appellants, it is established that the complainant by acting as an Investigating Officer could not be expected fairness and transparency especially when the appellants in their statements recorded under section 342 Cr.P.C have alleged a specific plea of *malafide* involvement by the local levy officials. It is also relevant to mention here that in the recent past the trend of acting by the complainant as an Investigating Officer in narcotics cases have been deprecated by this Court as well as by various Courts of the country and it has been seriously observed that a complainant could not be an Investigating Officer as such practice goes a long way to defeat the object of a fair, honest

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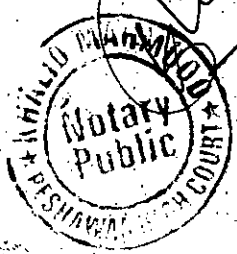
and transparent investigation. In the case of "State through Advocate General, Sindh v/s Bashir and others" reported as PLD 1997 Supreme Court 408 it was held by the Apex Court that the Investigating Officer is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules. In the case of "Fahad v/s The State" reported as 2022 P Cr.LJ 279 it was held the Sindh High Court that it is also pertinent to mention here that in this case complainant/ SIP Muhammad Khan had not only lodged FIR but also conducted investigation of the case himself as well as he himself took the case property for Chemical Examination. In our view it is/was not appropriate that the person who is

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ATTY

complainant of a case could investigate the same case and took the narcotic item for report because in order to keep all fairness of thing the rule of propriety demands that it must be investigated by an independent officer but not by the complainant himself. In the case of "Zeenat Ali v/s The State" reported as 2021 P Cr. LJ 1294 it was held by the Islamabad High Court that in the present case the complainant had himself conducted the investigation of the case, however, the person who was complainant of the case in order to keep all fairness of thing could not investigate the same case, which must be investigated by an independent officer but not by the complainant himself. Investigation by complainant while functioning as Investigating Officer is a biased investigation.

Z. Ali
15-9-23



12. It is also relevant to mention here that it is the case of prosecution that a motorcar

was found parked on the roadside and on search of the trunk of the said motorcar the alleged recovery of contraband has been made, however, this story by itself appears to be unreasonable and does not appeal to sanity that as to why the appellant would be on the driving seat of the motorcar and that too at odd hours of a cool winter night, without having any justified reason for his presence on the spot. It is also relevant mention here that it is not the case of prosecution that the said motorcar belongs to the appellant namely Jehandad Khan and it is also the case of prosecution that the contraband was not recovered from a visible place rather it was lying in the trunk (ڈبئی) of the said motorcar and thus the prosecution has not been able to prove with reasonable and considerable piece of evidence the presence of the appellant on the spot as well as his conscious knowledge

Jehandad Khan
25/3/23

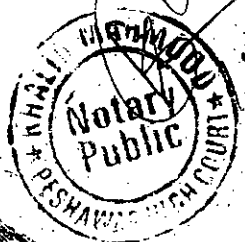


ATK
 Peshawar
 District

about the alleged contraband lying in the trunk of the motorcar.

13. As far as the case of co-appellant namely Farhan Khan is concerned, admittedly he was neither arrested on the spot nor any recovery of contraband was made from his personal possession or on his pointation and since while discussing the case of the co-appellant namely Jehandad Khan, it has been held that the prosecution has not been able to prove the safe transmission of the parcels/samples containing contraband from the spot to the police station and its safe custody inside the police station as well as conscious knowledge of the contraband on his part, therefore, on the basis of the aforesaid lacunas in the case of prosecution as well as the ground exclusively attracted to the case of present appellant namely Farhan Khan, he is entitled for its benefit in shape of his acquittal.

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A circular notary seal for a Notary Public in Peshawar, High Court. The seal contains the text 'Notary Public' and 'PESHAWAR HIGH COURT' around the perimeter.

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14. As far as conviction of appellant under sections 171/471/420/34 PPC is concerned, suffice it say that the appellant is employee of police department and as per the report of Excise & Taxation Officer Ex.PW5/19 placed on file the in-signed number plat was allotted to the squad of the Chief Secretary of Khyber Pakhtunkhwa, however, the prosecution has not been able to brought on record an iota of evidence that as to who is the owner of the motor car or as to whether the motor car is the ownership of a private person or is the property of a government department or of police department. As far as the recovery of two green number plates from the trunk of the motor car is concerned, suffice it to say that it is not the case of prosecution that subject motor car is the ownership of the appellant.

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Jehandad and as in the case of recovery of contraband from a place in the motorcar, which is not visible, it has been held that it was the duty of the prosecution to prove the conscious knowledge of the appellant, the aforesaid principal fully attracts to the case of two green number plates, as to this extent too prosecution was duty bound to prove those green number plates which were recovered from an invisible place of the motorcar were laying with the knowledge of the appellant, however, the prosecution has not made any appreciable efforts to prove the conscious knowledge of the appellant, therefore, legally sentence under these heads too are not sustainable.

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15. It is settled since long that for giving benefit to an accused, it is not essential that there should be many grounds for the same, even a single doubt is sufficient to

extend its benefit to an accused person as it is the cardinal principle of criminal administration of justice that let hundred guilty persons be acquitted but one innocent person should not be convicted. In the case of "Bashir Muhammad Khan v/s The State" reported as 2022 SCMR 986, the Hon'ble Apex Court has held that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable; trustworthy and reliable evidence. Any doubt arising in prosecution's case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt.

Similarly, in the case of "Khalid Mahmood alias Khaloo v/s The State" reported as 2022 SCMR 1148, the Hon'ble Apex Court has reiterated the same rational by observing that in these circumstances, a dent in the

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 Khalid Mahmood
 Notary Public
 Peshawar High Court

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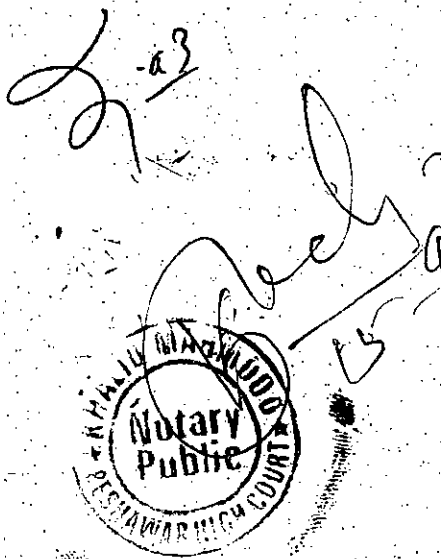
prosecution's case has been created, benefit of which must be given to the appellant. It is a settled law that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. In the case of "Muhammad Mansha v/s The State" reported as 2018 SCMR 772, the Hon'ble Apex Court has also held that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be

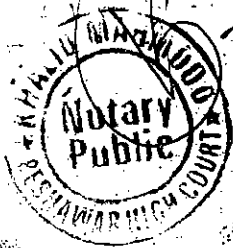
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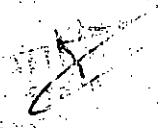
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convicted". In the case of "Tariq Pervaiz v/s
The State" reported as 1995 SCMR 1345 ,
the Hon'ble Apex Court has held that the
concept of benefit of doubt to an accused
person is deep-rooted in our country. For
giving him benefit of doubt, it is not
necessary that there should be many
circumstances creating doubts. If there is a
circumstance which creates reasonable doubt
in a prudent mind about the guilt of the
accused, then the accused will be entitled to
the benefit not as a matter of grace and
concession but as a matter of right. Reliance
in this behalf can be made upon the cases of
Tariq Pervez v. The State (1995 SCMR
1345), Ghulam Qadir and 2 others v. The
State (2008 SCMR 1221), Muhammad
Akram v. The State (2009 SCMR 230) and
Muhammad Zaman v. The State (2014
SCMR 749).

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16. For what has been discussed
above, this Court is of the firm view that the



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prosecution has failed to prove its case against the appellants beyond reasonable doubt, therefore, their conviction cannot be maintained. Resultantly, while extending them the benefit of the doubt both these connected criminal appeals bearing No. 243-M & 259-M of 2022 are allowed and the impugned order/judgment of conviction and sentence dated 03.09.2022 recorded by the learned trial Court is set aside and consequently the appellants namely Jehandad Khan and Farhan Khan are acquitted of the charges levelled against them. They be released forthwith from the jail, if not required in any other case.

17. These are reasons for our short orders of even dated.

S.No. 55
 Name of Applicant Jehandad Khan
 Date of Presentation of Applicant 26/9/23
 Date of Completion of Copies 26/9/23
 No of Copies 30/11
 Urgent Fee 100/-
 Fee Charged 100/-
 Date of Delivery of Copies 26/9/23

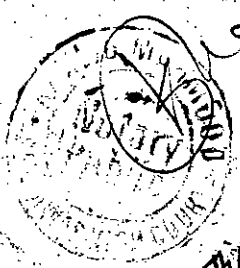
Announced
Di. 15.03.2023

J
 JUDGE

Certified to be true Copy

M. J. Khan
 EXAMINER
 Peshawar High Court Bench
 Mingora/Dar-ul-Qaza, Swat.

J. a 3
 JUDGE

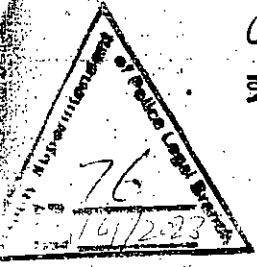


17/04/2023
WJR

خدمت مہا۔ کیپٹل سٹی پولیس انفنٹری مہا۔ پشاور

مضمون :- حکیمانہ ایپیل برائے بحالی ملازمت و بر خلاف
ارڈر نمبر 3521-27/PA مورخہ 11/16/2022 جسکی
مبادیہ نمائیں کو ملازمت سے برخواست کیا گیا ہے

595
22/04/2023



جناب عالی! سائل حسب ذیل عرض رساں ہے :-

1۔ یہ کہ سائل سال 2007ء کو بطور کنسٹیبل جعفری ہو کر ریکروٹ
ہوا جنکو سے پاس کیا ہے

2۔ یہ کہ سائل نے محکمہ پولیس میں تقریباً 15 سال بے داغ ملازمت
انجام دی ہے۔ اور کبھی انفنٹری مالدار کو شکایت کا موقع نہیں دیا ہے

3۔ یہ کہ مورخہ 12/11/2021ء کو میرے دوست فرحان نے سفیر ڈھیری کے
سائل کو ہیکر لگانے کا جھانڈہ دیکر سائل اس کے ساتھ

دوستی کی بناء پر گاڑی میں بیٹھ کر ہیکر لگانے کی خاطر اس کے
ساتھ اس کے گاڑی میں روانہ ہوا۔

4۔ یہ کہ سائل کو کوئی علم نہیں تھا کہ گاڑی میں کیا ہے۔ لیکن سبھی
فرحان نے سائل سے چھپ کر خشتیاں رکوتھے

5۔ جب سائل جائے وقوع پر پہنچا تو جونہی مالدار کنڈلیوں والوں نے
اشارہ دیکر گاڑی فرحان رکوائی اور تلاشی لینے پر بھرنشیاں
برآمد ہوا تو سبھی فرحان موقع سے فرار ہو کر جبکہ سائل باورس
حقیقت سے بے خبر ہو کر لہو پولیس ایڈیکاروں نے سائل کو

گرفتار کر کے سائل کے خلاف مقدمہ عدلہ 125 مورخہ 12/11/2021
جرم D/KP CNVA-9 لہو پوسٹ قانہ درج رہبر ہو کر بعد فرحان

میں نافذ کیا گیا ہے

FMC
For record
S. Akhtar



28/4

- 6 یہ کہ چونکہ سائل نے قصور اور دلہ علم تھا۔ لہذا عدالت - محترمہ میں قدم کی پیروی کر کے آخر کار عدالت عالیہ دارالقویہ سوات - منگورہ نے بحوالہ فیصلہ مورخہ 15/3/2023 کو بری کر دیا گیا۔
- 7 یہ کہ اس دوران سائل نے خلاف حکمانہ ماروائی شروع ہو کر جس سائل کو سماعت کا موقع نہیں دیا گیا۔ اور نہ ہی سائل کی شناخت ہوئی۔
- 8 یہ کہ سائل نے خلاف یکطرفہ ماروائی ہو کر سائل کو ملزمت سے بہر خواست لیا گیا۔
- 9 یہ کہ سائل نے گناہ ہے۔ ایک طرف خود بخود مقدمہ میں کھینچا گیا جبکہ دوسری طرف ملزمت سے بہر خواست لیا گیا ہے۔
- 10 یہ کہ سائل بلال بیگم دار ہے۔ اور سید روزگاری کی وجہ سے معافی بدعالی کا

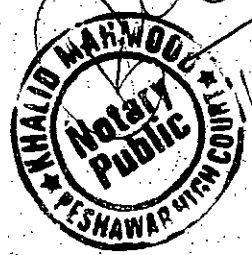
شکار ہے۔

اس لئے درخواست حضور الخیر ہے کہ درہم مالہ صفت کو عدالت کو کر سائل کو ملزمت پر دوبارہ بحال فرما کر مشکورہ فہمیں رہا ہو اور نفاذ نوٹ۔ نقل فیصلہ عدالت عالیہ سوات لیا گیا ہے۔

عق۔

ریکا تابعدار جہانزاد سابقہ جنرل سٹیٹ بینک نمبر 2127 حال ڈرہم
 Contact: No. 0315-9016004.

0300-9010422



15-9-23



Amour (D) 414

OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

ORDER.

This order will dispose of the departmental appeal preferred by **Ex-Constable Jehan Dad Khan No. 2127**, who was awarded the major punishment of "dismissal from service" under KP PR-1975 (amended 2014) by SP/HQr: Peshawar vide OB No. 3045, dated 16.11.2022.

2- Brief facts leading to the instant appeal are that the defaulter Constable was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No. 125, dated 11.12.2021, u/s 9(D) KPCNSA, PS Levy Post Malakand.

3- He was issued Charge Sheet and Summary of Allegations by SP/HQr: Peshawar. DSP Complaint & Enquiry, Peshawar was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer after conducting departmental enquiry submitted his findings in which he was found guilty. The competent authority in light of the findings of the Enquiry Officer awarded him the major punishment of dismissal from service.

4- He was heard in person in Orderly Room. During personal hearing, he was given an opportunity to prove his innocence. However, he failed to submit any plausible explanation in his defense. Therefore, his appeal for setting aside the punishment awarded to him by SP/HQr: Peshawar vide OB No. 3045, dated 16.11.2022 is hereby **rejected/filed being also time barred for 04 months and 12 days.**

"Order is announced"

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 2224-30 /PA, dated Peshawar the 23 / 08/2023

Copies for information and necessary action to the:-

1. SSP/Investigation Peshawar.
2. AD/IT CCP Peshawar.
3. EC-II, AS & PO.
4. FMC along with complete Fouji Missal.
5. Official concerned.



15/9-23

Annexure (F) P (46)



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. SI/ 2283 /23, dated Peshawar the 05/09/2023.

To: The Capital City Police Officer,
Peshawar.

Subject: REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Jehan Dad Khan No. 3127 of CCP Peshawar, against the punishment of dismissal from service awarded by SP HQrs vide Order Endst: No. 3521-27/PA/SP dated 16.11.2022, being badly time barred.

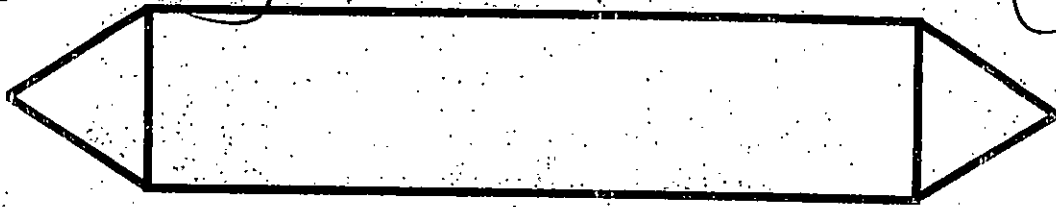
The applicant may please be informed accordingly

(Signature)
5/9/23
(AFSAR JAN)
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

(Signature) -23

بعدالت کتاب عدویہ فی السیولہ کاغذ

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2023 منجانب اللہ

صاندر حکم نامہ

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

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

کلیئے لکھو اللہ صحت

آن مقام کاغذ

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 اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب 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 سند ہے۔

2023

دسمبر

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المرقوم

العبد گ Accept و اہ العبد

(Signature)

Handwritten signature on the right margin.