

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

**SERVICE APPEAL NO. 1109/2017**

Date of institution ... 10.10.2017

Date of judgment ... 23.01.2019

Rahat Shah, Driver FC Belt No. 3759/618  
Of Traffic Peshawar.

... (Appellant)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Senior Superintendent of Police (Traffic), Peshawar.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE ORDER DATED 09.07.2015 WHEREBY, THE  
APPELLANT HAS BEEN DISMISSED FROM SERVICE AND  
AGAINST THE ORDER DATED 02.08.2017 AND 25.09.2017  
WHEREBY, THE DEPARTMENTAL APPEAL AND REVIEW  
APPEAL UNDER 11-A OF THE APPELLANT HAS BEEN  
REJECTED FOR NO GOOD GROUNDS.

Mr. Taimur Ali Khan, Advocate

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the  
appellant present. Mr. Muhammad Jan, Deputy District Attorney for the  
respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant  
was serving in Police Department as Driver. He was dismissed from service by  
the competent authority vide order dated 09.07.2015 on the allegation of  
absence from duty. The appellant filed departmental appeal on 18.04.2017

*M. Amin*  
23.1.2019

which was rejected on 02.08.2017 thereafter, the appellant filed revision petition on 04.08.2017 which was rejected on 25.09.2017 hence, the present service appeal on 10.10.2017.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department as Driver. It was further contended that the appellant was falsely charged in criminal case vide FIR No. 650 dated 18.12.2014 under sections 302/342/148/149 PPC therefore, the absence of the appellant was not intentional but it was beyond the control of the appellant due to involvement in the aforesaid criminal case. It was further contended that the appellant was imposed major penalty vide order dated 09.07.2015 but the appellant was acquitted by the competent court vide detailed judgment dated 20.03.2017 therefore, after acquittal the appellant immediately filed departmental appeal on 18.04.2017. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted therefore, the impugned order is illegal and liable to be set-aside.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was appointed as Driver in Police Department in the year 2009 as alleged by the appellant in service appeal but after six years he remained absent from duty. It was further contended that charge sheet, statement of allegation was served upon the appellant and proper inquiry was also conducted. It was further contended that on the basis of inquiry report, the appellant was imposed major penalty of dismissal from service by the competent authority vide order dated 09.07.2015 but the appellant was absconder in the criminal case vide FIR No. 650 dated 18.12.2014 under sections 302/342/148/149 PPC therefore, the absence of the appellant was intentional. It was further contended that the

*M. Arun*  
23-1-2019

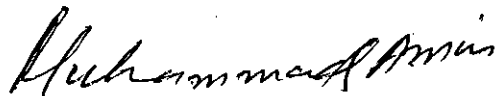
appellant filed departmental appeal on 18.04.2017 after more than one year and eight months. It was further contended that the departmental appeal of the appellant was also dismissed on merit as well as on limitation. It was further contended that it is well settled law that when the departmental appeal is time barred than the service appeal is not maintainable therefore, it was contended that the appeal has no force and prayed for dismissal of appeal being time barred.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was involved in criminal case vide FIR No. 650 dated 18.12.2014 under sections 302/342/148/149 PPC Police Station Sarband for committing double/two murder. The record further reveals that the appellant remained absconder in the aforesaid criminal case and did not attend the duty therefore, after fulfilling the codal formalities, the appellant was dismissed from service by the competent authority vide order dated 09.07.2015. The record further reveals that the appellant was required to file departmental appeal within one month from the date of passing of impugned order i.e 09.07.2015 but the appellant has filed departmental appeal on 18.04.2017 after a delay of more than one year and eight months and the appellant has also not file any application for condonation of delay. It is well settled law that when the departmental appeal is time barred than the service appeal is not maintainable. As such, without touching the merit of the case, the present appeal is hereby dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
23.01.2019



(HUSSAIN SHAH)  
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 11.12.2018.

  
READER

11.12.2018

Appellant alongwith counsel and Addl. AG alongwith Muhammad Raziq, H.C for the respondents present. The Worthy Chairman is on leave, therefore, case is adjourned to 23.01.2019 for arguments before the D.B.

  
Member

23.01.2019

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

Vide our detailed judgment of today consisting of three pages placed on file, without touching the merit of the case, the present appeal is hereby dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
23.01.2019

  
(HUSSAIN SHAH)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

30.08.2018

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Farman Gul, S.I for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is busy before the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on ~~01.10~~.2018 before D.B.



(Ahmad Hassan)  
Member



(Muhammad Amin Khan Kundi)  
Member

01.10.2018

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney, for the respondent present. Junior to counsel for the appellant seeks adjournment on the ground that learned senior counsel is not available today. Adjourned. To come up for arguments on 02.10. 2018 before D.B.

(Hussain Shah)  
Member



(Muhammad Hamid Mughal)  
Member

02.10.2018

. Learned counsel for the appellant and. Mr. Muhammad Jan learned DDA for the respondent present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on ~~08.10~~.2018 before D.B



(Hussain Shah)  
Member



(Muhammad Hamid Mughal)  
Member

DFA

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**PESHAWAR**

**SERVICE APPEAL NO. 1109/2017**

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Rahat Shah, Driver FC Belt No. 3759/618  
Of Traffic Peshawar.

... (Appellant)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
  2. The Capital City Police Officer, Peshawar.
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- ... (Respondents)

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Mr. Taimur Ali Khan, Advocate

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI  
MR. HUSSAIN SHAH

.. MEMBER (JUDICIAL)  
.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the  
appellant present. Mr. Muhammad Jan, Deputy District Attorney for the  
respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant  
was serving in Police Department as Driver. He was dismissed from service by  
the competent authority vide order dated <sup>9-7-2015</sup> ~~07.09.2015~~ on the allegation of  
absence from duty. The appellant filed departmental appeal on 18.04.2017

22

E

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

SERVICE APPEAL NO. 164/2004

Date of institution ... 28.02.2004

Date of decision ... 11.03.2006

Waqeem-ur-Rehman, Sub-Engineer,  
Canal Division, Peshawar.

.. Appellant

VERSUS

1. Govt. of NWFP Irrigation & Power Department through its Secretary, Peshawar.
2. Chief Engineer, Irrigation & Power Department, NWFP, Peshawar.
3. Chief Engineer (O&M) Irrigation Department, NWFP, Peshawar.
4. Sub-Engineer Fazli Khuda and 11 others  
C/O Respondents 1 & 2. .. Respondents

Mian Muhabullah Kakakhel,  
Advocate.

.. For appellant

Mr. Noor Zaman Khan,  
Addl : Govt. Pleader.

For respondent-  
department.

Mr. Sher Zaman Kundi,  
Advocate.

For respondents  
No. 5, 10, 12, 14 &  
15.

Mr. Mukhtiar Ali,  
Advocate.

For respondents  
No. 6 & 9.

Mian Muhammad Murad,  
Advocate.

For respondents  
No. 11 & 13.

Mr. Abdul Sattar Khan,  
Mr. Azmat Hanif Orakzai.

.. Chairman  
Member

JUDGMENT

ABDUL SATTAR KHAN, CHAIRMAN:

This appeal U/S 4

which was rejected on 02.08.2017 thereafter, the appellant filed revision petition on 04.08.2017 which was rejected on 25.09.2017 hence, the present service appeal on 10.10.2017.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department as Driver. It was further contended that the appellant was falsely charged in criminal case vide FIR No. 650 dated 18.12.2014 under sections 302/342/148/149 PPC therefore, the absence of the appellant was not intentional but it was beyond the control of the appellant due to involvement in the aforesaid criminal case. It was further contended that the appellant was imposed major penalty vide order dated 09.07.2015 but the appellant was acquitted by the competent court vide detailed judgment dated 20.03.2017 therefore, after acquittal the appellant immediately filed departmental appeal on 18.04.2017. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted therefore, the impugned order is illegal and liable to be set-aside.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was appointed as Driver in Police Department in the year 2009 as alleged by the appellant in service appeal but after six years he ~~was~~ remained absent from duty. It was further contended that charge sheet, statement of allegation was served upon the appellant and proper inquiry was also conducted. It was further contended that on the basis of inquiry report, the appellant was imposed major penalty of dismissal from service by the competent authority vide order dated 09.07.2015 but the appellant was absconder in the criminal case vide FIR No. 650 dated 18.12.2014 under sections 302/342/148/149 PPC therefore, the absence of the appellant was intentional. It was further contended



of the NERF Service Tribunals Act, 1974 arises against an order dated 14.2.2004, vide which the appeal of the appellant for reckoning his seniority with effect from the date of his appointment, was dismissed.

2. The facts of the case as narrated in the memo. of appeal briefly stated are that the appellant initially joined the respondent department as Sub-Engineer vide order dated 29.6.1981 and since then he is serving the department. He was allowed Selection Grade (BS-16) vide Notification dated 31.5.2002. That in the seniority list, as it stood on 31.12.2002, which was prepared on the basis of grant of Selection Grade (BS-16), the name of the appellant finds mention at S.No. 29, whereas the private respondents, who were juniors to him, figure at S.No. 10, 12 to 14, 20 & 23 to 25. The name of Farman-Ullah (private respondent) which was missing from the seniority list, was also included in the said seniority list maintained by the department. Feeling aggrieved, the appellant filed his departmental appeal to the effect that his seniority be reckoned w.e.f the date of his appointment and <sup>for</sup> correction of the seniority list, but his appeal/representation was turned down. Hence this appeal.

3. Notices were sent to the respondents. They turned up and contested the appeal by filing separate written replies. Various factual and legal pleas were raised. It was also inter-alia alleged that the instant appeal is time barred; that the appellant has got no locus-standi and that the instant appeal is not maintainable in its present form. It was also averred that seniority

that the appellant filed departmental appeal on 18.04.2017 after more than one year and ~~six~~ <sup>eight</sup> months. It was further contended that the departmental appeal of the appellant was also dismissed on merit as well as on limitation. It was further contended that it is well settled law that when the departmental appeal is time barred than the service appeal is not maintainable therefore, it was contended that the appeal has no force and prayed for dismissal of appeal being time barred.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was involved in criminal case vide FIR No. 650 dated 18.12.2014 under sections 302/342/148/149 PPC Police Station Sarband for committing <sup>double/triple</sup> murder. The record further reveals that the appellant remained absconder in the aforesaid criminal case and did not attend the duty therefore, after fulfilling the codal formalities, the appellant was dismissed from service by the competent authority vide order dated 09.07.2015. The record further reveals that the appellant was required to file departmental appeal within one month from the date of passing of impugned order i.e 09.07.2015 but the appellant has filed departmental appeal on 18.04.2017 after a delay of more than one year and ~~six~~ <sup>eight</sup> months and the appellant <sup>has</sup> also not file any application for condonation of delay. It is well settled law that when the departmental appeal is time barred than the service appeal is not maintainable. As such, the present <sup>without touching</sup> ~~the merit of the case. The present appeal~~ appeal has no force which is hereby dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
23.01.2019

(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

(HUSSAIN SHAH)  
MEMBER

24

of the diploma holder Sub-Engineers was determined on the basis of grant of Selection Grade (BS-16). Since the Sub-Engineers mentioned at S.No. 10, 13 and 28 had passed the Departmental Grade B&A Examinations earlier than the appellant, hence they were granted seniority and selection grade (BS-16) earlier than the appellant. It was further alleged that seniority in this case is based on the qualification of departmental examination according to which the selection grade is granted. It is clarified that the seniority list was prepared by the department according to the seniority position reckoned from the date of grant of Selection Grade (BS-16). The appellant is not entitled for grant of seniority from the date of his initial appointment because he has passed the departmental 'A' Grade examination on 6.6.2000, the date from which he has been allowed selection grade. His name has been correctly placed in the seniority list on the basis of grant of selection grade (BS-16). The private respondents also in their written replies to the line of the respondent department. Replication was also filed by the appellant in rebuttal.

4. Arguments heard and record perused.

5. Learned counsel for the appellant argued that the respondent department has maintained the seniority of Sub-Engineers on the basis of grant of Selection-Grade (BS-16) which is against the accepted principles as well as against law. Reliance was also placed on Service Appeal No. 206/89 of Alamgir Khan, decided on 27.7.92 by the Tribunal, wherein it has been held that seniority is to be reckoned in accordance with Sec.8(4).

08.02.2018

Appellant in person and Addl: AG alongwith Mr. Muhammad Raziq, H.C for respondents present. Written reply submitted. To come up for rejoinder and arguments on 16.04.2018 before D.B.

(Ahmad Hassan)  
Member(E)

16.04.2018

Counsel for the appellant and Addl: AG for respondents present. <sup>rejoinder submitted.</sup> Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 28.06.2018 before D.B.

(Ahmad Hassan)  
Member

(M. Amin Khan Kundi)  
Member

28.06.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Farman Gul SI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.08.2018 before D.B.

(Muhammad Amin Kundi)  
Member

(Muhammad Hamid Mughal)  
Member


21-8-2018

Due to eidul Azha vacation  
the case is adjourned to 30-8-2018

Reader

28.12.2017


Counsel for the appellant present and Addl: AG alongwith Bashir Ahmad, SI (Legal) for the respondents present. Written reply not submitted on behalf of respondent department. Learned Addl: AG requested for further time adjournment. Adjourned. To come up for written reply/comments on 12.01.2018 before S.B.

  
(Gul Zeb Khan)  
Member (E)

12.01.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Bashir Ahmed, S.I for the respondents also present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment. Adjourned. To come up for written reply/comments on 24.01.2018 before S.B.

24.01.2018

  
(Muhammad Amin Khan Kundi)  
Member  
Learned counsel for the appellant present. Mr. Kabir Ullah Khattak, Learned Additional Advocate General along with Mr. Muhammad Raziq H.C for the respondents present. written reply not submitted. representative of the respondents seeks time to file written reply. Time granted by way of last opportunity. To come up for further written reply/comments on 08.02.2018 before S.B

  
(Muhammad Hamid Mughal)  
MEMBER

16.11.2017

Counsel for the appellant present. Preliminary arguments heard and file perused.

Learned counsel for the appellant argued that the appellant joined the Police Force as Driver constable in 2009. That he was falsely charged under criminal case in FIR dated 18.12.2014. that an enquiry was conducted by the respondents on the basis of this charge, wherein neither the appellant was heard or associated for the purpose of cross examining the witnesses, which is against the law/rules as well as the Principles of natural justice. That ultimately the appellant was dismissed from service vide impugned order dated 9.7.2015 without waiting for finalization of the criminal case which is violation of CSR 194. That the appellant filed departmental appeal against the impugned order to PPO on 18.04.2017, however the concerned section of the PPO office directed the appellant to file appeal before the competent authority i.e CCPO, therefore he filed departmental appeal on 24.07.2017 to competent authority which was rejected in fanciful manner vide order dated 02.08.2017. That the inquiry was conducted against the appellant without associating him with the inquiry and as such one sided inquiry was conducted. Further argued that the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.

Points raised need consideration. Admitted for regular hearing, subject to all legal objections including limitation. ~~just exceptions~~. The appellant is directed to deposit security and process fee within 10 days, whereafter notices be issued to the respondent for written reply/comments for 28.12.2017 before S.B.

Appellant Deposited  
Security & Process Fee

  
(Gul Zeb Khan)  
Member

**Form-A**  
**FORM OF ORDERSHEET**

Court of \_\_\_\_\_

Case No. 1109/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10/10/2017	<p>The appeal of Mr. Rahat Shah presented today by Mr. Muhammad Asif Yousafzai Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 10/10/17</p>
2	13/10/2017.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/11/2017</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
	01.11.2017	<p>Appellant present. Seeks adjournment on the ground that District Bar is on strike. Adjourned. To come up for preliminary arguments on 16.11.2017 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Muhammad Hamid Mughal Member (J)</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 1109/2017

Rahat Shah

V/S




Police Deptt:

.....  
**INDEX**  
.....

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-4
2.	Copy of FIR	-A-	5-6
3.	copy of charge sheet and statement of allegations	-B -	7-7A
4.	copy of finding report	-C-	08
5.	Copy of impugned order dated 09.07.2015	- D-	09
6.	Copy of anti-terrorism court judgment dated 20.03.2017	-E-	10-35
7.	Copy of appeal to PPO	-F-	36-37
8.	Copy of appeal to CCPO	-G-	38
9.	Copy of rejection order dated 02.08.2017	-H-	39
10.	Copy of review	-I-	40-41
11.	Copy of rejection order dated 25.09.2017	-J-	42
12.	Vakalat Nama	-----	43

**APPELLANT**

THROUGH:

  
(M.ASIF YOUSAFZAI)  
ADVOCATE SUPREME COURT  
  
(TAIMUR ALI KHAN),  
&  
  
SYED NOMAN ALI BUKHARI  
(ADVOCATES, PESHAWAR)



①

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 1109 /2017

**Khyber Pakhtukhwa  
Service Tribunal**

Rahat Shah, Driver FC Belt No. 3759/618  
of Traffic Peshawar.

Diary No. 1137

Dated 10-10-2017

.....(Appellant)

**VERSUS**

1. The Provincial Police Officer, KPK Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Senior Superintendent of Police (Traffic). Peshawar.

.....(Respondents)

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 09.07.2015 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM THE SERVICE AND AGAINST THE ORDER DATED 02.08.2017 and 25/09/2017 WHEREBY, THE DEPARMENTAL APPEAL AND REVIEW APPEAL UNDER 11-A OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.**

**PRAYER:**

Filed to-day  
Registrar  
10/10/17

**THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 09.07.2015, 2.08.2017 AND 25.09.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.**

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. That the appellant joined the police force as Driver constable in 2009 and also has good service record throughout.
2. That the appellant was falsely charged under the criminal case and the FIR No.650 dated 18.12.2014, u/s 302-342-148-149 PPC was registered against the appellant. **Copy of the FIR is attached as Annexure-A).**
3. That on the basis of above mentioned FIR appellant was charge sheeted and allegation was mentioned in the charge sheet being involved in a criminal case. **(Copy of charge sheet & statement of allegation are attached as Annexure- B).**
4. That the inquiry was conducted against the appellant without associating him with the inquiry and as such one sided inquiry was conducted. Further added that the appellant was behind the bar at the time of inquiry. **(Copy of inquiry is attached as Annexure-C).**
5. That, thereafter, without final show cause notice the appellant was dismissed from the service vide order dated 09.07.2015 without giving personal hearing and before the finalization of criminal case which is violation of CSR.194. **(Copy impugned order is attached as Annexure-D).**
6. That after, the appellant was acquitted by the Court of Additional Session Judge-VII, Peshawar vide judgment dated 20.03.2017, he was released from jail. **(Copy of judgment is attached as Annexure-E).**
7. That after releasing from jail, the appellant filed departmental appeal against the impugned order to PPO on 18.4.2017, however the concerned section of the PPO office directed the appellant to file appeal before the competent authority i.e CCPO, therefore he filed departmental appeal on 24.7.2017 to competent authority which was rejected in fanciful manner vide order dated 02.08.2017. **(Copy of appeal to PPO, appeal to CCPO and rejection order are attached as Annexure-F, G&H).**

8. That after rejection of the departmental appeal, the appellant file a review under 11-A to IGP to take action on grievance of the appellant but the same was also rejected vide order dated 02.08.2017 without showing any cogent reason. **(Copy of review and rejection order are attached as Annexure-I & J).**
9. That now the appellant have no other adequate remedy and constraint to file the instant appeal on the following grounds amongst others.

**GROUND:**

- A) That the impugned order dated 09.07.2015, 2.08.2017 AND 25.09.2017 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant was acquitted by the Court of Additional Session Judge-VII from the baseless charges leveled against the appellant. So, there was no more remained any ground to punished the appellant, so the impugned order is against the law and void-ab-initio, hence liable to be set-aside.
- C) That according CSR-194 the department must kept the appellant under suspension till the finalization of criminal case but department had violated the provision of CSR-194 and bent upon to remove the appellant at any cost.
- D) That the appellant was legally entitled for reinstatement under FR-53/54 after being acquitted from the criminal charges by the competent court of law.
- E) That even the appeals of the appellant were rejected in violation to the verdict of the august Supreme Court of Pakistan reported as PLD 2010 (SC) 695. Thus the appellant has been punished for no fault on his part.
- F) That the appellant has been condemned unheard and has not been treated according to law and rules.
- G) That no showcause notice and regular inquiry was not conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.

- H) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- I) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- J) That the appellant's guilt has not been proved beyond the shadow of doubt and the appellant has been punished on the basis of conjecture and surmises.
- K) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- L) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

راحت شاہ

**APPELLANT**

Rahat Shah

THROUGH:

اسف یوسفزئی

**(M.ASIF YOUSAFZAI)**

**ADVOCATE SUPREME COURT**

تیمور علی خان  
**(TAIMUR ALI KHAN),**

&  
سید نoman علی بخاری

**SYED NOMAN ALI BUKHARI**

**(ADVOCATES, PESHAWAR)**





CHARGE SHEET

B700

1. WHEREAS I am satisfied that a formal enquiry as contemplated by Police Rules 1975 is necessary and expedient.
2. AND whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule-3 of the aforesaid Rules.  
therefore, as required by Rule 6 (1) (a) of the said Rules I, Wahid Mehmood, Senior Superintendent of Police, Traffic, Peshawar hereby charge you DFC Rahat No. 3759/618-T of Traffic Staff, Peshawar on the basis of following allegations:-  
  
You while posted in M.T.Staff are involved in a criminal case vide FIR No. 650, dated 18.12.2014 u/s 302/324/148/149 PPC P.S Sirband Capital City. Reportedly, you (accused official) have remained absent from your lawful duty since 18.12.2014 to date without permission/intimation to your seniors. Which amount to gross misconduct and to hold you liable for major/minor punishment as defined in Police Rules-1975.
3. AND I hereby direct you further under Rule 6 (I) (b) of the said Rules to put in written defence within 07-days of the receipt of this Charge Sheet as to why the proposed action should not taken against you and also state whether you desire to be heard in person.
4. AND in case your reply is not received within the stipulated period, it shall be presumed that you have no defence to offer and in that case, ex-parte action will be taken against you.

~~(WAHID MEHMOOD) PSP  
Senior Superintendent of Police,  
Traffic, Peshawar.~~

(Competent Authority)

ATTESTED  


SUMMARY OF ALLEGATIONS

7-A

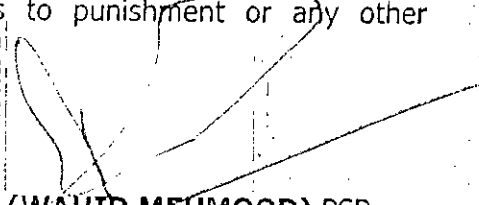
1. That while posted in MT Staff, he (DFC Rahat Shah No. 3759/618-T) committed the following misconducts on his part:

a) Reportedly he is involved in a criminal case vide FIR No. 650, dated 18.12.2014 u/s 302/324/148/149 PPC P.S Sirband Capital City. He (accused official) has remained absent from his lawful duty since 18.12.2014 to date without permission/intimation to his seniors. Which amount to gross misconduct and to hold him liable for major/minor punishment as defined in Police Rules-1975.

2. For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations, an Enquiry Committee comprising of the following officer(s) is constituted:-

b. Mr. Raheem Hussain, DSP/Traffic, Cantt: Peshawar.

3. The enquiry committee/officer shall in accordance with the provision of the Police Rules 1975 provide reasonable opportunity of hearing to the accused officer/official and make recommendations as to punishment or any other appropriate action against the accused.

  
(WAHID MEHMOOD) PSP  
Senior Superintendent of Police,  
Traffic, Peshawar.

(Competent Authority)

ATTESTED  




## FINDING REPORT

Departmental inquiry Rahat Shah Driver FC Belt No. 3759/618 of Traffic Peshawar. vide  
Endst: No. 1039/PA dated 03.03.2015

Respected Sir,

Rahat Sha Driver FC Belt No. 3759/618 was charged as below:

- a) Reportedly he is involved in a criminal case vide FIR No. 650 DATED 18.12.2015 U/S 362/324/148/149 PPC P.S Sarband Capital City. He (accused official) has remained absent from his lawful duty since 18.12.2011 to date without permission intimation to his seniors. Which amount to gross misconduct and held him liable for major/minor punishment as defined in Police Rules, 1975.

### A) FACTS AND CIRCUMSTANCES:

The matter inquired into. Accused Rahat Shah is still absent. Copies of Charge Sheet and summary of Allegations were sent to accused through registered postal mail which were returned back with the remarks that accused is not available at his home. Copy of FIR and its index reports of In-charge investigation and DFc the then search witness obtained. Statements of MTO and Moharrier recorded. The proceedings however in-absentia of accused completed as ex-parte.

The extracts are as under.

1. Accused was charged for involvement in a criminal case wherein two persons murdered and attempted for murder of others and willful absence on duty since 18.12.2014.
2. Date and time of occurrence as per FIR was 18.12.2014 at 10.10 am.
3. Accused was absented in the D.D No. 4 dated 18.12.2014 at 20.50 pm.
4. According to statements of Syed Zulfiqar Ali MTO and Nawab Khan Assistant Moharir, accused I was absent on duty on the date and time of occurrence that they never seen him in the traffic lines barracks and accused never contact them.
5. Accused was due to be on duty at night from 21.00 hrs on 18.12.2014 . Copies of duty obtained.
6. Charge sheet and summary of allegations were sent to accused through registered post martum but returned back with the remarks that accused not available at his home.
7. The Criminal case had reported him as absconder and proclaimed Offender by the report of Search Witness of P.S Sarband.
8. Challan had been submitted to the court wherein he had been declared as accused for murder and proclaimed Offender.
9. Accused neither got sanctioned any leave or permission nor applied for Similarly he did not inform any officer of his absence.

### B. CONCLUSION.

1. Rahat Shah accused is guilty for involvement in a criminal case carrying capital punishment. Through the case had not been tried however he being a police officer should surrender himself before the competent court or police, if he is innocent. His escape itself is against well established rules.

ATTESTED  


2. he remained absent on duty without any reason, leave, or permission with effect from 18.02.2014 up till now.

**C) RECOMMENDATIONS.**

1. Rahat Shah FC Belt No. 3759/618 being involved in the murder of two persons and attempted murder of others, being Proclaimed Offender, his conduct unbecoming of a police officer, had ceased to be a police officer and remained absent on duty, without any leave or permission or information, from 18.02.2014 till date, therefore, is guilty of misconduct.

2. There are no mitigating circumstances, and therefore, liable for major punishment. Submitted please.

**ATTESTED**



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FINDING REPORT

Inquiry against Rahat Shah Driver FC Belt No. 3759/618 of Traffic Peshawar.

Under No. 1059/PA dated 05.05.2015.

Respected

Rahat Shah Driver FC Belt No. 3759/618 was charged as below:

1. He is involved in a criminal case vide FIR NO. 650 dt: 18.12.2015 U.S. P.S Sarband Capital City. He (accused official) has remained absent from his lawful duty since 18.12.2014 to date without permission/intimation to his superior. Which amount to gross misconduct and held him liable for major/minor punishment as defined in Police Rules, 1975.

A. FACTS AND CIRCUMSTANCES:

The matter inquired into. Accused Rahat Shah is still absent. Copies of Charge Sheet and Summary of Allegations were sent to accused through registered postal mail which were returned back with the remarks that accused is not available at his home. Copy of FIR and its index, reports of In-charge investigation and DFe the then search witness obtained. Statements of MTO and Moharrir recorded. The proceedings, however, in-absentia of accused, completed as ex-parte.

The entire case as under:

1. Accused was charged for involvement in a criminal case, wherein two persons murdered and attempted for murder of others, and willful absence on duty since 18.12.2014.
2. Date and time of occurrence as per FIR was 18.12.2014 at 10.10 am.
3. Accused was absent in the D.D No. 4 dated 18.12.2014 at 20.50pm.
4. According to statements of Syed Zulfiquer Ali MTO and Nawab Khan Asstt. Moharrir, accused was absent on duty on the date and time of occurrence, that they never seen him in traffic lines barracks and accused never contact them.
5. Accused was due to be on duty at night from 21.00 hrs on 18.12.2014, copies of duty roll were obtained.
6. Charge sheet and summary of allegations were sent to accused through registered post mail but returned back with the remarks that accused not available at his home.
7. In the criminal case had reported him as absconder and Proclaimed Offender sanctioned by the report of Search Witness of P.S Sarband.
8. Complete challan had been submitted to the court wherein he had been declared as absconder for murder and Proclaimed Offender.
9. Accused neither got sanctioned any leave or permission nor applied for. Similarly he did not inform any officer of his absence.

B. CONCLUSION

1. Rahat Shah accused is guilty for involvement in a criminal case carrying capital punishment. Though the case had not been tried however, he, being a police officer, should surrender himself before the competent court or police, if he is innocent. His case itself is against well established rule.
2. He remained absent on duty without any reason, leave, or permission with effect from 18.12.2014 up till now.

(C) RECOMMENDATIONS

1. Rahat Shah Driver FC Belt No. 3759/618 being involved in the murder of two persons attempted murder of others, being Proclaimed Offender, his conduct unbecoming of a police officer, had ceased to be a police officer and remained absent on duty, without any leave or permission or information, from 18.12.2014 till date, therefore, is guilty of misconduct.
2. He is liable for no mitigating circumstances, and therefore, liable for major punishment. Submitted please.

DSP Cantt. Traffic  
Inquiry Officer

ATTESTED

ORDER

This is an order on the departmental inquiry initiated against Driver constable Rahat Shah No. 3759/618 for involvement in case FIR No. 650, dated 18.12.2014 U/S 302/324/148/149 PPC PS Sarband, Peshawar. He also remained absent from duty w.e.f 18.12.2014 (from the date of involvement in the criminal case) and still at large without leave/permission of the competent authority. Departmental proceeding was initiated against the caused driver constable and charged sheet along with summary of allegations were delivered through his home address.

Mr. Raheem Hussain DSP/traffic Cantt was nominated as Enquiry Officer in to the matter in his finding stated that the accuse official failed to attend enquiry proceedings and failed to submit his written reply to the charge sheet within the stipulated period. The inquiry officer thus recommended him for major punishment as he is a proclaimed offender and there is no likelihood of his arrival for duty.

Keeping in view the recommendation of the inquiry officer as well as his continuous and prolonged absence from service, and exparte action is therefore, taken against the accused Rahat Shah and he is therefore, awarded major punishment of dismissal from service under Police Rules, 1975 from the date of his absence i.e. 18.12.2014.

(WAHID MEHBOOD) PSP  
Senior Superintendent of Police,  
Traffic Peshawar..

ATTESTED  


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ORDER

This is an order on the departmental enquiry initiated against Driver constable Rahat Shah No.3759/618 for involvement in case FIR No.650, dated 18.12.2014 U/S 302/324/148/149 PC, PS Sarband, Peshawar. He also remained absent from duty w.e.from 18.12.2014 (from the date of involvement in the criminal case) and still at large without leave/permission of the competent authority. Departmental proceedings was initiated against the accused driver constable and charge sheet along-with summary of allegations were delivered through his home address.

Mr. Raheem Hussain DSP/Traffic Cantt. was nominated as Enquiry Officer into the matter. In his findings stated that the accused official failed to attend enquiry proceedings and failed to submit his written reply to the charge sheet within the stipulated period. The enquiry officer thus recommended him for major punishment as he is a proclaimed offender and there is no likelihood of his arrival for duty.

Keeping in view the recommendation of the enquiry officer as well as his continuous and prolonged absence from service, an ex-parte action is therefore, taken against the accused constable Shah and he is therefore, awarded major punishment of dismissal from service under Police Rules, 1975 from the date of his absence i.e. 18.12.2014.

Order Announced.

( WAHID MEHMOOD ) PSP  
Senior Superintendent of Police,  
Traffic, Peshawar.  
/2015.

92-96 /PA, Dated Peshawar this 08 / 107

Copies for information and action to:-  
Superintendent of Police, HQrs, CCP Peshawar.  
DSP/HQrs. Traffic Peshawar.

Accountant

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BEFORE THE COURT OF SADIA ARSHAD  
ADDITIONAL SESSIONS JUDGE-VII, PESHAWAR

10

Case No. 20/SC of 2015  
Date of Institution: 06-05-2015  
Date of Decision: 20-03-2017

State versus 1. Maqbool Shah  
s/o Said Muhammad  
r/o Shiekh Muhammadi,  
Peshawar

2. Rahat Shah  
s/o Said Muhammad r/o  
Shiekh Muhammadi,  
Peshawar

FIR No. 650  
Dated: 18/12/2014  
Under section: 302/324/148/149 PPC  
Police Station: Sarband, Peshawar

JUDGEMENT:

Accused Maqbool Shah and Rahat Shah have faced trial in the instant case for the offences under section 302/324/148/149 of Pakistan Penal Code, registered at Police Station Sarband vide FIR No. 650 dated 18/12/2014 for committing qatl-e-amd of Lal Muhammad and Fayyaz Khan as well as injuring one passerby namely Falak Niaz and for ineffective firing upon the complainant and PW Khayal Muhammad.

2. Precise facts as narrated in the FIR are that on 18/12/2014 at about 10:30 hours, complainant Naik Muhammad lodged a report to the effect that he alongwith his sons Fayaz and Lal Muhammad and grandson namely Khial Muhammad came to cattle-Mandi Sarband for sale/purchase of cattle, in the meanwhile, Maqbool Shah, Rahat Shah,

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Sultan Shah sons of Said Muhammad, Murad and Akhtar sons of Maqbool Shah started firing at them, as a result of which, Lal Muhammad was died on the spot while Fayaz and one passerby namely Falak Niaz were injured. That Fayaz also succumbed to his injuries on the way to the hospital while he alongwith his grandson Khial Muhammad escaped unhurt. Motive is stated to be previous blood feud enmity, hence, the subject FIR was registered by the police.

3. After completion of investigation, complete challan against the accused was submitted before the court of learned District & Sessions Judge, Peshawar on 06/05/2015 who entrusted the same to this court for trial. The accused facing trial namely Maqbool Shah and Rahat Shah were produced in custody while remaining accused were absconding, therefore, SW was summoned and after recording his statement, the accused Sultan Shah, Murad and Akhtar were proceeded u/s 512 Cr.P.C. Provisions of section 265-C Cr.PC were complied with from the accused facing trial and case was fixed for framing of charge.

4. **Charge** under section 302/324/148/149 PPC was framed against accused facing trial on 02/09/2016, to which they pleaded not guilty and claimed trial. The prosecution was then given the opportunity to produce evidence collected during investigation.

5. **PWs** were summoned, prosecution produced 19 witnesses. Brief of the prosecution evidence is as under:- 7

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**Shaz Ali FC No.3823** appeared and examined as **PW-1**, who deposed that he is marginal witness of recovery memo Ex-PW1/1 vide which the IO took into possession spent bullet of 30 bore sent by doctor which was recovered from the body of the PW Falak Niaz and sealed the same into parcel in his presence. The spent bullet is Ex-P-1. His statement u/s 161 Cr.P.C. was recorded by the IO.

**Sher Muhammad DFC** was examined as **PW-2**, who stated that he was entrusted with the warrant of arrest issued against the accused Akhtar, Murad, Rahat Shah and Sultan Shah which are Ex-PW2/1 to ex-PW2/4 respectively. As the accused were avoiding their lawful arrest, therefore, he returned the said warrant as unserved with his report on the back of the warrants Ex-PW2/5 to Ex-PW2/8 respectively.

Similarly, he was entrusted with the proclamation notices against the accused named above which were Ex-PW2/9 to Ex-PW2/12 respectively. He executed the notices as per law and returned one of the same to the IO. His report on the notices are Ex-PW2/13 to Ex-PW2/16 respectively.

**Ijaz Khan SI** was examined as **PW-3**, deposed that on 20/12/2014 he arrested accused Maqbool Shah and issued his card of arrest Ex-PW3/1.

**Fazal Subhan FC-5603** was examined as **PW-4**, who stated that he escorted the dead body of deceased Lal Muhammad to the mortuary. No body interfered in the way. After completion of the PM examination the blood stained garments of the deceased were handed over to him and he handed over the same to the IO in the police station on his return. His statement u/s 161 Cr.P.C. was also recorded by the IO. *X*

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**Mar Jan Ali ASI** appeared before the court and was examined as **PW-5**, who stated that on 18/12/2014, he was on mobile gasht when he received information regarding the occurrence. He rushed to the spot where complainant Niak Muhammad reported the matter to him, the same was reduced into writing in shape of Murasila Ex-PA/1 and after admitting the same to be correct, he thumb impressed the same as a token of its correctness. He also prepared the inquest report Ex-PW5/1 and injury sheet Ex-PW5/2 of deceased Lala Muhammad and sent the dead body of deceased to mortuary. Likewise, he also prepared the inquest report Ex-PW5/3 and injury sheet Ex-PW5/4 of deceased Fayaz and sent the dead bodies to the mortuary for PM examination. He also placed on file the OPD chit of deceased Fayaz on the file.

**Yar Akbar HC-4076** was examined as **PW-6**, who narrated that he is marginal witness to recovery memo Ex-PW6/1 vide which the IO took into possession blood stained earth from the place of injured Falak Niaz and sealed the same into parcel No.1, which is Ex-P-1. He is also marginal witness to recovery memo Ex-PW6/2 vide which the IO took into possession blood stained earth from the place of deceased Fayaz which is Ex-P-2. He is also marginal witness to recovery memo Ex-PW6/3 vide which the IO took into possession blood stained earth from the place of deceased Lal Muhammad and sealed the same into parcel which is Ex-P-3. He is also marginal witness to recovery memo Ex-PW6/4 vide which the IO took into possession 07 empties of 30 bore which were lying in scattered condition and sealed the same into parcel which is Ex-P-4. He is also marginal witness to the recovery memo Ex-PW6/5 vide which the IO took into possession blood stained garments of deceased Lal Muhammad brought by PW Fazal Subhan consists of shirt Ex-P-5, Shalwar Ex-P-6, jersey Ex-P-7 and sealed

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the same into parcel in his presence. He is also marginal witness to the recovery memo Ex-PW6/6 vide which the IO took into possession blood stained garments of deceased Fayyaz brought by PW Kamran consist of shirt Ex-P-8, Shalwar, Ex-P-9, chaddar Ex-P-10 and banyan Ex-P-11 and sealed the same into parcel in his presence. He is also marginal witness to the recovery memo Ex-PW6/7 vide which the IO took into possession blood stained garments of injured Falak Niaz reproduced by his brother Umer Daraz, consist of shirt Ex-P-12, Shalwar Ex-P-13 and sealed the same into parcel in his presence. His statement u/s 161 Cr.P.C. was also recorded by the IO.

**Falak Niaz s/o Amir Nawaz** was examined as **PW-7**, who deposed that he was busy in sale/purchase of the cattle, in the meanwhile, firing started as a result of sustained injuries at his back side and thereafter he was taken to the hospital. His statement u/s 161 Cr.P.C was also recorded.

**Shehriyar HC** was examined as **PW-8**, who stated that he is marginal witness to recovery memo Ex-PW8/1 vide which the IO took into possession one spent bullet of 30 bore sent by doctor which was recovered from the body of PW Falak Niaz and sealed the same into parcel in his present. The spent bullet is Ex-P-12. His statement u/s 161 Cr.P.C. was also recorded.

**Dr. Muhammad Arshad** was examined as **PW-9**, who narrated that on 18/12/2014, he has conducted autopsy of deceased Lal Muhammad s/o Naik Muhammad r/o Sheikh Muhammad Badhber, Peshawar aged about 45 ± 02 years, brought by Fazal Subhan FC-5603 identified by Khial Muhammad and Ashraf and found the following:-

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(Examiner)

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**External Examination:**

No ligature mark around the neck. A young male barded body of good built. Wearing Shalwar qameez of light cream colour and khur sweater. Clothes are blood stained with firearm defects corresponding to the injures. Rigor mortis and PM lividity had started.

**Injuries:**

1. FA entry wound right back chest, 1 x 1 cm in size, 05 cm from midline and 17 cm above costal margin.
2. FA entry wound right back abdomen, 1x1 cm in size, 14 cm from midline and 10 cm below the costal margin.
3. FA exit wound on right front chest 1x1 cm in size, 03 from midline and 13 cm below the clavicle.
4. FA exit wound on left lower abdomen, 2x2 cm in size.
5. FA entry wound right front thigh, 1x1 in size, 6 cm below the inguinal ligament and 32 cm above the knee joint. Bullet recovered from the back of right thigh:

**Internal Examination:**

Abdomen: Walls, peritoneum, both intestines were injured. Stomach was healthy and containing semi digested food.

Thorax: Walls, ribs, cartilages, plurae and right lung were injured.

**Opinion:** in his opinion, the deceased due to injury to the right chest and both intestines due to firearm.

Probable time that elapsed between inures and death: Immediate

Between death and PM 01-04 hours.

The dead body alongwith PM documents and garments of the deceased were handed over to the police. The PM report Ex-PM consists six months including pictorial are correct and correctly signed by him. The injury sheet and inquest report correctly bear his signature and endorsement.

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OFFICER IN CHARGE

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Similarly, on 18/12/2014 at 01:30 PM, he has conducted the autopsy of deceased Fayaz Khan s/o Naik Muhammad r/o Sheikh Muhammadi Badhber, Peshawar aged about 35 to 40 years, brought by Kamran FC-1212 identified by Niaz Ul Amin and Naeem Khan and found the following.

**External Examination:**

Short black bearded male body having thing built wearing Shalwar, qameez of khur colour and white vest. Rigor mortis and PM lividity had started.

**Injuries:**

1. FA entry wound right back chest, 1x1 cm in size, 04 cm from midline and 06 cm above costal margin.
2. FA entry wound on right back chest, 1x1 cm in size, 08 cm from midline, and 1 cm above the costal margin.
3. FA entry wound on left back chest, 0.7x0.7 cm in size, 06 cm from midline, and 08 cm above the costal margin.
4. FA entry wound on left buttock, 0.7x0.7 cm in size, 10 cm below the iliac crest and 1 cm from midline.
5. FA entry wound on left outer thigh, 1x1 cm in size, 03 cm below the buttock fold.
6. FA entry wound on left upper front thigh, 2x1 cm in size, and 03 cm below the iliac crest.
7. FA exit wound on inner aspect of left thigh, 1x1 cm in size, 05 cm below buttock fold.
8. FA exit wound on right front chest 2x2 cm in size, 10 cm below the clavicle and 10 cm from midline.
9. FA exit wound on right front chest, 2 x1 cm in size, 03 cm above the nipple and 08 cm from midline.
10. FA exit wound on right front abdomen 1x1 cm in size, 02 cm below the costal margin and 03 cm from the midline.
11. FA entry wound on left back chest, 02 cm below scapula. R

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12. FA exit wound on left front chest, 2x2 cm in size, 06 cm below the nipple and 09 cm from midline.
13. FA entry wound on left front foot at the ankle joint.
14. FA exit on left foot inner aspect.

**Internal Examination:**

Thorax: Walls, ribs, cartilages, plurae and right lung, left lung were injured.

Abdomen: Walls, peritoneum, diaphragm, both intestines were injured. Stomach was healthy and containing semi digested food.

**Opinion:** In his opinion, the deceased died due to injury to both lungs and both intestines due to firearm.

Probable time that elapsed between injury and death.. immediately

Between death and PM 01-04 hours.

The dead body alongwith PM documents and garments of the deceased were handed over to the police.

The PM report is Ex-PM/1 consists six months including pictorial are correct and correctly signed by him. The injury sheet and inquest report correctly bear his signature and endorsement.


**Ashraf Khan s/o Shakir Ullah** was examined as **PW-10**, who stated that the deceased Lal Muhammad was his cousin and on 18/12/2018, he correctly identified his body before the police as well as before the doctor.

**Naik Muhammad** was examined as **PW-11**, who stated that he alongwith his two deceased sons namely Fayyaz Khan and Lal Muhammad and his grandson namely Khial Muhammad were present in the cattle market. In the meanwhile, the accused namely Sultan Shah, Rahat Shah, Maqbool Shah sons of Said Muhammad, Murad, Akhtar s/o Maqbool Shah arrived there alongwith their weapons and started firing at them. Due to their firing, Fayyaz Khan and Lal Muhammad expired on the spot while the people took the Fayyaz and passerby to the

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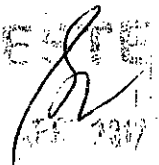
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hospital. The occurrence has been seen by himself and the PW- Khial Muhammad. He reported the matter to the police on the spot. He has signed the Murasila/report and his grandson thumb impressed the same. The police has prepared at his instance. He charged the accused for the commission of offence.

**Khial Muhammad s/o Niaz Muhammad** was examined as **PW-12**, who deposed that on the day of occurrence, he alongwith his grandfather and two deceased uncles namely Fayyaz Khan ad Lal Muhammad were present in the cattle market for sale and purchase purpose. In the meantime, the accused namely Sultan Shah, Rahat Shah, Maqbool Shah sons of Said Muhammad, Murad, Akhtar s/o Maqbool Shah came to the spot and started firing at them at 10:10 hrs. His deceased uncle and one passerby was hit due to the firing of the accused. His uncle Lal Muhammad expired on the spot while Fayyaz and Falak Niaz sustained injuries. They were taken by the people to the hospital. The local police arrived after some 20 minutes to the spot and the report was made on the spot by local police. The report was thumb impressed by his grandfather and he signed the same as a token of correctness. He has been the report, which correctly bears his signature. Site plan was prepared at their instance and thereafter they took the dead body to the mortuary. They have blood feud since long.

**Ali Hussain SI** was examined as **PW-13**, who stated that on 20/07/2016, they were informed by the local police of police station Khawaza Khel, District Swat that accused Rahat Shah has been arrested and is in custody of him. After complying with the formal proceedings, he went to the police station concerned and formally arrested accused and brought him back to the Peshawar to Sarband police station. DD dated 21/07/2016 is Ex-PW13/1. 

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**Altaf No.1990** was examined as **PW-14**, who stated that he is marginal witness to the pointation memo vide which the accused Rahat Shah led the police party to the place of occurrence and correctly pointed out the place of occurrence in his presence as well as other marginal witnesses. Memo is ex. PW 14/1.

**Hamayun Khan SI** was examined as **PW-15**, who deposed that on 22-7-2016, after the arrest of the accused Rahat Shah, vide his card of arrest Ex. PW 15/1 by PW Ali Hussain, the accused was handed over to him. During his police custody, the accused led the police party to the spot and made pointation of the spot, in this respect he prepared pointation memo already exhibited as Ex. PW 14/1. He recorded statement of the accused and after completion of his police custody vide his application Ex. PW 15/2, the accused was produced for recording his confessional statement before the learned JMIC, Peshawar, but he refused the same and was remanded to Judicial lock up.

**Ali Akbar SI** was examined as **PW-16**, who deposed that after registration of the FIR, the same was entrusted to him and after receiving copy of FIR, he proceeded to the spot along with other police party and prepared the site plan at the instance of complainant which is Ex.PB. During the spot inspection, vide recovery memo already Ex.PW 6/1, he took into possession blood stained earth from the spot of PW Falak Niaz and sealed the same into parcel NO.1. Similarly vide memo Ex. PW 6/2, he took into possession blood stained earth from the place of deceased Fayaz and sealed the same into parcel NO.2. Likewise, vide memo Ex. PW 6/3, he took into possession blood stained earth from the place of deceased Lal Muhammad and sealed the same into parcel NO: 3 and vide recovery memo Ex. PW 6/4. He took into possession 07 empty shell of 30 bore and sealed the same into parcel

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NO: 4. Vide recovery memo Ex. PW 6/5. He took into possession the blood stained garments of deceased Lal Muhammad and sealed the same into parcel NO; 5. Furthermore, vide recovery memo Ex. PW 6/6. He took into possession the blood stained garments of the deceased Fayaz and sealed the same into parcel NO; 6. Vide recovery memo Ex.PW 6/7. He took into possession the blood stained garments of injured Falak Niaz and sealed the same into parcel NO: 7. He also took into possession one spent bullet of 30 bore vide recovery memo Ex.PW 1/1, and sealed the same into parcel NO; 8. He sent all the above mentioned parcels to the FSL through application. And in this respect, he received the FSL report Ex.PZ and placed the same on file. After the arrest of the accused Maqbool Shah by the Badha Ber PS, he applied for issuance of Zamima bay vide application Ex.PW 16/1 and accordingly the same was issued. After handing over to me and he vide application Ex.PW 16/2. He produced him before the learned JMIC for grant of his physical custody and accordingly three days custody was granted. He cursory interrogated the accused and recorded the statement of the accused as well as the PWs u/s 161, Cr.PC. He also forwarded application Ex.PW 16/3, for handing over the recovered 30 bore pistol from accused Maqbool after his arrest. After expiry of police custody, he produced the accused Maqbool shah vide application Ex.PW 16/4, for recording his confessional statement but he refused and was sent to the Juridical lock up. As the accused namely Rahat Shah, Murad, Sultan Shah and Akhtar were avoiding their lawful arrest; hence, he vide his application Ex.PW 16/5, applied for issuance of warrant u/s 204 Cr.PC and accordingly the same were issued and he handed over the same to the DFC concerned for execution. Similarly, he vide application Ex.PW 16/6, he applied for issuance of proclamation notices against the above mentioned accused and accordingly the same were issued and he

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21

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handed over the same to the DFC concerned for its execution. He sent the crime empties for FSL and received its report which is Ex.PZ/1. He vide application Ex.PW 16/7, requested to OSI Peshawar for confirmation of information regarding accused Rahat Shah. He vide application Ex.PW 16/8, made house search of all accused but nothing was recovered from their house; however vide search memo Ex.PW 16/9. He recovered and took into possession from the house of accused Sultan Shah, one rifle 8MM bearing NO: FFC6280 without bullet. He also prepared list of legal heirs of the deceased Lal Muhammad which is Ex.PW 16/10. He also prepared list of LRs of the deceased Fayaz which is Ex.PW 16/11. He vide application ex. PW 16/12, applied for the attachment of the properties of the absconding accused u/s 88 Cr.PC. He also drafted an application Ex.PW 16/13, to the SHO for preparing history sheet of the absconding co-accused. After completion of investigation, He handed over the case file to the SHO concerned for submission of challan against the accused Maqbool Shah and 512 Cr.PC challan against the absconding co-accused.

27/03/17  
20/03/17

**Nawab Khan M. Moharrar** was examined as **PW-17**, who deposed that he issued DD report No: 4 dated 18/12/2014 and DD report NO: 11 dated 21-12-2014 subsequently on 21-12-2014 regarding the absence of one Rahat Shah No; 618 constable driver and he handed over to Ali Akbar SI/OII. The DDs are Ex.PW 17/1 and Ex.PW 17/2 respectively.

**Dr. Javed Iqbal KTH** was examined as **PW-18**, who deposed that on 18/12/2014, at 11:01 am, he examined one Falak Niaz s/o Amir Nawaz aged about 27-28 years and found the followings;

1. Firearm injury ..... patient develop bullet wound entry on left flank region having charring marks.

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12

13 APR 2017

2. No exit of bullet wound are seen.

Patient was conscious, referred to surgical unit on call for further management.

Nature of injury..... firearm

Duration of injury ..... 25 minutes.

Kind of weapon ..... Firearm

On 18/4/2015, on the operation notes of surgical ward, he shows the finding of operation which are;

Fist perforation geugnum 1 feet from DJ junction.

Two perforation in ileum.

One perforation in sigmoid colon.

Hemopertion with fecal spillage.

He has seen his report which is Ex.PW 18/1, which is correct and correctly bears his signature.

**Niaz Ul Amin s/o Muhammad Amin** was examined as **PW-19**, who deposed that deceased Fayaz was his maternal uncle. He correctly identified the dead body before the doctor at the time of PM examination.

6. The prosecution closed its evidence against the accused facing trial on 24/01/2017 and thereafter separate statements of both the accused were recorded u/s 342 Cr.PC on 23/12/2016, wherein they professed their innocence but neither they opted to be examined on oath nor to produce evidence in their defence.

7. The following documents were produced by the prosecution in support of its case.

- I. FIR.Ex.PA
- II. Murasila Ex.PA/1
- III. Site Plan Ex.PB
- IV. Inquest report Ex-PW3/1 & injury sheet Ex-PW3/2 of deceased Lal Muhammad.
- V. Inquest report Ex-PW5/3 & injury sheet Ex-PW5/4 of deceased Fayyaz.

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- VI. Blood stained earth of injured Falak Niaz Ex-P-1, recovery memo Ex-PW6/1.
  - VII. Blood stained earth of deceased Fayyaz Ex-P-2, recovery memo Ex-PW6/2.
  - VIII. Blood stained earth of deceased Lal Muhammad Ex-P-3, recovery memo Ex-PW6/3.
  - IX. 07 empties of 30 bore Ex-P-4, recovery memo Ex-PW6/4.
  - X. Blood stained garments of deceased Lal Muhammad Ex-P-5, Ex-P6, Ex-P7, Ex-P11, recovery memo Ex-PW6/5.
  - XI. Blood stained garments of deceased Fayyaz Ex-P-8, Ex-P9, Ex-P10, recovery memo Ex-PW6/6.
  - XII. Blood stained garments of injured Falak Niaz Ex-P-12 & Ex-P13, recovery memo Ex-PW6/7.
  - XIII. Search memo Ex-PW16/9.
  - XIV. Spent bullet recovered by the doctor Ex-P-2, recovery memo Ex-PW8/1.

8. Learned counsel for the complainant assisted by learned APP for the state contended that accused facing trial are directly and promptly charged by the complainant in his report, which is duly supported by the statements of all the PWs; that material available on record in shape of site plan, recovery memos and medical reports etc fully support the stance of the complainant; that prosecution has examined 19 PWs who remained consistent during their examination and have fully corroborated the prosecution story; and that prosecution has successfully proved its case against the accused facing trial, thus, they be awarded maximum punishment.

9. Learned counsel for accused facing trial argued that accused are innocent and have falsely been implicated in the instant case; that no evidence is available on record against the accused facing trial which could connect them with the commission of offence; that none of the eyewitnesses cited in the instant case were present on the spot, therefore, they have

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13 APR 2017

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failed to establish their presence on the spot at the time of alleged occurrence; that their non-availability on the spot is evident from major contradictions in their statements; that accused were booked in the instant case malafidely due to previous blood feud enmity and for compelling them to compromise with the complainant party, and due to false allegations, whole prosecution case is full of doubts, benefit of which must be given to the accused facing trial thus prayed for their acquittal.

10. I have heard the arguments of learned counsel for the parties and gone through the available record.

11. Accused Maqbool Shah and Rahat Shah both sons of Said Muhammad faced trial before this court under the charge that on 18/12/2014 at about 10:10 hours at cattle Mandi Sarband, they alongwith absconding co-accused namely Sultan Shah, Murad and Akhtar, all armed with deadly weapons, in furtherance of common object, formed an unlawfully assembly and made firing upon complainant party, as a consequence of firing, deceased Lal Muhammad and Fayaz were hit. Out of both deceased Lal Muhammad died on the spot, whereas Fayaz died on the way to the hospital. They are also charged for attempting at the lives of complainant Naik Muhammad and PW Khayal Muhammad who escaped unhurt, while during the course of firing, one passerby Falak Niaz was also hit.

12. To prove it charge against the accused facing trial, prosecution produced 19 PWs, out of which in the instant case, besides other pieces of evidence, the most important evidence is

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that of complainant Naik Muhammad and PW Khayal Muhammad, they being eyewitnesses of occurrence claiming their presence on the spot at the time of incident witnessing the entire episode are direct evidence, therefore, I will first take up and discuss their evidence in the light of contents of murasila and first information report, which being the very initial version of the case are much relevant. As per murasila, it was at 10:10 AM, when complainant alongwith his deceased sons Lal Muhammad and Fayaz Khan and grandson Khayal Muhammad s/o Niaz Muhammad were present in the cattle market for sale/purchase of cattle, when accused facing trial alongwith absconding co-accused came there armed with firearms and started firing upon them with the intention to commit their murder as a consequence two sons of complainant i.e. Lal Muhammad and Fayaz were hit and died, one Lal Muhammad on spot while Fayaz during shifting to hospital. As a result of firing by accused, one passerby namely Falak Niaz also got hit and was injured, while complainant and his grandson Khayal Muhammad remained unhurt. Motive for the alleged occurrence disclosed in murasila and FIR is previous/old blood feud enmity.

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13. In support of above version, complainant Naik Muhammad appeared in witness box as PW-11. In his examination in chief, he has categorically stated that accused party started firing at them, which hit his two sons who died, a passerby sustained injuries while he and his grandson Khayal Muhammad luckily remained unhurt. I will first discuss

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13 APR 2017

96  
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statement of complainant with regard to different pieces of evidence available on record.

14. Firstly, it is very strange that accused party made indiscriminate firing on the complainant party which hit two sons of complainant as well as a passerby but no single bullet touched complainant and his grandson. It is also not appealing to the common sense that accused left complainant and his grandson alive so that they can later on come and depose against them.

15. Secondly, complainant (PW-11) in his examination in chief has stated that he reported the matter to police on the spot. He signed the murasila/report and his grandson thumb impressed the same. But in cross examination, he has contradicted his above statement by stating that murasila available on the file does not bear his signature. That he cannot show the signature of his grandson on the murasila.

16. Thirdly, complainant (PW-11) in his statement has categorically stated that he reported the matter to the police on the spot. Similarly, as per his version in murasila, after firing by accused, his son Lal Muhammad died on the spot while his other son was shifted to hospital by the people of cattle Mandi. Meaning thereby that at the time of lodging report to local police, his died son Lal Muhammad was lying on the spot and therefore could have been easily identified by him to police but it is very surprising that despite of complainant being present on the spot and making report to police, for identification

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purpose, nephew of complainant namely Ashraf Khan was called by police to the police station. This fact is admitted by complainant himself in his statement in the following words:-

***"PW Ashraf Khan s/o Shakir Ullah is my nephew (my brother son). It is correct that the above mentioned Ashraf Khan was called by the police to the police station for identification purpose"***

17. Not only complainant (PW-11) himself admitted the summoning of PW-7 namely Ashraf Khan for identification purpose, but said Ashraf Khan himself while appearing as PW-10 deposed as under:-

***"Deceased Lal Muhammad was my cousin and on 18/12/2014, I correctly identified his dead body before the police as well as the doctor."***

This aspect of the case makes doubtful the presence of complainant on the spot at the time of occurrence.

18. Fourthly, the factum of non-availability of the complainant at the time of occurrence is further confirmed from the fact that in his cross examination, PW-10 Ashraf Khan, further deposed as under:-

***"Dead body was lying in the police station and thereafter he left for his house. the women folk of the deceased were present and no male person was there."***

19. Fifthly, another important lacunas in prosecution story which disprove complainant version regarding his presence on the spot is that in murasila recorded at 10:10 hours, complainant (PW-11) has specifically mentioned that due to

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firing of accused, his one son Lal Muhammad was hit and died on the spot while his other son Fayaz was injured and taken to hospital, who on the way to hospital died, but on inquest report of deceased Fayaz as well as on his OPD Medical chit, time of death of deceased Fayaz is mentioned as 11:00 hours. Besides, it is not believable, as to how complainant while reporting the matter to police at 10:30 hours, got knowledge about death of Fayaz who as per inquest report died at 11:00 hours. Meaning thereby, that FIR was lodged after preliminary investigation.

20. Sixthly, another aspect of matter ~~which~~ further making the presence of alleged eyewitnesses of the occurrence i.e. complainant (PW-11) and PW Khayal Muhammad (PW-12) doubtful is their unnatural conduct at the time of incident. Admittedly, complainant Naik Muhammad is father of both the deceased while PW Khial Muhammad is their real paternal nephew but surprisingly none of them accompanied deceased Fayaz then injured, when shifting to hospital while it is a natural human reaction that whenever a person gets injured specifically a close relative, the first thing one would do is to take him to hospital so that he could be rescued but in the instant case, no such effort is made by any one of both PWs. Although hard and fast rules about the human conduct and behavior are not available yet in the light of accepted standard of human behavior, it can be safely said that in the normal course of events, the PWs ought to have accompanied the then injured Fayaz to hospital and tried to have rescued him but they instead left him at the mercy of people of locality and

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preferred to stay with dead body. Yet another interesting act on the part of complainant totally unnatural to the normal course is that in his cross examination, PW-11 (complainant) stated that after his report to the police, he was present in the cattle market but was roaming in the cattle market. Thereafter, he was taken by the police, when the dead bodies were brought back from the hospital to his home, he was also taken there. The conduct thus exhibited by the both witnesses is offensive to normal human behavior and gives support to the defence version regarding their non-presence on the spot.

21. Now coming to the ocular account of PW-12 i.e. Khayal Muhammad, the other alleged eyewitness of the occurrence. As per murasila, he is shown to be present on the spot at the time of alleged occurrence witnessing the entire episode but surprisingly his statement u/s 161 Cr.P.C. was recorded by Investigation Officer on 03/02/2015 i.e. after about two months of alleged occurrence though neither he was injured nor there was any disability on his part which prevented his statement to be recorded. This fact is not only evident from the record but PW-16, IO of the case also admitted this fact in his statement in the following words.

***"The FIR was registered on 18/12/2014, whereas I recorded the statement of PWs Falak Niaz on 03/02/2015, while statement of the PW Khayal Muhammad was also recorded on 03/02/2015"***

The witness further stated that:

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13 APR 2017 20

(Examiner)

Session Court Peshawar

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*"It is correct that PW Khayal Muhammad was not present on the spot at the time of preparation of site plan i.e. why his statement was not recorded by me on the day when I have prepared site plan Ex-PB on 18/12/2014 i.e. the date of occurrence".*

22. In a case of "Syed Saeed Muhammad Shah Vs The State" reported in 1993 SCMR 550, the Honorable Apex Court, while dealing with the point, has observed as under:

**--S.161---Statement recorded by the police after delay and without explanation are to be ruled out of consideration".**

From the perusal of above case law, it is clear that if the police did not record the statement of a witness with in time and delay is caused in recording such statement, then a reasonable explanation is required to be furnished by the prosecution for such delay. If such reasonable explanation is furnished, then the evidence of a witness can be relied upon, if not, then such delay affects the veracity of a witness and the evidence is to be disbelieved and discarded. In the instant case no explanation, what to say of a plausible explanation is brought on record by prosecution for such long delay of two months in recording statement of a material witness, without showing any inability on his part to record his statement, thus strengthening further the stance of defence that said witness was not present on the spot at the time of alleged occurrence

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(Exhibit 2)

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and for that reason his statement could not be recorded on the same day of occurrence or immediately thereafter.

23. Besides above major discrepancies in stance of P:W-11 and PW-12, there are improvements in their statements, which further makes their statements doubtful as in murasila and FIR, except complainant and PW Khayal Muhammad, nowhere the presence of any other relative of the complainant party on the spot is shown but while recording their statements, both complainant (PW-11) and Khayal Muhammad (PW-12) in their statements have introduced presence of their some relatives on the spot at the time of occurrence, however, neither the names of these witnesses were mentioned in challan form in the column of witnesses nor any application ever came from complainant side to produce them as witness.

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24. Coming to the circumstantial pieces of evidence, usually and of repeatedly, as the proverb goes, men may lie but the circumstances do not. This phenomenon has exhibited itself with such a marked intensity that every time that it was thought over, it became more and more thought provoking.

To appreciate the unavoidable, one should refer to the post mortem report of both the deceased Lal Muhammad and Fayaz indicating following injuries of deceased Lal Muhammad

**Injuries of deceased Lal Muhammad:**

1. FA entry wound right back chest, 1 x 1 cm in size, 05 cm from midline and 17 cm above costal margin. *[Handwritten mark]*

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2. FA entry wound right back abdomen, 1x1 cm in size, 14 cm from midline and 10 cm below the costal margin.
3. FA exit wound on right front chest 1x1 cm in size, 03 cm from midline and 13 cm below the clavicle.
4. FA exit wound on left lower abdomen, 2x2 cm in size.
5. FA entry wound right front thigh, 1x1 in size, 6 cm below the inguinal ligament and 32 cm above the knee joint. Bullet recovered from the back of right thigh.

**Injuries of deceased Fayaz:**

1. FA entry wound right back chest, 1x1 cm in size, 04 cm from midline and 06 cm above costal margin.
2. FA entry wound on right back chest, 1x1 cm in size, 08 cm from midline, and 1 cm above the costal margin.
3. FA entry wound on left back chest, 0.7x0.7 cm in size, 06 cm from midline, and 08 cm above the costal margin.
4. FA entry wound on left buttock, 0.7x0.7 cm in size, 10 cm below the iliac crest and 1 cm from midline.
5. FA entry wound on left outer thigh, 1x1 cm in size, 03 cm below the buttock fold.
6. FA entry wound on left upper front thigh, 2x1 cm in size, and 03 cm below the iliac crest.
7. FA exit wound on inner aspect of left thigh, 1x1 cm in size, 05 cm below buttock fold.
8. FA exit wound on right front chest 2x2 cm in size, 10 cm below the clavicle and 10 cm from midline.
9. FA exit wound on right front chest, 2 x1 cm in size, 03 cm above the nipple and 08 cm from midline.
10. FA exit wound on right front abdomen 1x1 cm in size, 02 cm below the costal margin and 03 cm from the midline.
11. FA entry wound on left back chest, 02 cm below scapula. *R*

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12. FA exit wound on left front chest, 2x2 cm in size, 06 cm below the nipple and 09 cm from midline.

13. FA entry wound on left front foot at the ankle joint.

14. FA exit on left foot inner aspect.

25. Perusal of above injuries would transpire that almost all entry wounds on the bodies of both the deceased were on their back while exit wound were on front side. Complainant (PW-11) in his cross examination specifically stated that firing was made at his self from the main Bara road and fires were made from his front side. In site plan Ex-PB, deceased are shown to be standing opposite to accused party and adjacent to the complainant. Meaning thereby that if firing was made by accused party from main Bara road on the complainant party facing them in front, both the deceased should have received entry wound on front part of the body but as per post mortem reports, both deceased received bullet injuries from back side. This fact makes another dent in prosecution version regarding presence of complainant on the spot at the time of incident.

26. So far as charge u/s 324 PPC is concerned, the victim Falak Niaz was produced by the prosecution as PW-7 to support charge but neither in his examination in chief nor in his cross examination, he charged the accused facing trial for injuries on his person rather categorically stated that he has not seen anybody ~~were~~ while firing. He do not charge the accused facing trial for the commission of offence because he has not seen anyone at the time of occurrence, thus, charge against the accused facing trial u/s 324 PPC is not proved.

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27. In view of the above discussion, this court is of firm view that both the alleged eyewitness have badly failed to establish their presence on the spot and to prove the occurrence in the mode and manner as alleged in the FIR. The peculiar facts and circumstances of the case strongly suggest that none of the two PWs has witnessed the occurrence, so their testimony which otherwise is suffering from material contradictions and discrepancies getting no corroboration from the site plan, medical evidence and other circumstances of the incident, cannot be believed and relied upon for recording conviction.

28. In the instant case, heavy responsibility rested upon the shoulders of complainant and prosecution to prove their case against the accused facing trial by producing coherent, independent, reliable and confidence-inspiring evidence but they have miserably failed to prove the charges against the accused facing trial beyond reasonable shadow of doubt, and it is well settled principle of law that it is not necessary to have many facts for disbelieving the story of the prosecution but even a single slightest circumstance creating reasonable doubt in the prudent mind makes the accused entitled to the benefit of doubt, not as a matter of grace but as a matter of right; while in the instant case, prosecution has totally failed to establish its charge against the accused facing trial, rather whole prosecution case is full of doubts, what to say of a single slightest doubt. Resultantly, all the accused facing trial namely Maqbool Shah and Rahat Shah both sons of Said Muhammad r/o Sheikh Muhammadi, Peshawar are acquitted from the

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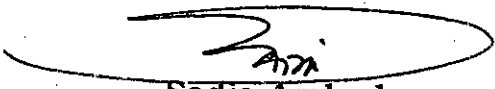
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charges levelled against them in the instant case. They are in custody, they be released forthwith if not required in any other case.

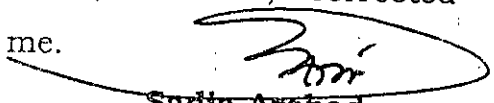
29. So far as the case of absconding co-accused Sultan Shah, Murad and Akhtar is concerned, they have already been proceeded against u/s 512 Cr.PC vide order dated 04/06/2015, and prosecution was allowed to produce its evidence against the accused in their absence. From the available record, a prima facie case exists against accused Sultan Shah s/o Said Muhammad, Murad and Akhtar sons of Maqbool Shah, hence, they are declared as proclaimed offenders, their names be entered in the register of POs and perpetual non-bailable warrant of arrest be issued against them. Copy of this order be sent to District Public Prosecutor, Peshawar for necessary action.

30. Case property be kept intact till arrest of absconding co-accused and conclusion of trial against them. Police record be returned alongwith copy of this Judgment. File be consigned to record room after compilation and completion.

**Announced**  
20/03/2017

  
Sadia Arshad,  
Additional Sessions Judge-VII,  
Peshawar  
**CERTIFICATE**


Certified that this judgment consists **twenty six** pages. Each page has been read, checked, corrected wherever necessary and signed by me.

  
Sadia Arshad,  
Additional Sessions Judge-VII,  
Peshawar

CERTIFIED TO BE TRUE COPY

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15 APR 2017

No:	5185
Dated of Application	13-4-17
Name of Application	Old Self
Word	10400/26
Fee	
Signature of Collector	
Dated of Preparation	13-4-17
	13-4-17

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پہل دربارہ بنفالی  
حیدرآباد عالی

۹۲-۹۶/۲۸ - ۹۷ - ۹۸  
۹۱۶۱۲۰۱۵

۳۰۲ - ۳۰۸  
۹۸۳۲۰/۱۴۸  
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خط عالی - یہ دہلی سرحد حکم مندرجہ عنوان گذارش کے مطابق  
خط لے لے لیں حالت سے

۱) یہ کہ سائل ٹریفک پولیس سے اجازت تھا . جس وقت وہ مندرجہ عنوان  
خدمتہ راج رہیں گے تو

۲) یہ کہ سائل کو بے گناہ . خدمتہ عنوان بالا میں ملوث کیا گیا  
حکمی وجہ سے سائل کو اس وجہ سے براہ قرار اختیار کیا گیا

۳) یہ کہ سائل بے گناہ تھا لیکن سائل کی بات سے کوئی بھی گنہگار  
کو تیار نہیں تھا .

۴) یہ کہ سائل نے تقریباً ۵ ماہ جوڈیشل ریٹائرمنٹ کے دوران سے  
قبل میں گرا .

۵) یہ کہ سائل کے خدمتہ کی سماعت کے دوران کوئی بیاد  
اور شہادت گنہگار ہفتہ مشن سے نہیں آسکا .

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6) یہ کہ سال 1977ء میں فروری میں آئے گئے گناہ جیسے  
مداخلت میں 1/5 رہتا۔

7) یہ کہ نہ تو میں یا میرے بھائی نے قتل کیا  
اور نہ ہی بلوڑا کوئی ان کے ساتھ دیکھی تھی

8) یہ کہ سال 1977ء میں مقدمہ کی بناء پر حکومت سے  
علحدہ کیا گیا جائے تاکہ قانون کو ملحوظ خاطر رکھتے  
ہوئے یہ خاستگی کے حکم کو لکھ کر  
سال کو بحال و نیا جاری

9) یہ کہ سال 1977ء میں ایک غریب آدمی نے سال 1977ء کو عورتوں کو اور لڑکیوں کو  
مذمت ملے تھی اور لڑکیوں کو مقدمہ کے اختتام تک  
7-2 مذمت بھی تھی۔

حکم کی کاپی ریفرن غور و خوض میں لکھا ہے  
استدعا میں غور و خوض کے حکم یہ فائل کو  
ملکیت و دیگر بحال کرنے کا حکم صادر و جاری ہے

راحت شاہ شریک  
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راحت شاہ

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راحت شاہ

Office of the P.P. A.P. Paslana  
(Secret Branch)  
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18-6-17

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موردیہ نورش حکمہ سائل 2009 کا جواب شدہ ہے جس کے اپنی ملاقات اور سائل کو جواب دینا  
 ضلعی دہلی ایسڈ ایس سے بجایا ہے یہ کہ ایک سو سائل نمائندگی کے لیے جو نمائندگی سائل کو  
 صواب سائل کے خلاف قہارہ سریندر میں کسی نے رقم 302 کے تحت درخواست کی ہے اس سائل کو  
 علم ہی تھا اور ہی اس وقت سے کوئی واسطہ سائل کو اس وقت کی دوسری کی وجہ سے 2014 سے  
 شکہ ہذا سے "دسمن" کیا گیا سائل کو پورے اہلکاروں نے شامل تفتیش کر کے متعلقہ عدالت میں جہاں میں  
 سماعت جاری تھی پیش کیا مگر سائل کے بے قصور بے گناہ اور قلم نابت نہ ہونے پر سب سے پہلے ہی سب  
 صاحبہ محترمہ سیدہ ارشد ہاشمی نے عدم ثبوت کی بنا پر بڑی تڑپ سے انکشافات سے گزرا ہے اب سائل  
 کیا ماحول سے موربانہ ابتدا کرتا ہے کہ سائل ایک استریٹ گھرانے سے تعلق رکھنے والا ہے اور ان کا  
 کنبیل ہے اس کو گری کے علاوہ سائل کا پورا کوئی ذیلی سائل نہیں ہے سائل تفتیش میں ہی عدم ثبوت  
 نہیں پورا و قہر سے سائل کا کوئی واسطہ فرق نہیں کہیں کی پیروی کرنے والی عدالت کے سائل کو عدم  
 ثبوت ہونے پر غصا کر کے بڑی کیا ہے سائل کی استدعا ہے کہ دوبارہ شکہ زلیں ہو بڑی پر خیال کر کے  
 حکم صادر فرمائیں سائل تاحیات دعا کر رہا ہے۔

عین خورشیدی

الحاضر

السرور اجیت شاہ / 3759  
 363 9835 336 0 / 618T / 3754 / 24  
 3759 / 618T

CPC  
 Put up Case  
 24/11/20

ATTESTED



*[Handwritten initials]*

**OFFICE OF THE  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR**

Phone No. 091-9210989  
Fax No. 091-9212597

*[Handwritten initials]*

ORDER

*H*  
*39*

This order will dispose off departmental appeal preferred by ex-Driver Constable Rahat Shah No. 3759/618-T who was awarded the major punishment of Dismissal from service under O.R 1975 vide No. 92-96/PA dated 9.7.2015 by SSP-Traffic, Peshawar.

2. Short facts leading to the instant appeal are that appellant while posted at Traffic Unit Peshawar was proceeded against departmentally on the charge of his involvement in criminal case FIR No. 650 dated 18.12.14 u/s 302/324/148/149 PPC PS Sarband and also deliberately absented himself from duty w.e.f 18.12.2014 till his dismissal from service i.e 9.7.2015 (6-months & 21-days).

3. Proper departmental proceedings were initiated against him and Mr. Raheem Hussain, DSP-Traffic Cantt. was appointed as the E.O. who in his findings mentioned that due to involvement in the murder of two persons and attempted murder of others, he has been declared Proclaimed offender. He also absented from official duty from 18.12.2014. During enquiry he found him guilty hence recommended ex-parte action against him. On receipt of the findings of the E.O., the SSP-Traffic, Peshawar awarded him the above major punishment.

4. The appellant was called in O.R. on 2.08.2017, and heard in person. The enquiry papers were perused in detail. He was provided the opportunity to defend himself but he failed to offer any plausible explanation in his favour. The allegations levelled against him stand proved. The appeal is also time barred for 1-year and 8-months. There is no need to interfere in the order passed by SSP-Traffic, Peshawar. The appeal is, therefore, **rejected/filed**.

*[Handwritten signature]*

(MUHAMMAD TAHIR) PSP  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

No. *1039-1105* /PA, dated Peshawar the *2/8/* 2017

Copies for inf and n/a to the:-

- 1/ SSP-Traffic, Peshawar.
- 2/ SSP-QRs: Peshawar.
- 3/ I/O ASI/CRC along with S.Roll for making necessary entry in his S.Roll.
- 4/ FM along with FM
- 5/ General concerned.

**ATTESTED**

*[Handwritten signature]*



Office of the Registrar  
 No. 2457/17  
 Dated 4/8/17

ایس ڈی بارہ بحالی از قلم  
 7-9 سندھ 92-96/PA  
 9/7/2015

رجسٹریشن (40) I  
 رجسٹرار  
 Pls proceed

302  
 524/148  
 149

خطی عالی۔ یہ ایس بی مختلف حکم مندرجہ عنوان گذارش پکڑنے کے  
 حکم لے لوں حالت سے

یہ کہ سائل ٹرنک پولس میں تحینات تھا جس وقت مندرجہ عنوان  
 مقدمہ رجسٹرڈ ہوا

یہ کہ سائل کو بے گناہ مقدمہ عنوان بلا میں ملوث کیا گیا  
 حکمی وجہ سے سائل کو اس وجہ پر براہ فرار اختیار کرنا پڑا

یہ کہ سائل بے گناہ تھا۔ لیکن پھانسی کی بات سے کوئی بھی کان دھرنے  
 کو تیار نہیں تھا۔

یہ کہ سائل نے تقریباً (8) ماہ جوڈیشل ریمانڈ کی حالت سے  
 جیل میں گزارے۔

ATTESTED

یہ کہ سائل کے مقدمہ کی سماعت کے دوران کوئی شہادت  
 اور ثبوت گنہگار کے مقدمہ میں نہ آسکا۔

7) یہ کہ سائل اگر فرار نہ میرا تو رہے گا، جس کی  
سدخول میں ڈرا رہتا۔

8) یہ کہ نہ تو میں یا میرے بھائی نے قتل کیا  
اور نہ ہی ملو رہا کوئی ان کے ساتھ رہتی تھی

8) یہ کہ سائل کو اس مقدمہ کی بناء پر حکم سے  
علحدہ کیا گیا جا رہا ہے تاہم قانون کے مطابق خاطر رکھتے  
ہوئے یہ خاصگی کے حکم کو لکھتے کر کے  
سائل کو بحال و نایا جا رہا

9) یہ کہ سائل ایک غریب آدمی ہے سائل کو عورتی عورت اور لڑکیوں کے ساتھ

عدالت عدالت تھی اور لڑکیوں کے مقدمہ کے اختتام تک  
7-2 عدالت بہتی تھی

حکم کی کاپی شریف منظور و حوض شامل کیجاتی ہے

استدعا اس پر عبور و حکم یہ خاصگی کو  
ملک طرف و نہ کر بحال کرنے کا حکم صادر و نایا جا رہا

10) یہ کہ سائل نے cepto صاحب کو کھنڈ درخواست دی جو  
الغیر نے Rejected کیا (کاپی نمبر اولف 18)

17/8/17

ATTESTED  
ایک ٹالعدار راجت شاہ  
تھانہ لہرہ سید  
618  
راجت شاہ



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
PESHAWAR.

No. SI 6101 /17, dated Peshawar the 25/09/2017. (792)

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by **Ex-Driver FC Rahat Shah No. 3759/618-T**. The appellant was dismissed from service w.e.f 18.12.2014 by SSP/Traffic, Peshawar vide order Ends: No. 92-96/PA, dated 09.07.2015 on the allegation of involvement in criminal case FIR No. 650 dated 18.12.2014 u/s 302/324/148/149 PPC Police Station Sarband and absence from duty for 06 months and 22 days.


His appeal was rejected / filed by Capital City Police Officer, Peshawar vide order Ends: No. 1099-1105/PA, dated 02.08.2017.

Meeting of Appellate Board was held on 14.09.2017 wherein petitioner was heard in person. During hearing petitioner contended that he was innocent and he was acquitted from the charge by the court of Additional Session Judge-VII, Peshawar.

Perusal of record reveals that petitioner was dismissed from service on the charge of involvement in criminal case FIR No. 650 dated 18.12.2014 u/s 302/324/148/149 PPC Police Station Sarband and also absence from duty for a period of 06 months and 22 days.

During hearing petitioner failed to advance plausible explanation in rebuttal of the charge. Therefore, the Board decided that his petition is hereby rejected.

**This order is issued with the approval by the Competent Authority.**

  
(ARIF SHAHBAZ KHAN)  
AIG/Establishment,  
For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

No. SI 02-08 /17,

Copy of the above is forwarded to the:

- 1. Capital City Police Officer, Peshawar.
- 2. Senior Supdt: of Police, Traffic, Peshawar.
- 3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
- 4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
- 5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
- 6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
- 7. Office Supdt: E-IV CPO Peshawar.

**ATTESTED**  


**BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No. 1109/2017

Rahat Shah Ex-Driver Constable No.3759/618 CCP, Peshawar.....Appellant

**Versus**

- 1- Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
- 2- Capital City Police Officer, Peshawar.
- 3- Senior Superintendent of Police Traffic, Peshawar.....Respondents

**Reply on behalf of Respondents No. 1, 2&3.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS.**

- 1- That the appellant has not come with clean hands to this Hon'ble Tribunal.
- 2- That the petition is not maintainable due to mis-joinder and non-joinder of necessary parties.
- 3- That the appeal is time barred.
- 4- That the appellant concealed material facts from the Hon'able Tribunal.
- 5- That the appellant is estopped by his own conduct.
- 6- That the appellant has got no cause of action/locus standi.

**FACTS:-**

- 1- Para No.1 pertains to record, hence needs no comments.
- 2- Para No.2 is incorrect and denied. Infact the appellant while posted at Traffic Unit Peshawar, was proceeded departmentally on the charge of his involvement in criminal case vide FIR No. 650 dated 18.12.2014 u/s 302/324/148/149 PPC PS Sarband and also deliberately absented himself from his lawful duty w.e.f 18.12.2014 to 09.07.2015 (Total 06 Months and 21 Days). Proper departmental proceedings were initiated against him, and he was issued charge sheet, statement of allegations. DSP/Traffic Cantt: was appointed as the enquiry officer. The enquiry officer mentioned in his finding that due to involvement in the murder of two persons and attempted murder of others, he has been declared proclaimed offender. During enquiry he found him guilty. On receipt of the findings of the enquiry officer, the SSP/Traffic awarded him major punishment of dismissal from service. ( copy of charge sheet, summary of allegations and enquiry report annexed as A,B,C)
- 3- Para No.3 is incorrect. The appellant was issued charge sheet and summary of allegation on the charges of involvement in a criminal case FIR No. 650 dated 18.12.2014 u/s 302/324/148/149 PPC PS Sarband and also remained absent from his lawful duty w.e.f 18.12.2014 to 09.07.2015.

- 4- Para No.4 is incorrect. The appellant was properly associated with the enquiry proceedings. He was called time and again to defend himself, but he did not turn up. After fulfilling all codal formalities he was recommended for major punishment.
- 5- Para No.5 is incorrect. The appellant was called and heard in person in Orderly Room on 02.08.2017. He was provided full opportunity to defend himself but he failed to defend himself. The criminal proceedings and departmental proceedings are two different entities and can run side by side. After fulfilling all codal formalities, he was awarded major punishment.
- 6- Para No.6 is pertains to court, hence needs no comments.
- 7- Para No.7 is incorrect. The appellant filed departmental appeal which after due consideration was filed/rejected on the grounds of time barred for about 01 Year and 08 Months.
- 8- Para No.8 incorrect. The appellant filed review petition before the appellate authority, which was also filed/reject because the charge against him were stand proved.
- 9- That appeal of appellant being devoid of merits may kindly be dismissed of the following grounds.

**GROUND:-**

- A- Incorrect. The punishment orders are in accordance with law/rules and liable to be upheld.
- B- Incorrect. The punishment orders are in per the law/rules. The appellant found guilty in the charges leveled against him.
- C- Incorrect. The departmental and criminal proceedings are two different entities and can run side by side.
- D- Para D is incorrect. Appellant was proceeded departmentally on the charge of his deliberate absence from duty w.e.f 18.12.2014 to 09.07.2015 (Total 06 Months and 21 Days)during enquiry it was surfaced that appellant after committing double murder, was charged in a criminal case vided FIR No. 650 dated 18.12.2014 u/s 302/324/148/149 PPC PS Sarband. Appellant had gone into hiding in the said case and after completion of proclamation proceedings appellant was declared as PO.
- E- Incorrect. The appellant failed to point out any plausible explanation. The allegations against him were stand proved; therefore his appeals were filed/rejected.
- F- Incorrect. The appellant provided full opportunity of defence, but he failed. The appellant was called and heard in person in Orderly Room on 02.08.2017, but he could not prove himself innocent.
- G- Incorrect. Proper departmental enquiry was conducted against him. After fulfilling all codal formalities he was awarded major punishment of dismissal from service.
- H- Incorrect. The appellant was treated as per law/rules and liable to be upheld.
- I- Incorrect. The punishment order is in accordance with law/rules.

- J- Incorrect. The allegations/charges were reported proved beyond any shadow of doubt.
- K- Incorrect. The appellant availed the opportunities of defence. He was also heard in person in Orderly Room on 02.08.2017, but he failed to defend himself.
- L- That respondent may also be allowed to advance any additional ground at the time of hearing of the appeal.

**PRAYERS:-**

In view of the above, and keeping in view the gravity of slackness, willful negligence and misconduct of appellant, it is prayed that his appeal being devoid of any legal force may kindly be dismissed.



**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**



**Capital City Police Officer,  
Peshawar.**



**Senior Superintendent of Police,  
Traffic, Peshawar.**

**BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No. 1109/2017

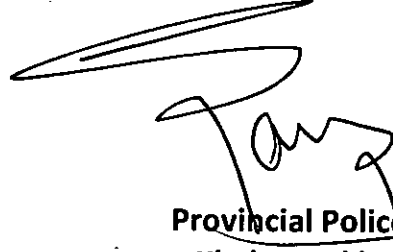
Rahat Shah Ex-Driver Constable No.3759/618 CCP, Peshawar.....Appellant .

**Versus**

- 1- Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
- 2- Capital City Police Officer, Peshawar.
- 3- Senior Superintendent of Police Traffic, Peshawar.....Respondents.

**AFFIDAVIT**

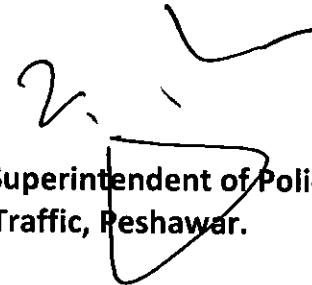
We respondents No. 1 ,2 and 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.



**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**



**Capital City Police Officer,  
Peshawar.**



**Senior Superintendent of Police,  
Traffic, Peshawar.**

**BEFORE KPK SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 1109/2017**

Rahat Shah

Vs

Police Deptt.

-----  
**REJOINDER ON BEHALF OF APPELLANT**  
-----

**PRELIMINARY OBJECTIONS:**

(1-6) All objections raised by respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

1. Admitted correct. Fact pertaining to record available with respondent's department.
2. Incorrect, hence denied. Appellant was departmentally proceeded without satisfying codal procedure and dismissed from service without affording proper opportunity of self defence. Awarding major penalty without associating the victim party to enquiry made the proceedings defective, illegal and unlawful.
3. Correct to the extent that appellant was issued charge sheet and summary of allegations on the charges of involvement in criminal case FIR No. 650 dated 18.12.2014 u/s 302/324/148/149 PPC PS Sarband while absentee was unwilling for being behind a bar, hence denied.
4. Incorrect hence denied. While Para-4 of appeal is correct.
5. Incorrect, hence denied. Nothing on record reveals that appellant was afforded opportunity to be heard in person and to defend himself. Moreover, appellant at the time of departmental proceedings was



behind a bar which fully supports appellant's version of being condemned unheard.

6. Admitted correct. Fact pertaining to record available with respondent's department.
7. Incorrect hence denied. Appellant filed a departmental appeal after getting release from jail which is to be considered well within a time in the light of dictum by Superior Courts.
8. Incorrect hence denied. Departmental appeal can be rejected by appellate authority but must be with solid and cogent reasons.
9. That the appellant filed instant appeal to be accepted in favour of appellant on the grounds inter alia.

**GROUND:**


- A. Incorrect. While Para A of appeal is correct.
- B. Incorrect hence denied. Honourable acquittal by Additional Session Judge-VII nullifies para-B of reply.
- C. Incorrect. Departmental proceedings can be initiated on the basis of criminal proceedings only and can not be separated from each other. Moreover, departmental proceedings are initiated in violation to the express provision of CSR-194.
- D. Incorrect, hence denied. Appellant's absent was not deliberate but for being behind a bar in a criminal case vide FIR No. 650 dated 18.12.2014.
- E. Incorrect, hence denied. While para-E of appeal is correct.
- F. Incorrect. Nothing on record reveals that appellant was afforded opportunity to be heard in person and to defend himself. Moreover, appellant at the time of departmental proceedings was behind a bar which fully supports appellant's version of being condemned unheard.
- G. Incorrect, hence denied. While para-G of appeal is correct.
- H. Incorrect, hence denied. While para-H of appeal is correct.
- I. Incorrect, hence denied. While para-I of appeal is correct.

- J. Incorrect, hence denied. While para-J of appeal is correct.
- K. Incorrect. Nothing on record reveals that appellant was afforded opportunity to be heard in person and to defend himself. Moreover, appellant at the time of departmental proceedings was behind a bar which fully supports appellant's version of being condemned unheard.
- L. Legal.

It is, therefore, most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

**APPELLANT**

**THROUGH**



**M. ASIF YOUSAFZAI**  
**(Advocate Supreme Court)**



**ASAD MAHMOOD**  
**(Advocate High Court)**

**AFFIDAVIT**

I, Rahat Shah, solemnly affirm and declare that contents of rejoinder are correct and true to the best of my knowledge and belief and nothing have been concealed from this Honourable tribunal.



**DEPONENT**

16/4/18  
Javed Muhammad  
Advocate High Court  
Distt. Court Peshawar.