


FORM OF ORDER SHEET

Court of _____

Appeal No. 2208/2023

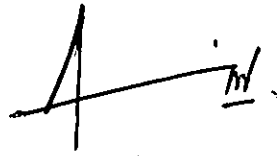
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/10/2023	<p>The appeal of Syed Dilbar Shah resubmitted today by Mr. M. Asif Yousafzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshai is given to the counsel for the appellant.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

The appeal of Syed Dilbar Shah I z-Principals of the appeal filed on 13.10.2023 is incomplete on the following grounds and is returned to the appellant for completion and resubmission within 15 days:

1. Copy of judgment of PHC mentioned in para 3 of the appeal is not attached with the appeal be placed on Annexures A, B, D & G of the appeal.

No. 3414/18.

Dt. 16/10/2023.



M. ASIF YOUSAFZAI
ADVOCATE
HIGH COURT PESHAWAR
PESHAWAR

M. Asif Yousafzai Adv.
High Court Peshawar.

① objection 1 is cleared & fresh copy are attached.

② Further objections are also cleared by attaching the fresh better copy

HK.

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

Appeal No. 2208 /2023

Syed Dilbar Shah **VERSUS** Education Department

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APPELLANT

Syed Dilbar Shah

Through

M. Asif Yousafzai

Advocate, Supreme Court of
Pakistan

Syed Noman Ali Bukhari

Advocate, High Court

&

Hilal Zubair

Advocate, Peshawar

Room No. FR-8, 4th Floor,

Bilour Plaza, Peshawar Cantt

Cell No: 0333-910324

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 2208 /2023

Syed Dilbar Shah, Ex principle (BS -19),
GHS Tarnab Farms Peshawar.

APPELLANT

VERSUS

1. Government of KP through Chief Secretary Civil Secretariat Peshawar.
2. The Chief Secretary Government of KP, Civil Secretariat Peshawar.
3. The Secretary to Govt of KP (E&SE) Deptt: Civil Secretariat Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICES TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 05.04.2016 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE BY INCOMPETENT AUTHORITY AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 05.04.2016 MAY PLEASE BE SET ASIDE AND MAJOR PENALTY OF REMOVAL FROM SERVICE MAY BE CONVERTED IN TO MAJOR PENALTY OF COMPULSORY RETIREMENT KEEPING IN VIEW LONG SERVICE CAREER OF APPELLANT OF 35 YEARS. 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 initially joined the respondent department dated on 08.03.1981 and was promoted as subject specialist (BPS-17) on 30.05.1992 and performing his duty with the entire satisfaction of his superior, unimpeachable reputation, and spot less integrity, never give any chance of complaint, even a minor complaint to any of his superior. He has an apolitical career and one of the cleanest track-record amongst the rank of Government servant in the department of education, excellent record of service through out his career. The appellant during this time served the department with complete dedication and utmost honesty. The service record of the appellant bears witness to the professionalism of the appellant. During this time period the important assignments given to the appellant, which the appellant has always ensure to complete, that appellant was transfer through notification dated 08.03.2003 from GHSS Pir saddi mardan to Bannu as Distict officer, and appellant give his arrival report on dated 10.03.2003. **Copy of order dated 08.03.1981, notification dated 30.05.1992, and transfer order dated 10.03.2003 attached as annexure-A.**
2. That on dated 03.11.2005 a fake FIR was logged against the appellant in which the appellant was charged under the section 302, 324/34 of PPC. **Copy of the FIR is attached as annexure-B.**
3. That on order dated 24.01.2006, the section officer suspended the appellant from 03-11-2005, by giving reason that the appellant being involved in murder case. **Copy of the notification dated 24.01.2006 is attached as annexure-C.**
4. That the appellant was acquitted from the charges by the Session Court of the Bannu vide judgment dated 22.01.2010. After acquittal from the charges vide notification dated 31.08.2010, the competent authority reinstated the appellant into service from the date of his suspension, while the absence period treated as leave without pay. **Copy of the judgment dated 22.01.2010 and order dated 31.08.2010 is attached as annexed D & E.**
5. That on 24.04.2014 a notification was issued in which the appellant was promoted from (BPS-18) to (BPS-19) and was also transfer from Bannu to GHS Tarnab farm Peshawar. **copy of the notification order dated 24.04.2014 attached as annexure-F**

while the appellant file appeal before the Honorable Supreme Court against the judgment of the Honorable High Court Bannu but the Honorable Supreme Court maintained the judgment of High Court with certain direction and disposed the appeal of the appellant. **Copy of the judgment and Supreme Court judgment are attached as annexure-G.**

7. That on dated 19.04.2023 the appellant released from jail and appellant approached to his department and department informed appellant that he was removed from service vide order dated 05.04.2016 by incompetent authority without any notice, on receiving his removal order the appellant file representation before the honorable chief minister within month which was not responded by the competent authority in specified period given by the law, that upon feeling aggrieved now the appellant comes to this Honorable Tribunal on the following grounds amongst the others: **Copy of the impugned order and departmental appeal are attached as annexure-H & I**

GROUND:

- A) That the impugned order dated 05.04.2016 and not taking any action on the department appeal, is against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That no proper procedure has been followed before the awarding the major penalty of "Removal from service", the whole proceedings are conducted in violation of the 'END RULE 2011' and thus not tenable in the eye of the law.
- C) That no regular inquiry has been conducted and there is no order in black & white form for dispensing with regular inquiry and without passing an order regarding dispensing with inquiry awarded a major penalty to the appellant which is violation of the express provision of law and dictums laid down by the superior courts.
- D) That, there is no charge sheet or statement of allegation was issued to the appellant which is necessary under END RULE 2011.
- E) That the appellant has 35 years service with good record at his credit and the impugned order has been passed so harsh. So keeping in view the long service career of the appellant the major penalty of removal from service may be converted into the major penalty of the compulsory retirement.
- F) That the whole actions of the authority and the impugned order dated 05.04.2016 is one sided in violation of fair principle of natural justice, law and rules.


- G) That no show cause notice was issued before passing penalty order which is against the law and rules. And also against the sprit of article 10 (fair trial) .
- H) That appellant has not been treated according to law and rules.
- I) That the appellant has been condemned unheard and has not been treated according to law and rules.
- J) That the impugned order was passed by the incompetent authority which is corrum non judice and void as per judgment of the Supreme Court of Pakistan reported as 2014 SCMR 1189 and also against the sprit of judgment of Honorable Supreme Court (22 PLC (SC) 659) . That competent authority will make order and also sign the impugned order.
- K) That the appellant has been condemned unheard in violation of Article 10-A of the Constitution of Islamic republic of Pakistan and in violation of maxim "Audi Alterum Partum" and has not been treated according to law and rules. That according to reported judgment cited as *2019 CLC 1750* stated that Audi Alterum Partum" shall be read as part and parcel of the every statute. The same principle held in the Superior Court judgments cited as 2016 SCMR 943, 2010 SCMR 1554 and 2020 PLC(es) 67.
- L) That the appellant have not been treated in accordance with law hence the appellant right secured and guaranteed under the law are badly violated.
- M) That according to Federal Shariyat court Judgment cited as *PLD 1989 FSC 39* the show cause notice is must before taking any adverse action, non-issuance of show cause notice is against the injunction of Islam. Hence the impugned order is liable to be set-aside.
- N) That the show cause is the demand of natural justice and also necessary for fair trial and also necessary in light of injunction of Quran and Sunnah but show cause was not given to the appellant. So, fair trail denied to the appellant which is also violation of Article 10-A of the constitution. Further it is added that according to reported judgment cited as *1997 PLD page 617* stated that every action against natural justice treated to be void and unlawful. Hence impugned order is liable to be set-aside. The natural justice should be considered as part and parcel of every statute according to superior court judgment cited as 2017 PLD 173 and 1990 PLC cs 727.

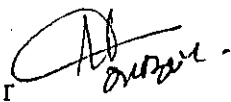
- O) That in light of judgment of Supreme court 2010 PLC (sc) 695 that no limitation will be consider if the appeal of the appellant in time after released from jail .
- P) That no show cause notice was issued before taking adverse action which is violation of rule *Rule-5(a) Read with Rules -7* in case inquiry was not necessary and *Rule-14(b) of the E&D Rules 2011*, in case where regular inquiry is necessary. Which were totally ignored before taking adverse action. The same principle held in the Superior Court judgments cited as 1987 SCMR 1562, 2019 PLC cs 811, 2008 PLC cs 921 and 209 SCMR 605.
- Q) That the appellant has not been treated under the proper law and rules, therefore, the impugned order is liable to be set aside on this score alone.
- R) That the in the service appeals NO 872/2014 and 898/2014, in same circumstances the Hon'able Tribunal kind enough to accept the appeal and the major penalty of Dismissal from service was converted in to the major penalty of compulsory retirement. So the appellant is entitled to the same relief.
- S) That it is totally against the sprite of the article 13 of constitution of Islamic republic of Pakistan that it comes in the circle of double jeopardy.
- T) That the penalty of dismissal from service is very harsh which was passed in violation of law and rules, therefore, the same is not sustainable in the eyes of law.
- U) 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 maybe accepted as prayed for.


APPELLANT
Syed Dilbar shah

THROUGH:


(SYED NOMAN ALI BUKAHRI)
ADVOCATE HIGH COURT.


Hilal zubair

ADVOCATE PESHAWAR.

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023

Syed Dilbar Shah

V/S

Education Deptt:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023

Syed Dilbar Shah

V/S

Education Deptt:

AFFIDAVIT

I, Syed Dilbar Shah Ex-Principal BPS-19 GHS Tamab Farm Peshawar (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.

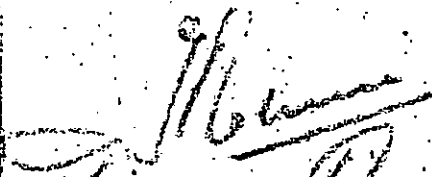

DEPONENT

Syed Dilbar Shah

A. (9)

Charge Report


Verified that Mr. Mohammad Bilber Shah
S/o Mohammad Sarwar F. Sc. Candidate
handed over the charge of S.V. vacant post
here at Govt Middle School Angori (F.R
Kurram Agency on 9.3.81 Fore Noon,
vide Director of Edu FATA endst No. 1629-
A-1 dated Peshawar the 9.3.1981.


Sign of Relieved
Govt Servant

Mohd. Bilber Shah
Sign of Relieving
Govt Servant

No. 190 dated 20.3.01

Forwarded to the Director of Edu FATA
M. W. F. P. Peshawar.


20/3/01
Govt. Middle School
Govt (Kurram Agency)

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Charge Sheet

Certified that Mr. Mohammad Dilbar Shah S/o Muhammad Sarwar F.SC candidate handed over the charge of S.V vacant post here at Government Middle School Amgori (F.R) Kurram Agency on 09.03.1981 For a Noon vide director of Education FATA Endst No. 1629-31 A, dated Peshawar the 08.03.1981.

Sign of receiving
Govt Servant

Dilbar Shah
Sign of receiving
Government Servant

No. 190 dated 10.03.01.

Forwarded to the director of Education FATA NWFP Peshawar.

10.03.01

NOTIFICATION.

NO. SO(S)5-6/91/I. The Governor NWFP on the recommendation of the NWFP, Public Service Commission are pleased to order the appointment of the following candidates as Subject Specialist BPS-17 in Govt. Higher Secondary Schools with immediate effect:-

1. Mr. Iqbal Anwar S/O Haji Ashtamand Khan Village and P.O Lund Khwar (Mardan).
2. Mr. Saraf Ali Shah S/O Mirza Hakim Shah SET GMS Kalim Khan Killa (Bannu).
3. Mr. Muhammad Dilber Shah S/O Muhammad Sarwar Vill: Haji Khel Anwar Shah near Bahnu Woolen Mills (Bannu).
4. Mr. Muhammad Ajmal S/O Muhammad Aslam Vill: & P.O Shergarh Teh: Takht-Bhai (Mardan).
5. Mr. Tajul Alam S/O Muhammad Khan Vill: & P.O Thana Malakand Agency.
6. Mr. Muhammad Nazir S/O Muhammad Yaqoob Vill: & P.O Maira Amjad Ali Teh: & Distt: Mansehra.
7. Mr. Abdul Hanan S/O Molvi Ghulam Sarwar SET G.H.S Sikkandar Khel Dala (Bannu).
8. Haji Fazal Sadiq S/O Haji Abdul Khaliq C/O Sipaj Medical Hall Tanchi Bazar Bannu.
9. Hafiz Muhammad Rauf S/O Mir Ghulam Vill: Sadat Nassani Shah Baz Shah Shah Khan Bannu.
10. Mr. Roohullah S/O Matiullah SET G.H.S Tarnab Charsadda.
11. Mr. Abdul Rashid S/O Jan Muhammad Village and P.O Abukhel (Lakki Marwat).
12. Mr. Imad-ud-Din S/O (Late) Qazi Sirajud Din Vill: Kandar P.O Jabbar (Kohat).
13. Mr. Lutfur Rehman S/O Abdur Rehman Vill: Behram Killi P.O Risalpur (Nowshera).
14. Mr. Muhammad Ashiq S/O Abdul Halim Village Ochawala P.O Shabqadar Fort Charsadda.
15. Mr. Abdul Aziz S/O Mashal Khan Village Nar Gharib Abad Sarai Naurang (Bannu).
16. Mr. Kifayatullah S/O Khalil Khan Village and P.O Chamkani (Peshawar).

TERMS AND CONDITIONS OF THEIR APPOINTMENT/

- i) They will be governed by such Rules & Regulations as may be prescribed by the Government for the category of the Government Servants to which they belong from time to time.
- ii) Their services will be terminable on one month's notice.
- iii) They shall be on probation for a period of 2 years

10

- iv) They will make... already done & will submit all concerned.
- v) They should join the post within one month. Immediately, thereafter Director Secondary Edu: should furnish a certificate to to the effect that the candidates have joined the post or otherwi

2. On their appointment they are hereby posted as under:-

No.	Name	Posting	Remarks.
1.	Iqbal Anwar S/O Ashtamand Khan.	Sub:Specialist Phy: GHSS Katlang Mardan	Against vacant post.
2.	Saraf Ali Shah S/O Mirza Hakim Shah	Sub:Speclst: Physics GHSS Saria Naurang.	-do-
3.	Muhammad Dilbar Shah S/O Muhammad Sarwar	S/Specialist Biology GHSS Saria Naurang.	-do-
4.	Muhammad Ajmal S/O Muhammad Aslam	Sub:Speclst: Physics GHSS Kabgani Swabi.	-do-
5.	Mr. Tajul Alam S/O Muhammad Khan.	Sub:Speclst: Physics G.H.S.S. Swari (Bir)	-do-
6.	Muhammad Nasir S/O Muhammad Yaqoob.	Sub:Speclst: Biology GHSS Baffa (Mansehra).	-do-
7.	Abdul Hanan S/O Molvi Ghulam Sarwar.	Sub:Speclst: Biology GHSS No.4 D.I.Khan.	-do-
8.	H.Fazal Sadiq S/O H.Abdul Khaliq	Sub:Speclst: Chemistry GHSS Sher Pio Charsadda	-do-
9.	Hafiz Muhammad Rauf S/O Mir Ghulam	Sub:Speclst: Islamiyat GHSS No.1 Bannu.	Vice Saffar Ali Shah.
10.	Mr. Foztullah S/O Foztullah.	Sub:Speclst: Islamiyat GHSS Lora Abbottabad.	Against vacant post.
11.	Abdur Rashid S/O Jan Muhammad.	Sub:Speclst: Islamiyat GHSS Pattan Kohistan	-do-
12.	Imad-ud-Din S/O Qazi Sirajud Din	Sub:Speclst: Islamiyat GHSS Sher Pio Charsadda	-do-
13.	Lutfur Rehman S/O Abdur Rehman	Sub:Speclst: Islamiyat GHSS Tehkal Peshawar.	Vice Abdul Jamil.
14.	Mr. Muhammad Ashiq S/O Abdul Halim	Sub:Speclst: Islamiyat GHSS Shahqadar Charsadda	Against vacant post.
15.	Abdul Aziz S/O Mashal Khan.	Sub:Speclst: Islamiyat GHSS Nawab Shere A. Abad.	Vice M. Jan already transferred.
16.	Mr. Kifayatullah S/O Khalil Khan.	Sub:Speclst: Islamiyat GHSS No.1 Peshawar City.	Vice Abdur Rashid.

SECRETARY TO GOVT. OF NWFP
EDUCATION DEPARTMENT.

Endst: No. SO(S)-5-6/91/I. Dated Peshawar, the 30th May, 1992.

Copy forwarded to:-

1. The Director of Secondary Education NWFP Peshawar.
2. Accountant General NWFP Peshawar.
3. All District Accounts Officer in NWFP.
4. Manager Government Printing Press Peshawar.
5. Secretary NWFP Public Service Commission w/r to his No. 4854 dated 16.3.1992.
6. Officers concerned.

/M. JAVED/

[Signature]
30.5.92
Section Officer (Schools)

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GOVERNMENT OF NWFP
EDUCATION DEPARTMENT

NOTIFICATION

NO. SO (S) 5-6/91/. The Government of recommendation of the NWFP Public Service Commission are pleased to order the appointment of the flowing candidates as Subject Specialist BPS-17 in Govt Higher School with immediate effect:-

1. Mr. Iqbal S/o Haji Asthamand Khan, Village and P.O Lund Khwar, (Mardan).
2. Mr. Saraf Ali Khan S/o Mirza Hakeem Khan SET GHS Kalim Khan Killa (Bannu).
3. Mr. Muhammad Dilbar Shah S/o Muhammad Sarwar Vill: Haji Khel Anwar Shah near Bannu Woolen Mills (Bannu).
4. Mr. Muhammad Ajmal S/o Aslam Vill: Shergarh Teh: Takht-Bhai (mardan).
5. Mr. Tajul Alam S/o Muhammad Khan Vill: P.O Thana Malakand Agency.
6. Mr. Muhammad Nazir S/o Muhammad Yaqoob P.O Maira Amjad Ali Teh & District Mansehra.
7. Mr. Abdul Hanan S/o Molvi Ghulam Sarwar SET GHS Sikandar Khel Bala. (Bannu).
8. Haji Fazal Sadiq S/o Haji Abdul Khaliq C/o Siraj Medical Hall Tanchi Bazar Bannu.
9. Mr. Hafiz Muhammad S/o Mir Ghulam Vill: Sedat Hussani Shah Baz Shah Shai Khan Bannu.
10. Mr. Roohullah S/o Matiullah SET GHS Tarnab Charsadda.
11. Mr. Abdul Rashid S/o Jan Muhammad Village and P.O Abbakhel (Lakki Marwat).
12. Mr. Imad-Ud-Din S/o (Late) Qazi Sirajud Din Vill: Kander P.O Jabbar (Kohat).
13. Mr. Taufur Rahman S /o Abdul Rehman Vill: Bekram Killi P.O Risalpur (Nowshera).
14. Mr. Muhammad Ashiq S/o Abdul Halim Village Ochawala P.O Shabqadar Fort Charsadda.
15. Mr. Aziz S/o Mashal Khan Village Nar Gharib Abad Sardi Naurang (Bannu).
16. Mr. Kifayatullah S/o Khalil Khan Village and P.O Chankani (Peshawar).

TERMS AND CONDITIONS

- 1) They will be governed by such Rules & Regulations as may be prescribed by the Government Servants to which they belong from time to time.
- 2) Their services will be terminable on one month's notice.
- 3) They shall be on probation for a period of 2 years

P.T.O

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- vi. They will already done and will submits all concerned.
v. They would join the post with in one month. Immediately, there after director Secondary Edu: should furnish a certificate to the effect that the candidates have joined the post of otherwise.

2. Their appointment they are hereby posted as under:-

S. No.	Name	Posting	Remarks
1.	Iqbal Anwar S/o Ashtamand Khan	Sub: Special Phy GHSS Katlang Mardan	Against the vacant posts
2.	Sarif Ali S/o Mirza Hakim Shah	Sub Specialist Physic GHSS Saria Naurang	do
3.	Muhammad Dilbar Shah S/o Muhammad Sarwar	S/Specialist Biology GHSS Saria Naurang	do
4.	Muhammad Ajmal S/o Muhammad Aslam	Sub: Specialist physics GHSS Kabgani Swabi	do
5.	Mr. Tajul Islam S/o Muhammad Khan	Sub: Specialist physics GHSS Swari Dir	do
6.	Muhammad Nazir S/o Muhammad Yaqoob	Sub: Specialist Biology GHSS Baffa (Mansehra)	do
7.	Abdul Hanan S/o Mclvi Ghulam Sarwar	Sub: Specialist Biology GHSS No. 4 D.I Khan	do
8.	Il. Fazal Sadiq S/o S/o Mir Ghulam	Sub: Specialist chemistry GHSS No. 1 Bannu	Vice Safdar Ali Shah
9.	Hafiz Muhammad Rauf S/o Mir Ghulam	Sub: Specialist Islamiyat GHSS No. 1 Bannu	against the vacant post
10.	Mr. Roohullah S/o Mati Ullah	Sub: Specialist Islamiyat GHSS Lora Abbottabad	against the vacant post
11.	Abdul Rashid S/o Jan Muhammad	Sub: Specialist Islamiyat GHSS Pattan Kohistan	do
12.	Imad-ud-din S/o Qazi Siraj Ud Din	Sub: Specialist Islamiyat GHSS Sher PID Charsadda	do
13.	Lufur Rehman S/o Abdur Rehman	Sub: Specialist Islamiyat GHSS Tehkal Peshawar	Vice Abdul Jamil
14.	Mr. Muhammad Ishaq S/o Abdul Halim	Sub: Specialist Islamiyat GHSS Shabqadar Charsadda	Against the vacant post
15.	Abdul Aziz S/o Mashal Khan	Sub: Specialist Islamiyat GHSS Nawan Shre A. Abad	Vice M. Jan already transferred
16.	Mr. Kifayat Ullah S/o Khalil Khan	Sub: Specialist Islamiyat GHSS No. 1 Peshawar City	Vice Abdur Rashid

SECRETARY TO GOVERNMENT
EDUCATION DEPARTMENT

Indst No. SO (S) 5-6/91/I, dated Peshawar, the 30th May, 1992

Copy forwarded to the:-

1. The Director of Secondary Education NWFP Peshawar.
2. Account General NWFP Peshawar.
3. All District Accounts Officer in NWFP.
4. Manager Government Printing Press Peshawar.
5. Secretary NWFP Public Service Commission w/r to his No. 4854 dated 16.03.1992.
6. Official concerned.

Secretary Officer. (Schools)

/M.JAVED/

1 3 11

GOVERNMENT OF N.W.F.P
SCHOOLS & LITERACY DEPARTMENT

Dated Peshawar the 08-03-2003.

NOTIFICATION.

NO(S) 4-16/2002-Posting/Transfer. The Competent Authority has been pleased to order the postings/transfer in respect of the following officers of Schools (Administration Branch) with immediate effect in the public interest.

<u>S.No.</u>	<u>Name & Designation.</u>	<u>From.</u>	<u>To.</u>
1-	Mr. Shurifullah Khan, SS: Biology.	GHSS Berote Abbottabad.	GHS, Lachi, Kohat.
2-	Syed Dilbar Shah (BPS-17) Subject Specialist.	GHSS Pir Saddi Mardan.	As Dy: District Officer (S&L) Bannu in place Of Mr. Niaz Malook.
3-	Mr. Niaz Malook, Dy. Dist: Officer.	DDO(S&L), Bannu.	Headmaster, GHS, Bazai (Tank).
4-	Saeeda Khatoon, SET.	GHSS No.1 Karak.	SET, GMS Zaryab Colony Faqir Abad Peshawar.
5-	Bahadur Zaman, SS History/Civics.	GHSS Sheikhan Peshawar.	SS, GHSS (Pak: Study Doaba Hangu.

SECRETARY TO GOVT. OF NWFP
SCHOOLS & LITERACY DEPARTMENT.

ENDST NO. & DATE EVEN.

Copy forwarded for information & necessary action to:

- 1- PSO, to Chief Minister, NWFP.
- 2- Section Officer-1, Chief Minister Secretariat, NWFP w/r to his No. SOI/SCM/3-1/2003 dated 03-03-2003.
- 3- The Director Schools & Literacy, NWFP, Peshawar.
- 4- The Accountant General, NWFP, Peshawar.
- 5- Officer concerned.
- 6- PS, to Secretary Schools & Literacy Department, NWFP.
- 7- The District Account Offices concerned.
- 8- EDOs, S&L, Concerned.
- 9- Master File.

①

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⑫

To,

The E.D.O. (Schools & Lit)
BAMMAL.

Sub: Arrival Report

R/Sir: with due respect and humble submission that I have been transferred from GHS Pirsaddi, Mardan to this office as DDO(M) PRY, Bammal vide ^{sect (edu)} Emst No. (5) 4-11/2002/Posting transfer dated 08-03-2003. (Copy attached).

So your honor is requested to make necessary arrangements and do needfully to ensure the hand over & took over process as early as possible.

Your cooperation in this regard is highly appreciated.

Thanks,

Yours Obedient

10.03.03

Syed Dilber Shah
subject specialist (B-17)

GHS Pirsaddi, Mardan

Arrival Report no
of the said officer
accepted on
11/03/03 (PM)

Zamin Zhan
EDO (E)
11/3/03

11/3



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3-11-2005

Main body of handwritten text in Urdu script, appearing to be a detailed account or report.

B(13)

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ابتدائی اطلاعی رپورٹ

(فائل) ابتدائی اطلاعی رپورٹ نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زید دفعہ 154 مجموعہ ضابطہ

نوجداری

ضلع پشاور

پولیس اسٹیشن: صدر

تاریخ و وقت وقوع: 03/11/2005 وقت 06:30 بجے

علت نمبر: 382

03/11/2005 بجے چاکیڈگی 03/11/2005	تاریخ و وقت رپورٹ	1
07:50,		
گل لطیف شاہ ولد زربان شاہ، سکنہ تاتاخیل انور شاہ، بمبر	نام و سکونت اطلاع دہندہ و مستغیث	2
53/55		
PPC 302, 323, /34	مختصر کیفیت جرم (معہ دفعہ) مال اگر کچھ لیا گیا	3
	ہو	
بزد مسجد واقع خاتہ خیل انور شاہ جانب مشرق تھانہ ازبافصلہ 1	جائے وقوعہ فاصلہ تھانہ سے اور سمت	4
1/2 کلو میٹر از تھانہ		
(1) عبدالرشید شاہ، (2) محمد غنی شاہ، (3) دلبر شاہ	نام و سکونت ملزم 9-4214319-17301	5
پیران محمد سرور شاہ (4) حکمت اللہ شاہ ولد محمد غنی شاہ		
ساکنان حال خیل انور شاہ		
برسیدگی مراسلہ پر فوراً کیا گیا	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع	6
	درج کرنے میں توقف ہو، او تو وجہ بیان کرو۔	
بمذراہ پیش رپورٹ	تھانہ سے روانگی کی تاریخ و وقت	7

ابتدائی اطلاع نیچے درج کرو:- تحریری مراسلہ مخائب علی عباس خان 785 کیجو لٹی سٹاف سول ہسپتال بنوں بغرض قاتلی مقدمہ بدست کنسٹیبل عبدالرحمان غنی 665 موصول ہو کر درج ذیل ہے رپورٹ گل نظیف شاہ ولد زربان شاہ سکنہ حاجی خیل انور شاہ بمبر 53/52 سال نے آج مورخہ 03/11/05 بوقت 06:50 بجے لغش برادران اش مسیان گل جنت شاہ، میر سلیم شاہ، لغش پیراش شاہ فیصل، لغش برادران اش میر نظیف شاہ شنواری چارپائیدی بہ امدادیہ والدین بمقام ایمر جنسی داوسول ہسپتال بنوں ورکر گل نظیف شاہ مذکورہ غیر موجودگی برادران اش نظیف شاہ رپورٹ کرتا ہے کہ امر و میں معہ برادران ام گل جنت شاہ، میر سلیم شاہ میر نظیم شاہ اور پیرام شاہ شاہ فیصل بعد از نماز فجر مسجد دیہہ خود سے گھر خود جا رہے تھے برادر گل جنت شاہ آگے میر سلم شاہ، شاہ فیصل

مغرب نظیف شاہ علی الترتیب کے بعد دیگرے جبکہ میں عقب روانہ تھے قریب 06:30 بجے کا وقت تھا جو نبی ہم مسجد سے نکلے تو مسمیان (1)۔ عبدالسرور شاہ، (2)۔ محمد غنی ساکنان دیہہ ام مسلح بہ کلاشکوف گھر خود کے سامنے جنہوں نے ہمیں دیکھتے ہی جملہ بالا ملزمان نے اپنے اپنے کلاشکوف سے ہم پر بہ نیت قتل اندھا دھند فائرنگ کیں۔ جن کی فائرنگ سے گل جنت شاہ، میر سلم شاہ، میر نظیف شاہ، اور شاہ فیصل لگ کر گر پڑے جبکہ میں خوش قسمتی سے بچ گیا۔ ملزمان بعد وقوعہ کو خود بھاگ گئے میں بوجہ خالی ہاتھ کچھ نہ کر سکا جب میں پاس پہنچا تو برادر ام گل جنت شاہ اور پسر ام شاہ فیصل جان بحق ہوئے تھے جبکہ برادر ام میر نظیف شاہ زخمی تھا سابقہ بمعہ زون پر ہے کہ عرصہ قریب 20/25 یوم قبل ملزمان فریق کے محمد غنی شاہ، حکمت اللہ شاہ، نعمت اللہ شاہ، اور مقتول برادر میر سلم شاہ کے مابین ہاتھ پائی ہوئی تھی جسکی رپورٹ تھانہ میں نہیں ہوئی تھی میں برداران اش گل جنت شاہ، میر سلم شاہ اور پسر ام شاہ فیصل کے قتل برادر ام میر نظیف شاہ کی بانیت قتل اور اپنے اوپر بہ نیت قتل فائرنگ کرنے کا برخلاف عبدالسرور شاہ، محمد غنی شاہ، دلبر شاہ، پسران محمد سرور شاہ اور حکمت اللہ شاہ ولد محمد غنی شاہ ساکنان دیہہ ام دعویدار ہوں۔ وقوعہ ام برادر ام میر نظیف شاہ نے بھی خود دیکھا ہے۔ رپورٹ دیکھی جا کر غور کی جاوے العبد دستخط مغرب میر نظیف شاہ ولد زربان شاہ سکنہ حاجی خیل انور شاہ بمعہ 42 سال حرف بہ حرف تائید رپورٹ بالا کرتا ہوں العبد نشان انگوٹھا کاروائی حسب گفتہ ساکنان رپورٹ حرف بہ حرف درج بالا ہو کر بہ زبان پشتو پڑھ کر سنایا سمجھایا گیا صحت رپورٹ خود کو درست تسلیم کر کے گل نظیف شاہ نے اپنا دستخط اردو جبکہ مغرب میر سلم شاہ، شاہ فیصل کے نقشہ ضرر فرد صورت حال اور میر نظیف شاہ کا نقشہ ضرر علیحدہ علیحدہ بالترتیب کر کے زیر حفاظت کنسٹیبلان امان اللہ 926 آزاد خان 965 بغرض پوسٹ مارٹم رائے علاقہ حوالہ حسب سول ہسپتال بنوں کیے جاتے ہیں مضمون رپورٹ سے صورت جرم PPC 34/32-302 کا پایا جاتا ہے مراسلہ بغرض قائمی مقدمہ بلحاظ علاقہ بدست عبدالرحمان 565 تھانہ صدر ارسال خدمت ہے دستخط انگریزی علی عباس خان 785 سول ہسپتال بنوں 03/05/2005 کاروائی برسیدگی مراسلہ پرچہ بجرائم بالا چاک کیا جا کر نقول ایف آئی ار بغرض تفتیش حوالہ تفتیشی سٹاف کیے جاتے ہیں پرچہ بمنزل اسپیشل رپورٹ گزارش ہے۔

03/05/2005

دستخط

عہدہ

اطلاع کے نیچے دہندہ کا دستخط ہو گا یا اسکی مہر نشان لگایا جاگا اور انسر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور:
نوٹ: حرف یاب سرخ روشنائی سے بالمقابل ہر ایک ملزم یا مشتہر علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان ہو لکھنا چاہئے۔

1-8154-1-1

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GOVERNMENT OF NWFP
SCHOOLS & LITERACY DEPT

Dated: 24-01-2006

Notification

No. NO.SO (S) 4-17/05/Mr. Muhammad Dilbar Shah. The Competent Authority has been pleased to suspend Mr. Muhammad Dilbar Shah, instructor (BS-18)RITE(Male) Bannu with effect from 03-11-2005 under CR-194 being involved in a murder case registered against him vide FIR No.382 dated 03-11-2005 under Section 302/324/34 PPC Police Station Bannu Cantt:

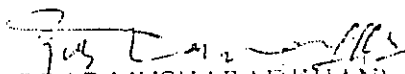
2- The accused officer is not entitled to draw the subsistence allowance under FR.53 (i) (h) because he is absconder and absented himself from duty un-lawfully.

SECRETARY.

ENDST. NO. & DATE EVEN.

Copy forwarded for information and necessary to:

1. Director, Schools & Literacy NWFP Peshawar.
2. Director Curriculum & Teachers Education, NWFP, Abbottabad.
3. Executive District Officer (S&L) Bannu.
4. District Accounts Officer, Bannu.
5. PS to Secretary (S&L) Department, NWFP
6. Officer concerned.
7. PA to Additional Secretary/Deputy Secretary (S&L) Peshawar
8. Office order file


(ARBAB MUSHARAF KHAN)
SECTION OFFICER(SCHOOLS)

IN THE COURT OF MR. MUHAMMAD BASHIR, ADDITIONAL
SESSIONS JUDGE-IV, BANNU.

36 ~~11~~ (11)

Sessions Case # 168 of 2009

Instituted on- 15.4.2009/17.12.2009.

Decided on- 22.01.2010.

(D) 15

STATE.....VERSUS.....DILBAR SHAH S/O
MUHAMMAD SARWAR
SHAH R/O FAQIR
ABAD KOT ADIL,
BANNU.

ACCUSED ON TRIAL

CHARGE U/Ss-302/324/337-R(i1)/34 PPC VIDE CASE
FIR # 382 DATED 03.11.2005, PS, SADDAR BANNU.

JUDGMENT:

Brief facts of the prosecution case are that a case FIR # 382 dated 03.11.2005 was registered at PS, Saddar on the basis of murasila. As per contents of murasila, the report was made by Gul Nazif Shah at about 0650 hours on 03.11.2005 at emergency ward civil hospital Bannu, with the dead bodies of the deceased namely- Gul Janat Shah and Mir Salam Shah alongwith injured Mir Nazif Shah, reported the matter that he alongwith his brother Gul Janat Shah, Mir Salam Shah, Mir Nazif Shah and his son Shah Faisal were coming to their home after offering "Fajr" prayer in the village mosque. His brother Gul Janat Shah was a-head followed by Mir Salam Shah, Shah Faisal and Mir Nazif Shah

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while he was behind them. As soon they came out of the mosque, the accused namely-Abdul Sarwar Shah, Muhammad Ghani Shah, Dilwar Shah (this accused facing trial) sons of Muhammad Sarwar Shah and Hikmatullah Shah duly aimed with Kalashni-kovs standing in front of their house opened indiscriminate firing with their respective Kalashni-kovs on seeing them. As a result of their firing Gul Jagan Shah, Mir Salam Shah, Mir Nasir Shah and Shah Wajid were hit and fell-down on the earth, however, the complainant Mir Wajid Shah immediately started shouting while accused decamped away from the spot to their home after the occurrence. The complainant was empty handed, so he could do nothing. When he contacted to injured, he found that his brother Gul Jagan Shah, Mir Salam Shah and his son Shah Wajid lie on the spot, while his brother Mir Nasir Shah was in injured condition. Narrative is stated to be suitable taken place between accused party, i.e, Muhammad Ghani Shah, Hikmatullah Shah, Wajidullah Shah and brother of complainant Mir Salam Shah were seen. A report in that regard was also made in the PS. All the accused were charged in the report signed by me.

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complainant. The date of the report was
for Nazif, Shah, (in, ured) was under increased the
circalla.

Investigation was conducted
and after a report was received, the
complaint was investigated. The
Muhammad Iqbal and Muhammad Ali were
at that time. Muhammad Iqbal was
arrested and detained in the
The trial was conducted
The present case is being
unproven offender, however, all the
evidence were admitted.

After a report was received
beginning, supplementary
and submitted to the court. The
and Muhammad Iqbal were
The trial was conducted
The present case is being
unproven offender, however, all the
evidence were admitted.
Muhammad Iqbal and Tahir Davan
-ation. Statement of
The present case is being
in 2011, 2009. After a report

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Kuala Lumpur

statement of the accused was recorded. He professed innocence and denied all the charges. He neither opted to be examined on Oath nor to produce defence. The resume of prosecution evidence is given below:-

Gul Nazif Shah (PW-1) stated that on the day of occurrence it was morning time, he alongwith Gul Janar Shah, Mir Salam Shah, Mir Nazif Shah and Shah Faisal had come out from the mosque after offering morning prayers. All they were a-head of him and he was after them, when they came out from the mosque to the street, meanwhile, Muhammad Ghani Shah, Dilbar Shah, Abdul Sarwar Shah and Hikmatullah Shah duly armed with Kalashnikovs were present in front of their house. It was about 06:30 AM. All the accused on seeing them started firing at them, as a result of firing, his brother Gul Janat Shah, Mir Salam Shah, Mir Nazif Shah and his son Shah Faisal were got injured and fell to the ground, while he escaped un-hurt. The accused after the occurrence decamped from the spot. Mir Salam Shah, Gul Janat Shah and Shah Faisal expired on the spot. He being empty handed

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could do nothing. It was Eid day, their co-villagers brought "Charpais" and all the dead bodies of deceased were placed including the injured and all those were shifted to hospital, where he lodged the report which after scribing was readover to him and he after admitting the same as correct signed the same. The report was also verified by his injured brother Mir Nazif Shah and he also thumb impressed the same. Motive for the occurrence was that 20/25 days prior to the occurrence, scuffling took place in between accused Muhammad Ghani Shah, Hikmatullah Shah, Naimatullah Shah and his deceased brother Mir Salam Shah. The I.O prepared site-plan at his instance. His supplementary statement was recorded. He charged the accused for the commission of the offence.

Mir Nazif Shah (PW-2) stated that on the day of occurrence, he alongwith his brothers Gul Nazif Shah, Gul Janet Shah, Mir Salam Shah and nephew Shah Faisal came out from the mosque after offering morning prayers and were proceeding to their house. He was a-head of his brothers and nephew. He saw accused Abdul Sarwar Shah, Muhammad Ghani Shah, Dilbar Shah, Hikmatullah Shah duly armed

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with Kalashnikovs present in front of their houses. It was 06:30 AM when they were passing by the side of the accused, all the accused started firing at them, as a result of which he, his brothers Gul Janat Shah, Mir Salam Shah and nephew Shah Faisal were got injured, while he escaped unhurt. After the occurrence, the accused decamped from the spot. His brothers and his nephew had expired on the spot and all were placed on "COTS" by co-villagers and were taken to hospital, where report of his brother Gul Nazif Shah was recorded, which was also verified from him and after admitting it as correct, he thumb impressed the same. His statement U/S-161 Cr.P.C was also recorded. The motive for the offence was scuffling between Muhammad Ghani Shah, Tikmatullah Shah, Naimatullah Shah and Mir Salam Shah. He charged the accused for the commission of the offence.

Dr. Khalid Mehmood (PW-3) had conducted autopsy on the dead body of Shah Faisal on 03.11.2005 at 09:00 AM and found the following:-

Condition of subject:- Young, stout cloths man.

Wounds:-

1-One 1" x 3/4" FA entry wound on left

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side front of chest 2" lateral to sternum at the level of 3rd and 4th ribs.

2-One 1/2" x 1/4" FA entry wound on the left side of upper lip.

3-One 1" x 1" FA exit wound on left side of skull behind left ear (foreign body present in X-ray chest).

Cranium and spinal cord:-Skull, scalp, membrane, brain injured.

Vertebrae and spinal cord:-Healthy.

Thorax:-Larynx and trachea and right lung healthy rest injured.

Abdomen:-Mouth and pharynx injured rest healthy. Stomach containing fluid material.

Muscles, bones and Joints:-Muscles injured at the site of injuries. The 3rd and 4th ribs on left side, skull and upper jaw fractured.

REMARKS:-

In his opinion, the deceased had died due to FA injuries to vital organs such as brain and heart.

Probable duration between injuries and death:

Instantaneous.

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Between death and PM:-Two to four hours.

He testified PM report EX.PW-3/1, injury sheet EX.PW-3/2 and inquest report EX.PW-3/3 to be signed by him.

This PW on the same date at about 1045 hours, also conducted autopsy on the dead body of Mir Salam Shah and found the following:-
Condition of subject:-Young, stout, clothed man.
Rigor mortis developing.

Wounds:-

- 1-One 1/4" x 1/4" FA entry wound on right side of face below right eye.
- 2-One 2 1/2" FA exit wound on base of skull posterior.

Cranium and Spinal Cord:-All injured.

Thorax:-Healthy. Blood vessels injured at the site of injury.

Abdomen:-All healthy.

Muscles, bones and Joints:-Muscles injured at the site of injured. Facial bone, skull and 1st cervical vertebrae fractured.

REMARKS:-

In his opinion, the deceased died due to FA injuries to brain.

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Probable time between injuries and death:-

Instantaneous.

Between death and PM:-Three to six hours.

He testified PM report EX.PW-3/4, injury sheet EX.PW-3/5 and inquest report EX.PW-3/6 to be signed by him.

Gul Salam ASI (PW-4) is marginal witness to recovery memo:EX.FW-1/1 vide which the I.O. took into possession from the places of deceased Gul Janat Shah, Mir Salam Shah and Shah Faisal, the blood stained earth EX.P-1 to EX.P-3, from the places of accused 07 empties of 7.62 bore packed and sealed the same into parcels in his presence. Two spent bullets in the line of fire was also recovered by the I.O in his presence. The I.O vide recovery memo:EX.PW-4/1 also took into possession one blood-stained shirt of Gul Janat Shah EX.P-4, one sealed bottle containing bullets, one another shirt and Bunyan of deceased Shah Faisal, and another Jamiz belonging to deceased Mir Salam Shah all blood stained and are EX.P-5 to EX.P-7 respectively, packed the same into parcels in his presence. He testified his signatures on the above referred memos:

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Gulap Khan SI (PW-5) on the receipt of 7 OCT 2023

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FIR copy, went to the spot where Gul Nazif Shah complainant pointed-out the place of occurrence to him at whose instance he prepared site-plan EX.PB. During spot inspection he noticed bullet marks on the Southern wall of Marandah of mosque shown on Point-A, on the Northern wall of the house belonging to accused, shown as Point-B and the Eastern wall of house of one Ayaz Khan. These bullet marks were at the height of 10 feet, 4½ feet and 5½ feet respectively. He also recovered 07 empties of 7.62 bore (P-1) from the places of accused, two spent bullets, (P-2) one from Point-B while the other from Point-C, lying on the ground, the same were sealed into parcel. He also recovered blood-stained earth from the places of deceased Gul Janat Shah, Mir Salam Shah and Shah Faisal and were separately sealed into parcel. He took into possession all the above said articles vide recovery memo: EX.PW-5/1. Azad Khan-FC produced one Shirt (P-4) blood-stained of deceased Gul Janat Shah, one sealed bottle containing one spent bullet belonging to deceased Gul Janat Shah (P-5), while one Shirt blood-stained (P-6), one Bunyan (P-7), belonging to deceased Shah Faisal, one other blood-stained Shirt (P-8) of

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deceased Mir Salam Shah, brought by Amanullah EC-926, packed and sealed the same separately into parcels by him on the spot and prepared recovery memo: EX.PW-5/2. Tahir Dawar SHO arrested accused Abdul Sarwar Shah and Hikmatullah Shah, however, by then due to shortage of contingent, he requested him for taking the accused to the PS while he recorded statements of the PWS U/S-161 Cr.P.C. He sent the blood-stained articles, recovered empties and bullets to the laboratories through Muhammad Karim of the PS the reports whereof are EX.PK and EX.PZ respectively. Muhammad Ghani Shah accused after obtaining interim bail appeared before him and he formally arrested him and recorded his statement U/S-161 Cr.P.C. He initiated proceedings U/S-204/87 Cr.P.C against the accused vide his applications EX.PW-5/3 and EX.PW-5/4 respectively. He also prepared the list of L/irs of deceased persons and on completion of investigation he handed-over the case file to the SHO for onward needful.

Abdul Karim DFO-1901 (PW-6) was entrusted with warrants of arrest U/S-204 Cr.P.C against accused Muhammad Ghani Shah and Dilbar Shah EX.PW-5/1 and

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EX.PW-6/2 respectively. He after due search for the accused in their village and surroundings and being not traceable returned the warrants as unexecuted with his report and statement of the elders over-leaf of the same which are EX.PW-6/3 and EX.PW-6/4 respectively. Thereafter, he was entrusted with three copies of proclamations against each of the accused and after doing the needful in accordance with law returned the third copy against each of the accused with his report and statements of elders of Illaqa returned the proclamations EX.PW-6/5 and EX.PW-6/6 while report and statements over-leaf are EX.PW-6/7 and EX.PW-6/8.

Razaullah Khan (PW-7) had identified the dead bodies of deceased Shah Faisal s/o Gul Nazif Shah, Mir Salam Shah s/o Zarban Shah and Gul Jannat Shah before the police as well as before the doctor . .

Azad Khan FC-965 (PW-8) had escorted the dead bodies of deceased Gul Janat Shah and Mir Nazif Shah injured alongwith their documents to the doctor for PM and medical examination respective, and after PM examination of deceased and medical examination of the injured, the doctor handed-over to him the PM and medicolegal documents, bloodstained Shirt of deceased

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one sealed bottle, which he in turn produced before the I.O.

Asghar Khan ASI (PW-9) had interrogated accused who had taken the plea of alibi and after expiry of remand of the accused he produced him before the JMOB from where accused was remanded to judicial lockup.

Abdul Hamid Khan SHO (PW-10) after completion of investigation by the I.O, submitted supplementary challan dated 29/3/2009 against the accused Dilbar Shah in the court, duly signed by him.

Aman Ullah IHC (PW-11) had escorted the of dead bodies /deceased Shah Faisal and Mir Salam Shah alongwith the documents to the doctor and the doctor after conducting PM examination handed over to him the PM documents and garments of deceased which in turn he produced before the I.O.

Dr. Anwar Farid SMO had conducted medicolegal examination of Mir Nazif Shah injured on 03/11/2009 at 06:50 AM and found the following:-

- 1- One FA entry wound on antero lateral aspect of left lower arm size 1/4" x 1/4".

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2- One FA exit wound on postero-lateral aspect of left lower arm size 1/2" x 1/2".

He advised X-ray left arm.

Nature of injuries: -KUO.

Probable duration of injuries: -Half to one hour.

Kind of weapon: -FAI

He testified his signatures on the MEC EX.PW-11/1 and injury sheet EX.PW-11/2, and delivered the same to Azad Khan FC-965.

This PW had also conducted PM examination of Gul Jahat Shah on 03.11.2005 at 07:15 AM and found the following:-

External Appearance: -Stout, and clothed man. Rigor mortis developing.

Wounds:-

1-One FA entry wound on the back of middle part of the chest near the spinal cord on the left side. Size 1/4" x 1/4".

2-One FA exit wound on the upper part of left side of the chest on its antero-lateral surface about 5" lateral to the left nipple. Size 1/2" x 1/2" (Exit on # 1).

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3-One FA entry wound on upper part
of medial surface of left upper arm.

Size 1/2" x 1/2" in line of wound # 2

Cranium and Spinal Cord:-Healthy.

Thorax:-Wall, ribs, cartilages plural, left lung
pericardium, heart and blood vessels
injured rest healthy.

Abdomen:-Abdomen portion healthy.

Muscles, bones and Joints:-Injured at the site of
injury, fractured of left humerus.

REMARKS:-

In his opinion the deceased died due to
FAI causing injuries to heart & blood vessels
leading to hemorrhage shock and ultimately death.

Probable duration between injuries and death:-

Ten to fifteen minutes.

Between death and PM:-1/2 hours to 45 minutes.

He testified his signatures on PM report
EX.PW-11/3 and handed-over the PM documents along-
with blood-stained shirt and sealed chial containing
bullet to police.

Ali Abbas (PW-13) on the report of the
complainant Gul Nazif Shah drafted murasila EX.PW-13/1

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which was read over to him and his rider Mir Nazif Shah and they after admitting the same as correct, complainant signed while Mir Nazif Shah thumb impressed the same. He prepared injury sheet EX.PW-13/2 and inquest report EX.PW-13/3 of the deceased Shah Faisal, injury sheet EX.PW-11/2 of injured Mir Nazif Shah, injury sheet EX.PW-13/4 and inquest report EX.PW-13/5 of deceased Mir Salam Shah, injury sheet EX.PW-13/6 and inquest report EX.PW-13/7 of deceased Gul Jannat Shah and handed-over the same to Amanullah and Azad Khan constable for production before the doctor for further proceedings. He testified his signatures on the above referred documents, while he sent the murasila to IS for registration of the case through constable Abdur Rauman.

It is note-worthy here that Iftikhar SHO(PW-8) who was examined on 20/2/2007 during the course of previous trial, being not procured despite of hectic efforts, the prosecution requested the court for transfer of earlier recorded statement of said PW to present file.

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Iftikhar SHO (PW-8) on the receipt of murasila, incorporated its contents into FIR EX.PW-8/1, duly signed by him.

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4- I have heard the arguments and perused the record.

5- The Point for determination of the present case are (1) motive of the occurrence (2) recovery of incriminating articles (3) abscondance of the present accused (4) opening of fire with Kalashnikovs on the complainant side with intent to kill the complainant party (5) presence of complainant on the spot and his ocular account and its effects (6) Ocular account of the injured and its effects (7) co-accused has already been acquitted in the case the effects of the same on the present case (8) reasonable doubts, if any (9) quantum of sentence, if case is established.

6- The report was lodged at 0650 hours while occurrence is stated to be of 0630 hours of 03.11.2005. Inquest reports, injury sheets, PM reports shows that occurrence had taken place. Now it is to be established by the prosecution that accused facing trial was involved in the commission of the offence. So far as motive is concerned, no scuffle had been taken place between complainant party and accused party, 20/25 days before the occurrence. The names of other three acquitted accused is cited with reference to the motive. As per

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address of the accused facing trial, he is resident of Faqir Abad Kot Adil, whereas, other accused are shown as resident of Haji Khel Anwar Shah. Both places of the residence of accused facing trial and acquitted accused are different. The occurrence had taken place in village Haji Khel Anwar Shah.

7- The main star witnesses in the present case are complainant and the injured. The statement of complainant namely-Gul Nazif Shah is recorded as PW-1 and in cross-examination he has stated certain facts which contradict his own statement recorded in examination-in-chief. As per his statement the deceased and injured of the present incident were ahead of him when they came out of the mosque to the street. In the meanwhile, acquitted accused and accused facing trial who were armed with Kalashnikovs and present in front of their house started firing at them on seeing them and due to their firing deaths occurred while one of them got injured, and complainant being empty handed could do nothing and it was Eid day. In cross-examination he has clarified certain things that 360 to 400 persons

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offered congregational prayer in the mosque on the day of occurrence and all the above persons were belonging to their village. He was unable to tell whether the accused and prayed their congregational prayer or not. After covering some 6/7 paces, after coming out from the mosque while proceeding to their house, they were fired at by the accused. He has further stated that they covered ^a distance of 12/3 paces, thereafter, the accused started firing at them. He was at a distance of 12/13 paces from his brothers and son at the time of occurrence. At the time of occurrence a lot of people were present in the Chowk/Bagh in it was laid. The statement of injured is recorded as PW-2. In cross-examination he has stated that as soon as they stepped ^{down} from the mosque and were having their faces towards their house, the accused started firing at them, not a single person was present at the time of occurrence except the accused and their party. It is not clarified that any one report was not made by this individual. He is simply rider of the report and he ^{has} stated.

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thing
different about the place of occurrence. It is
also does not appeal to the mind, if complainant
was with the deceased and injured, why he was left
un-hurt even he was not caused a single fire-arm
injury in the whole incident. The complainant
as well as injured almost gave the same statement ^{as} given
during the previous trial and complainant was
dis-believed by then learned trial court. There
are also contradiction ^{statements of} in between the/ alleged two
eye-witnesses. The motive was not existing in res-
-pect of the present accused facing trial. No
scuffle between the complainant party and present
accused party is alleged to have taken place.
Statement of Ali Abbas scribe of the murasils is
recorded as PW-13. In cross-examination he has
stated that at the time of reducing and writing
the report of complainant, Mir Nazif Shah was
present along with him and he admitted it correct
that he/ injured was hearing the report of Gul
Nazif Shah (complainant) whereas complainant Gul
Nazif Shah has stated in cross-examination that
his report was lodged in the police post of DHQ
hospital Bannu near the main gate of the hospital.

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by then Mir Nazif Shah was in emergency ward of the hospital. The witness has further clarified that the report was taken to him whereupon he thumb impressed the same report after being readover to him and he accepted the same as correct, but he was not present in this process of police with Mir Nazif Shah. These all facts cast doubts on the veracity of statement of the complainant

8- The occurrence is alleged to be of 0630 AM and report is of 06:50 AM. The occurrence does not seem to be of 06:30 AM as more than 20 minutes were to be needed to make arrangement and bringing the dead bodies of deceased and injured to hospital. The medical officer examined the injured/dead bodies at 07:15 AM while 30 to 35 minutes were stated to have been consumed in preparing injury-sheets, Inquest reports and murasila by Ali Abbas PW-13. These all facts also shows that consultation and deliberation had taken place. The possibility of exaggeration in charging/accused ^{the} cannot be ruled-out. Accused facing trial was Lecturer by profession living at different place.

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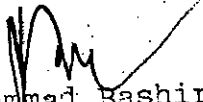
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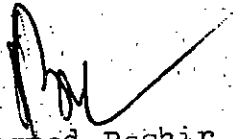
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Three accused have already been acquitted in the case. The same role had ^{been} attributed to him. So, the present accused is also entitled to the same treatment under the law. No weapon of offence is recovered from the possession of accused. No circumstantial evidence exists on the file to connect the accused with the commission of the offence. The mere abscondence is not sufficient for the conviction of the accused. Other-wise, abscondence of the accused is also not established upto the hilt. Thus, Benefit of doubt is also extended to the accused and he is acquitted of the charges levelled against him. He being in custody be released forthwith, if not required in any other case. The case property be kept intact till the period of appeal/- revision. File be consigned to RR after completion.

Announced;
22/01/2010.


Muhammad Bashir,
Addl: Sessions Judge-IV, Bannu.

CERTIFICATE:- Certified that my this judgment consisting of twenty two pages and each page has been signed by me after making necessary corrections therein.


Muhammad Bashir,
Addl: Sessions Judge-IV, Bannu

Registration No. 11508 January 22nd 2010.
Date of Presentation of Application 17-10-23
Date of Receipt of the file 17-10-23
Date of Preparation of copy 17-10-23
Date of Delivery of copy 17-10-23
No: of copies / words 22
Ordinary Fee 22
Urgent Fee _____
Total Fee 22
Signature of Copyist [Signature]

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17 OCT 2023

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Lower Courts Bannu

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Judgment

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Three accused have already been acquitted in the case. The same role had/attributed to him. So the present accused is also entitled to the same treatment under the law. No weapon of offence is recovered from the possession of accused. No circumstantial evidence exists on the file to connect the accused with the commission of the offence. The mere abscondence is not sufficient for the conviction of the accused. Other-wise, abscondence of the accused is also not established upto the hilt. Thus, benefit of doubt is also extended to the accused and he is acquitted on the charges. He should be released being in custody, if not required in any other case. The case property be kept intact till the period of appeal/-revisical. File be consigned to RR after completion.

Announced;
22/01/2010.

Muhammad Bashir
Addl. Sessions Judge-IV, Bannu

CERTIFICATE:-Certified that my this judgment consisting of twenty two pages and each page has been signed by me after making necessary corrections therein.

January 22nd 2010

Muhammad Bashir
Addl. Sessions Judge-IV, Bannu

Muhammad Bashir
Addl. Sessions Judge-IV, Bannu

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the August 31, 2010

NOTIFICATION

NO.SO(S)/E&SE/4-17/2005/Syed Muhammad Dilbar Shah: In pursuance of judgment of Additional Session Judge-IV Bannu dated 22-1-2010, the Competent Authority is pleased to make the following orders:-

- i. To re-instate, Syed Muhammad Dilbar Shah, Instructor (BS-18) Regional Institute for Teachers Education (Male) Bannu, in service from the date of his suspension i.e' 03-11-2005.
- ii. To treat his absence period from duty & court with effect from 3-11-2005 to 5-3-2009 as extra ordinary leave without pay.
- iii. To post him against the vacant post of Principal (BS-18) GHS Tarnab District Peshawar with immediate effect.
- iv. To adjust him against the vacant post of Instructor (BS-18) at RITE (M) Bannu from 6-3-2009 to 31-8-2010 for the purpose of draw of pay only.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Endst: of even No. & Date

Copy forwarded to the:

1. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
2. Director, DCTE, Abbottabad
3. Executive District Officer E&SE concerned
4. Principal RITE (M) E&SE Bannu.
5. District Accounts Officer concerned.
6. PS to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Secretary E&SE Department, Khyber Pakhtunkhwa.
8. Officer concerned.
9. Office order file.

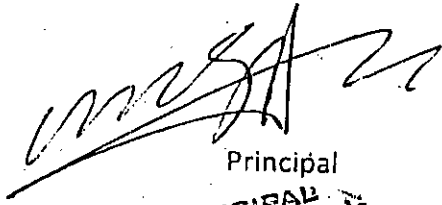

(Syed Ahmad Khan)
Section Officer (Schools)

All

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Charge Certificate

Certified that Mr. Syed Muhammad Dilbar Shah S/o Muhammad Sarwar Shah instructor (B-18) in (Bio) took over charge on 23-1-2010 (FN) on RITE (M) Ghoriwala Bannu after acquittal from the honorable Court of additional Session Judge IV Bannu on 22-1-2010.



Principal

PRINCIPAL
RITE (M) Ghoriwala
Bannu

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CERTIFICATE OF TRANSFER OF CHARGE

1. Certified that we have on the fore/afternoon of this day respectively made over and receive charge of this office of the Principal, GHS Tarnab Farm, Peshawar Promotion from BPS-18 to BPS-19 vide Govt. of NW Peshawar Notification No. 30(S/A) 30-322/1-2/2014/Promotion BPS-18 to BPS-19 dt. 21.04.2014.
2. Particulars of cash and important secret and confidential documents handed over are noted on the reverse:—

Station GHS Tarnab Farm, Peshawar.

Signature of relieved Government servant.....

Designation.....

Signature of relieving Government servant MR. MUHAMMAD DILBAR

Designation PRINCIPAL BPS-19

Principal
Govt High School
Tarnab Farm Peshawar

Dated 27/04/2014 (FN)

(PTO)

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OFFICE OF THE PRINCIPAL, GOVT. HIGH SCHOOL TARNAB FARM PESHAWAR.

SYDST. NO. 1129-34/P/PT. 11

DATED. 24/4/2014

Copy for information to the:

1. Accountant General Khyber Pakhtun Khwa Peshawar.
2. Director, BS BSSE Khyber Pakhtun Khwa Peshawar.
3. D.M.O (Male) Peshawar.
4. P.A to Secretary BSSE Khyber Pakhtun Khwa Peshawar.
5. P.A to Minister BSSE Khyber Pakhtun Khwa Peshawar.
6. District Account Officer Concerned.
7. Office copy.

Principal,

Govt. High School, Tarnab Farm,

Peshawar

PRINCIPAL
Govt. High School
Tarnab Farm Peshawar

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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH**
(Judicial Department)

Cr. A No.27-B of 2009

JUDGMENT

Date of hearing 26.02.2015

Appellant-Petitioner Gul Nazam Shah By Salimullah

Khan Rahzai Adv;

Respondent State By Ghulamullah Khan Sandhu Adv. A.S.

Accused By Muhammad Razaq Khan Dirmo Adv.

MUHAMMAD YOUNIS THAHEEM, J.--- Through

this single judgment, we intend to dispose of instant criminal appeal No.27-B of 2009 as well as connected criminal appeal No.53-B of 2010, titled as above, as both the appeals have been arisen out from one and the same FIR, and common question of facts and law in both appeals are involved.

2. Muhammad Ghani Shah, Abdul Sarwar Shah and Hikmatullah, acquitted accused were tried by the learned Additional Sessions Judge-II, Bannu in case F.I.R No. 382, dated 03.11.2005 registered with Police Station Saddar, Bannu for an offence under section 302/324/337-F(ii)/34 PPC, read

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with section 34 PPC. The learned trial Court vide his judgment dated 14.2.2009, acquitted the respondents. The complainant of the case namely Gul Nazeef Shah preferred this criminal appeals No. 27-B of 2009 against the respondents.

3. After acquittal of accused/respondents, co-accused Dil Bar Shah who was by then declared as proclaimed offender in the judgment dated 24.2.2009 also appeared before the court of Sessions by moving his BBA petition which was turned down, hence he was also arrested by the local police, After completion of investigation and on conclusion of trial, vide impugned judgment dated 22.01.2010, the learned trial court (ASJ-IV), Bannu also acquitted the accused/respondent by giving benefit of doubt, hence instant criminal appeal No.53-B of 2010 was moved against the said judgment.

4. The prosecution story in brief is, that on 03.11.2005 at about 0650 hours, appellant Gul Nazeef Shah brought the dead-bodies of his brothers namely Gul Janat Shah, Mir Salam Shah, his son Shah Faisal and injured brother Mir Nazif Shah on the "COTs" with the help of co-villagers, in the emergency ward of

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Civil hospital, Bannu and reported the matter to the local police to the effect that on the eventful day he alongwith his brother as well as his son named above were proceeding to their house after performance of "Fajar Nimaz"; that his brother Gul Janat Shah was ahead followed by Mir Salam Shah, Shah Faisal and injured Mir Nazif Shah one after another while he (appellant/complainant) was proceeding in the back of them. At about 06.30 hours, when they came out of the mosque, then accused/respondents Abdul Sarwar Shah, Muhammad Ghani Shah, Dil Bar Shah (sons of Muhammad Sarwar Shah) and Hikmatullah Shah (son of accused/respondent Muhammad Ghani Shah), their co-villagers, duly armed with Kalashnikovs, already present in front of their house, on seeing them, started indiscriminate firing at them with their respective weapons, as a result of which, Gul Janat Shah, Mir Salam Shah, Mir Nazif Shah and Shah Fasal were hit and fell down while the complainant/appellant luckily escaped unhurt. Accused /respondents decamped from the spot after the occurrence, while the appellant being empty handed could do nothing. When the appellant/complainant attended the victims, his brothers namely

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Gul Janat Shah, Mir Salam Shah, his son Shah Faisal were expired while his brother Mir Nazif Shah was injured. Motive for the offence was that about 29/25 days prior to the occurrence, scuffle had taken place between Muhammad Ghani Shah, Hikmatullah Shah, Naimatullah Shah and deceased Mir salam Shah, which report was not made to the police. The complainant charged the respondents for the commission of offence.

5. On completion of investigation, challan was accordingly submitted against the respondents to face the trial. Learned trial Court after complying with provision under section 265-C Cr.P.C framed the charge against the respondents of the instant criminal appeal, wherein they pleaded not guilty and claimed trial.

6. The prosecution has examined thirteen witnesses in support of its allegations, the brief whereof is as under:-

Dr. Khalid Mehmood (PW-2) has conducted autopsy on the dead-bodies of Shah Faisal, Mir Shalam Shah, while Dr. Anwar Farid (PW-10) had

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conducted autopsy on the deadbody of Gul Janat Shah and examined injured Mir Nazif Shah .

Gul Salam (PW-1) had witnessed the recovery memos, vide which, in his presence, the IO had taken into possession blood stained earth from the places of deceased Gul Janat Shah, Mir Salam Shah and Shah Faisal, while from the places of accused recovered seven empties of 7.62 bore and two spent bullets in the line of fire, as well as blood stained garments of the all the deceased respectively, which were also packed and sealed into parcels by the IO, in his presence.

Inayatullah Khan (PW-3) had identified the dead bodies of all the three deceased namely Shah faisal, Mir Salam Shah and Gul Janat Shah,

Amanullah LHC (PW-4) had escorted the dead-bodies of the deceased to the mortuary and after their autopsy by the doctors, blood stained garments of

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all the deceased were handed over to the IO on the spot.

Inayatullah SHO (PW-5) had arrested accused Muhammad Ghani Shah on 6/12/2005, after recalling his BBA by the court.

Ali Abas Khan (PW-6) had recorded the report of the complainant in shape of murasila, prepared injury sheets and inquest reports of all the deceased and the injured and handed over to constables Amanullah and Azad Khan for escorting the same to the doctor for autopsy, while Murasila was sent to the PS for registration of case.

Azad Khan FC (PW-7) had escorted dead-body of the deceased Gul Janat Shah and injured Nazif Shah to the doctor, after doing the needful by the doctor, the PM and medicolegal reports were handed over to the IO on the spot by him.

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Iftekhhar Ali SHO (PW-8) on receipt of murasila, had chalked out FIR.

Muhammad Tahir Dawar SHO (PW-9) had submitted challan against the accused and also arrested accused Himatullah Shah and Abdul Sarwar Shah and issued their card of arrest and also submitted supplementary challan against them.

Gul Nazif Shah (PW-11) is the complainant of the case. He has narrated same scenario of the case which has already been discussed in the early part of the judgment.

Mir Nazif Shah (PW-12) being injured eye witness, has also narrated almost the same story as was furnished by the complainant in his report.

Gulap Khan (PW-13) had conducted investigation of the instant case.

7. After closing the evidence by the prosecution, respondents were examined under section 342 Cr.P.C, wherein

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they stated that they are innocent and have been falsely implicated in the present case. They did not wish to be examined on oath as required U/S 342 Cr.P.C nor they opted to produce defence evidence.

8. On conclusion of trial, the learned trial court acquitted the respondents; the complainant being aggrieved has filed instant appeal against the respondents through two separate criminal appeals, which are to be disposed of by this single Judgment, as referred to herein above.

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9. Learned counsel for the appellant contended that F.I.R has been lodged with promptitude; that all the respondents were given specific role of firing on all the three deceased and injured; they were directly charged in the first information report; that the respondents were well known to the complainant; that the ocular account furnished by the complainant and injured Mir Nazif Shah is uniform and consistent on all material points, while their presence on the spot could not be denied; that blood stained earth as well as the crime empties were secured from the spot, so no other exception can be taken as for as the place of

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occurrence is concerned; that medical report fully substantiate the prosecution story and that no material contradictions or discrepancies are visible between the statements of eye witnesses, but the trial Court did not appreciate this aspect of the case and as such rendered an erroneous judgment based on mis and non-reading of the evidence, adduced on behalf of prosecution witnesses.

10. On the other hand, learned counsel for the respondents vehemently opposed the arguments advanced on behalf of the complainant side and supported the impugned judgment on the grounds that the prosecution has failed to prove its case against the accused/respondents beyond any shadow of reasonable doubt; that the occurrence is of day light and admittedly there was "Eid-ul-Fitr" on the eventful day of occurrence and a large number of the people were present but no disinterested witness has come forward to depose in favour of prosecution; that there is a lot of contradictions in the statements of the PWs on material points who in their cross examination has badly shattered the prosecution case and especially made

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references to the statements of complainant and the alleged eye-witness; that dishonest investigation has been conducted in this case by Gulap Khan IO with the connivance of Hazrat Ali inspector as he was admittedly present on the spot being close relative of complainant party, therefore, the testimony of the complainant/ appellant and injured was rightly disbelieved on the ground of close relation with Hazrat Ali Inspector, who was by then present on the spot; that the occurrence has not been taken place in the mode and manner as alleged; that the material brought on record with the statements of PWs were not sufficient to hold the accused/ respondent guilty of the offence and if otherwise case of the accused is doubtful, then mere absence of accused/respondent is no ground for conviction, therefore, the impugned verdict of the learned trial Judge needs no interference.

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11. We have heard arguments of learned counsel for the parties and gone through the case file, with their assistance.

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12. Now adverting to the points raised by the learned counsel of appellant, we have to elaborate and re-appreciate the evidence available on the case file.

13. Perusal of the impugned judgments it transpires that the learned trial court did not believe the ocular account as according to it eye witnesses have been contradicted on material points, while the Post mortem report as well as medical evidence and site plan are at variance; the time of occurrence as per the trial court seems to be of dark night; motive is not proved; hence the trial court acquitted the accused/respondents.

14. According to the report, the occurrence has taken place at 6.30 a.m, the report was lodged in the hospital at 6.50 a.m which eliminate the possibility of fabrication and consultation. In such state of affairs, when two brothers Mir Salam Shah, Gul Janat Shah and Shah Faisal (son of the complainant) have been died while brother of the complainant namely Mir Nazif Shah got injured, the shifting of injured as well as the deceased to the hospital would have

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been the priority of the complainant and their kith and kins, hence the report has naturally and promptly been lodged in the hospital within (20) minutes, so in such situation exonerating real culprit and substitution of innocent people is a rare phenomena which is not to be fitting in the circumstances of the instant case.

15. The parties being residents of the same locality were known to each other. It is the day light occurrence. As per FIR, the accused are directly charged and their faces were not muffled at the time of committing offence, hence, there is no question of their misidentification.

16. The record depicts that the complainant Gul Nazif shah and injured eye witness Mir Nazif Shah have recorded their statements, who are brothers interse and also the brothers of deceased Gul Janat Shah and Mir Salam Shah, while Shah Faisal is the son of the complainant/appellant, hence they being having close relation, are interested witnesses, therefore their testimony needs to be thrashed out with care and caution.

Shah Faisal

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17. The perusal of statement of complainant Gul Nazif Shah (PW-11) reveals that he ^{has} reiterated the same story which he has made at the time of report. It is clear from his statement that all of them went for performing "Fajar prayer" and further it was the day of "Eid-ul-Fitr" and usually in such like occasion, all the male family members used to go together for "Fajar" as well as Eid prayers, hence the version of the complainant is natural one and could be believed. The other eye witness Mir Nazif Shah who is also brother of deceased examined as PW-12, has also received stamp of injuries on his body. During the occurrence, the blood was recovered from his place from the spot; hence it is ample proof of his presence on the spot at the time of occurrence. In this respect, reliance may be placed in case titled "*Taj ...VS...The state*" (2012 SCMR 43) wherein it is held that:-

"We have considered the evidence of Khadam Hussain (PW-1), complainant, two injured witnesses namely Sarfaraz (PW-2) and Gulzar (PW-3). They have supported the prosecution

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case and specially stated that the petitioner Taj had participated in the occurrence and the fire made by the petitioner had hit the deceased on the chest near neck. The injured witnesses had also received numerous injuries during the occurrence and the doctor Muhammad Ashraf (PW-16) supported the factum of injuries. Thus, their presence at the spot was established. The eye witnesses were subjected to cross-examination but nothing had come to doubt their credibility. Thus their presence was natural as they sustained injuries alongwith deceased at the time of incident.

18. The statement of complainant and eye witnesses corroborate each other on material points, as there is no inconsistency in their statements. The principle of "Falsus in uno, falsus in omnibus" has been done away; rather principle of "sifting grains from the chaff" is to be applied to determine the culpability or innocence of an accused. In this respect reliance may be placed on case titled "*Muhammad Hayat Khan and other..VS..The state*" (2012 YLR 2360. When evidence of the complainant and eye

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witness is appreciated on the on the principle then there is no such improvement or contradiction in statements which may create any reasonable doubt. Besides both the witnesses were put to taxing and lengthy cross examination by the defence but nothing could be extracted from their mouth which may give benefit to the accused. No doubt, there are minor contradictions but it may occur due to aflex of time as the occurrence had taken place on 03-11-2005, whereas, they were examined on 5/10/2008 after more than 2 ½ years of the occurrence. Reliance is placed on case titled "*Zulfaqar Ahmad & others...VS...The state*" (2011 SCMR 492) wherein it is held that:-

"We have observed a few contradictions in her statement which can be ignored safely being minor in nature having no substantial bearing on merits of the case. It is worth mentioning that minor contradiction do creep in with the passage of time and can be ignored".

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19. It is settled principle of law that minor contradictions in the statements of the witnesses are to be



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over looked, however, only material contradictions are to be considered but in the instant case, there is no material contradiction or omission. Reliance is placed on case titled "*Ranjha...VS...The State*" (2007 SCMR 455), wherein it is held that:-

"The ocular testimony of quite independent witnesses duly supported by the medical evidence, the recovery of empties from the spot, the post-mortem reports of the two deceased, prompt lodging of F.I.R without any deliberation and exaggeration as well as the attending circumstances was found truthful and confidence-inspiring, therefore, the minor discrepancy and contradiction pointed out in the statement of witnesses being immaterial would be of no significance."

20. No doubt, the complainant and injured witnesses are close relatives with all of the deceased but their testimony on the sole ground of relationship cannot be discarded if otherwise their testimony is truthful and confidence inspiring. Reliance may be placed on titled "*Anwar Shamim*"

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and other..VS...The state" (2010 SCMR 1791), wherein it is held that:

"It is settled principle of law that mere relationship between the witnesses and the deceased is not enough to discard their evidence. It is the duty and obligation of the court for requiring corroboration of interested witnesses then it must first ascertain whether he should be believed without corroboration. The witnesses have faced lengthy cross-examination but their veracity cannot be shaken by the defence counsel. Both the courts below have come to the conclusion that their statements are of such a nature that their testimony must be given due weight and were believed"

21. On the same point, the august Supreme court in case titled "Muhammad Ikram and other...VS..... The Stat" (2011-SCMR-1133) and case titled "Muhammad Aslam ..VS... The State" (2012 SCMR-593) has held that:-

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"In the present case ocular version has been furnished through the statement of PW-6 Haq Nawaz who is real son of the deceased

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Muhammad Nawaz and PW-7 Ahmad Nawaz, the other eye witness who is cousin of the complainant. So, both the eye-witnesses are closely related with each other and with the deceased interse but mere relationship is not sufficient to term them as interested witnesses as there was no previous enmity between the parties"

22. In the instant case, the complainant (PW-10) and eye witness (PW-11) could not be termed as interested witnesses and their statements are held to be truthful, confidence inspiring and believable.

23. So far as the objection of the learned counsel for the accused/respondent that as per statement of the complainant and eye witness, other persons have also attracted at the spot at the time of occurrence but no independent witness has been produced. By now it is settled law that it is prerogative of the prosecution to produce witnesses of their choice. It is the quality and not the quantity of evidence which determines the fate of the case. If evidence of single witness is truthful, trust worthy, coherent and

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confidence inspiring, then it is sufficient for conviction of the accused as in the instant case, the statement of the complainant is corroborated by the statement of the eye witness, medical evidence and site plan. Reliance is placed in case titled "*Nasrullah Khan and 2 others..VS... The State*" (2011-SCMR 613).

24. So far as the motive is concerned, that is always in the mind of the accused/assailant, whatever was in the knowledge of the complainant, he disclosed at the time of report and has also reiterated it in his court statement. The injured PW also stated the same motive and in rebuttal there is nothing on record nor the defence produced any counter motive. It is settled law that in case there is no motive or no proof after alleging, it may not be fatal for the prosecution case, if direct evidence is trust worthy and confidence inspiring. In this respect, reliance can be placed in case titled as "*Niazmuddin.VS.. The State*" (2010 SCMR 1752).

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25. For what has been discussed above, it is established beyond any shadow of doubt, that they were the

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accused/respondents and non-else, who had committed the crime. The learned trial court has fallen in error by misreading and non-reading of evidence and have given undue weight to the minor discrepancies occurring in the prosecution evidence, thus both the impugned judgments of the instant criminal appeal bearing No.27-B of 2012 (titled Gul Nazif Shah..VS....Muhammad Ghani Shah and others), as well as that of connected Criminal appeal No.53 -B of 2010 (titled Gul Nazif Shah..VS... Dilbar Shah) are set aside and the accused/respondents of both the appeals referred to herein above are convicted under section 302(b)/34 PPC and sentenced to imprisonment for life imprisonment each on three counts. They will also pay Rs.5,00,000/- each as compensation under section 544-A Cr.P.C to be paid to the legal heirs of deceased or in default, they shall undergo one year S.I. On conviction under section 324/34 PPC all the respondents are sentenced to ten years R.I each and fine of Rs.25,000/- each and in default, they shall undergo further S.I for six months. They are also convicted and sentenced U/Ss 337-F(ii)/34 PPC to one year RI each and to pay

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Rs.25,000/- each as Daman or in default, to undergo three months further S.I. All the sentences shall run concurrently. Benefit of Section 382-B Cr.P.C is extended to the respondents. Respondents are present in the court, taken into custody and sent to Jail alongwith warrants for undergoing their sentences.

Announced
Dt:26.02.2015

JUDGE
JUDGE

920
14/10/18

CERTIFIED TO BE TRUE COPY

Postmaster General Bench
Authority of Section 100 of
The General Clauses Act, 1897
17/10/2023

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P No 15

(32)

(41) (9)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

20/19

PRESENT:

Mr. Justice Asif Saeed Khan Khosa, CJ
Mr. Justice Sajjad Ali Shah
Mr. Justice Syed Mansoor Ali Shah

Criminal Appeals No. 297 and 298 of 2015

(Against the judgment dated 26.02.2015 passed by the Peshawar High Court, Bannu Bench in Criminal Appeal No. 27-B of 2009)

Muhammad Ghani Shah, etc. (in Cr. A. 297 of 2015)
Dilbar Shah (in Cr. A. 298 of 2015)
...Appellants

versus

The State, etc. (in both cases)
...Respondents

For the Appellants: Malik Waheed Anjum, ASC
(in both cases)

For the complainant: Syed Zulfiqar Abbas Naqvi, ASC
Syed Rifaqat Hussain Shah, AOR
(in both cases)


For the State: Barrister Qasim Wadud, Additional
Advocate-General, Khyber
Pakhtunkhwa
(in both cases)

Date of hearing: 19.02.2019

JUDGMENT

Asif Saeed Khan Khosa, CJ.: Muhammad Ghani Shah and Abdul Sarwar Shah appellants in Criminal Appeal No. 297 of 2015, Dilbar Shah appellant in Criminal Appeal No. 298 of 2015 and another had allegedly murdered three persons namely Gul Jannat Shah, Mir Salam Shah and Shah Faisal and had injured another namely Mir Nazif Shah in an incident taking place at 06.30 A.M.

ATTESTED



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Criminal Appeals No. 297 and 298 of 2015

P No

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on 03.11.2005 in village Khana Khel Anwar Shah in the area of Police Station Saddar, District Bannu in the backdrop of a motive according to which about 20 to 25 days ago a quarrel had taken place between the parties. With these allegations the appellants and their co-accused were booked in case FIR No. 382 registered at the above mentioned Police Station during the same morning and after a regular trial the appellants were acquitted of the charge by the trial court. An appeal was filed against acquittal of the present appellants by the trial court and upon acceptance of that appeal the High Court had convicted the appellants on three counts of the charge under section 302(b), PPC read with section 34, PPC and had sentenced the appellants to imprisonment for life each on each count and to pay compensation. The appellants were also convicted and sentenced by the High Court for an offence under section 324, PPC read with section 34, PPC and also for an offence under section 337-F(iii), PPC read with section 34, PPC. Hence, the present direct appeals before this Court.

2. We have heard the learned counsel for the parties and have gone through the record of the case with their assistance.

3. In the case in hand three persons had been done to death and another had been injured in the morning of the day of Eid-ul-Fitr. The occurrence had taken place at daybreak, an FIR had been lodged in respect of the said incident within twenty minutes and post-mortem examinations of the deadbodies had also been conducted within a few hours of the incident in issue. The parties to this case were well known to each other and, thus, there was hardly any issue regarding mistaken identity. The place of occurrence was a thickly populated area and in the incident firearms had been used killing three persons and injuring another and, thus, it was inconceivable that the incident had remained unwitnessed or the culprits had remained unknown. The eyewitnesses produced by the prosecution, i.e. Gul Nazif Shah complainant (PW11) and Mir Nazif Shah (PW12) were residents of the same area and the latter was an injured eyewitness who had

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Criminal Appeals No. 297 and 298 of 2015

the stamp of firearm injuries on his body vouchsafing his presence at the scene of the crime at the relevant time. It may be true that the trial court had acquitted the present appellants but the reasons recorded by the trial court for recording their acquittal were sketchy and the same did not commend themselves for approval. It is also true that the motive set up by the prosecution was trivial and the same had remained far from being established and also that no weapon had been recovered from the custody of the appellants during the investigation. The analysis and assessment of the evidence undertaken by the High Court has been found by us to be in order warranting no interference in the same because upon our own independent evaluation of the evidence we have reached the same conclusion, i.e. that the prosecution had succeeded in establishing its case against the appellants beyond reasonable doubt. On account of lack of proof of motive and in the absence of recovery of the weapons of offence we have found the High Court to be quite justified in withholding the sentences of death from the appellants on the different counts of the charge pertaining to murder. We have, however, found that the High Court was not justified in ordering the appellants to pay compensation to the tune of Rs. 5,00,000/- each on each count of the offence of murder and in ordering that in default of payment of compensation the appellants would undergo simple imprisonment for one year each on each count.

4. For what has been discussed above these appeals are dismissed and all the convictions and sentences of the appellants recorded by the High Court are upheld and maintained except the order passed by the High Court regarding payment of compensation by the High Court on three counts of the charge pertaining to murder. It is ordered that the appellants shall pay a sum of Rs. 1,00,000/- (Rupees one hundred thousand only) each on each count of the charge of murder to the heirs of each deceased and in default of payment thereof they shall undergo simple imprisonment for six months each on each of the relevant count pertaining to murder. All the sentences of imprisonment

ATTESTED

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P No 18

Criminal Appeals No. 297 and 298 of 2015

passed against the appellants shall run concurrently to each other and the benefit under section 382-B, Cr.P.C. shall be extended to them. These appeals are disposed of in these terms.



Islamabad
19.02.2019
Not approved for reporting.

Sd/-HCJ
Sd/-J
Sd/-J
Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

6382/19

GR No:	Civil/Criminal
Date of Filing:	9.2.19
No of Words:	100
No of Pages:	50
Registration Fee:	7.00
Copy Fee in:	12.00
Court Fee Surcharge:	7/3/19
Date of Completion:	9.3.19
Date of delivery of Copy:	
Compared by/Prepared by:	Syed Ahsan Ali
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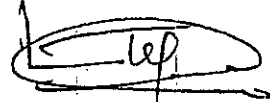
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CERTIFICATE

It is certified that Convicted Prisoner Muhammad Dilbar Shah s/o Muhammad Sarwar Shah was admitted to this jail as a convicted prisoner on 26.02.2015 in case FIR No. 382 dated.03.11.2005 u/s 302/324/337-F(ii) PPC P.S Saddar, Bannu, he has completed his sentence and is released from this jail on 19.04.2023 after earning permissible Jail Remissions & payment of compensation amount at the Court concerned, his conduct throughout at his imprisonment was extremely satisfactory and appreciable.



SUPERINTENDENT
CENTRAL PRISON BANNU
CENTRAL PRISON BANNU

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT



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Dated Peshawar the April 05, 2016

NOTIFICATION

NO.SO(S/M)/E&SED/4-17/2017/Syed Dilbar Shah Pr.I. BS-19: Consequent upon the conviction under section 302(b)/34 PPC for imprisonment of life on three counts by the Peshawar High Court Bannu Bench vide its judgement dated 26-02-2015 in criminal appeal No 53-B 2010 Syed Dilbar Shah Principal BS-19 GHS Tamab Peshawar is hereby ~~Removed from service with immediate effect~~

2. His period of absence from duty w.e.f 26-02-2015 till date is treated as unauthorized absence from duty without pay.

SECRETARY

Order of even No. & Date :-

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar
2. Registrar, Peshawar High Court, Bannu Bench.
3. PSO to Chief Minister Khyber Pakhtunkhwa.
4. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer (Maie), Peshawar.
6. Principal GHS Tamab, Peshawar.
7. PS to Chief Secretary, Khyber Pakhtunkhwa.
8. PS to Secretary E&SE Department, Khyber Pakhtunkhwa.
9. Incharge EMISE E&SE Department.
10. Officer concerned.
11. Office order file.

Handwritten signature of Mujeeb ur-Rehman.

(MUJEEB UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

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S.O. Admn CMS KPK
Diary No. 939
Date 20/01/2023

The Honourable Chief Minister
Khyber Pakhtunkhwa
Peshawar

Subject: REVIEW PETITION/ DEPARTMENTAL APPEAL AGAINST THE
NOTIFICATION VIDE NO. SO(S/M)ES&ED/4-17/2017 Syed
Dilbar Shah Prl. BS-19 DATED 05-04-2016 PASSED BY
SECRETARY ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR,
WHEREBY MAJOR PUNISHMENT OF REMOVAL FROM SERVICE
WAS IMPOSED UPON THE APPELLANT.

Respected Sir,

My Humble Submissions are As Under.

1. That the applicant namely Syed Dilbar Shah served as Principal (BS-19) in Elementary and Secondary Education and has rendered more than 34 Years unblemished service on various teaching Cadre posts as Head Master, Subject Specialist and Principal etc.
2. That on 03-11-2005 the applicant was falsely charged in a murder case vide F.I.R No. 382 u/s 302 324,337-F (ii) /34 PPC, Police Saddar Bannu.
3. The after falsely charged in criminal case the applicant was suspended vide Notification SO(S)4-17/5 Mr Syed Dilbar Shah dated 24-01-2006 by the Secretary ES&ED Khyber Pakhtunkhwa on account of absence and after laps of short time the applicant was granted Bail by Additional District and Session Judge Bannu which

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result the suspension Notification of the applicant was cancelled with approval of competent authority on 28-04-2009. The applicant was acquitted on 22-01-2010 by the Additional District and Session Judge -IV Bannu from the charges vide FIR No. Dated 03-11-2005. After acquittal the applicant was reinstated in service from the date of suspension w.e.f 03-11-2005 to 06-03-2009 through Notification No. SO(S)/ES&E/4-17/2005 dated 31-08-2010 by the Chief Secretary Khyber Pakhtunkhwa being competent authority.

4. That after acquittal from the charges the aggrieved complainant party filed appeal against the acquittal judgment dated 22-01-2010 before the Peshawar High Court Bannu Bench, wherein on 26-02-2015 Peshawar High Court Bannu Bench set aside judgment of Addl. District and Session Judge Bannu dated 22-01-2010 and sentenced the applicant for life imprisonment, while at that time the applicant was during in Service as Principal (BS-19) at GHS Tarnab Peshawar till 26-2-2015 and on the same date i.e. 26-02-2015 the applicant was arrested in the court and sent to jail.
5. The applicant filed appeal before the august Supreme Court of Pakistan against the judgment dated 26-02-2015 passed by Peshawar High Court Bannu Bench, wherein the applicant was awarded life sentence, but the august Supreme Court of Pakistan also dismissed the said appeal of the applicant on 19-02-2019.
6. That after completion of sentence the applicant was released from jail on 19-04-2023.

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7. That after released from jail the applicant contacted through phone the office of Principal GHS Tarnab Peshawar for forwarding an application of the applicant to the Secretary Elementary & Secondary Education for issuance of pensionary benefits, wherein the applicant was informed on 13/06/2023 that he has been removed from Service on 05-04-2016 vide Notification NO. SO(S/M)ES&ED/4-17/2017 Syed Dilbar Shah Prl. BS-19 by the Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa as the applicant received the said removal Notification copy through whattasp from GHS Tarnab Peshawar on 13/06/2023.

8. That the applicant was not served charged sheet/statement of allegations neither the applicant was issued Show Cause nor proper inquiry was conducted against the applicant further no opportunity of personal hearing has been availed to the applicant and one side ex party departmental proceedings was initiated against the applicant, which result the applicant was awarded major penalty of removal from service vide Notification dated 05-04-2016 issued by the Secretary Elementary & Secondary Education Department Govt of Khyber Pakhtunkhwa.

9. That the department proceeded illegally against the applicant whersin the department was in knowledge about the applicant who was in judicial lockup at central prison Bannu, while the department not communicated charge sheet / statements of allegation and show cause notice to the applicant at central prison Bannu neither the

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inquiry officer visited central prison to record statement of the applicant behind the judicial lock up nor an opportunity of cross examination was provided to the applicant and one side / ex- party departmental proceedings initiated against the applicant, which is against the law, rules, judgments of the superior courts and also against the norms of natural justice.

10. That no opportunity of personal hearing was afforded to applicant, which is also the mandatory requirement of law and rules. The applicant was condemned unheard and accordingly the removal Notification dated 04-05-2016 is void, ab-initio, arbitrary and hence not sustainable in the eye of law as double punishment was awarded to the applicant and the absence period has been treated as leave without pay thus an illegal and void Notification/ order passed against the applicant.
11. That no fact finding or regular inquiry has been conducted against the applicant hence the whole proceedings are illegal, unlawful against the law and rules, void -initio and the removal order dated 04-05-2016 of the applicant is liable to be set aside.
12. That the right of fair trial is granted by Article 10 A of the constitution of Islamic republic of Pakistan 1973 but the same cannot provided to the appellant, furthermore there is no evidence against the appellant.
13. That the applicant appeal is well in time as per judgments of the Superior Court reported as PLD 2014 SC 585, 2014 SCMR 1594,

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2013 SCMR 587 and 2021 SCMR 1158 that limitation against void order would run from the date of knowledge which had to be explicitly pleaded as the applicant came to know very late about the removal from service after released from jail.

14. That the penalty of removal from awarded to the applicant is very harsh punishment and not tenable in the eye of law as the applicant has been rendered unblemished more than 34 years' service to the department and as the august Supreme Court of Pakistan has maintained /confirmed compulsory retirement of major penalty of such like employees on account of absence. Thus the applicant may also be punished with a major penalty of compulsory retirement instead of removal from service in the light of judgments of the Supreme Court of Pakistan as the applicant served the department for more than 34 years and compulsory retirement is also a major penalty which is labile pensionable service.
15. That no codal formalities regarding removal from service of the applicant has been followed by the department in accordance with Law and Rules, while in case the applicant was in judicial lockup and behind the bar which is also against the norms of natural justice.
16. That the law and judgments of supra court relied upon the applicant as reported of judgment of the Supreme Court of Pakistan 1996 SCMR 1185 titled Hameed Akbar Inazi vs The Secretary Establishment Division, Government of Pakistan and 2009 SCMR 1 - If the service Tribunal or Supreme Court decides a point of law relating to the terms of service of a Civil Servant which covers not only the case

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of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/ Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum".

It is, therefore, most humbly requested that the applicant major penalty of removal from service is very harsh punishment, therefore the appellate authority may very kindly be converted penalty of removal from service of the applicant into compulsory retirement in the light of various judgments of the superior Courts as well as Honourable Tribunal mentioned above & the applicant review petition /departmental appeal may kindly be accepted in accordance with rules and judgments of the Honourable Courts as mentioned above. Any others relief which this office deem fit if any may also be granted.

Necessary judgment as mentioned above and all relevant Notifications, letters are attached for ready reference please.

{Syed Dilbar Shah}
Ex - Principal (BS-19)
GHS Tarnab Peshawar
Mobile No. 03362828925, 03338696429
Present address:
Paracha Ice Factory
Nizam Bazar Bannu. Post office
Nizam Bazar, Tehsil & Distt:
BANNU.

VAKALAT NAMA

NO. _____/2023

IN THE COURT OF Service Tribunal Peshawar

Syed Dillbar Shah. (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt: of KP (Respondent)
(Defendant)

I/We, Syed Dillbar Shah

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court of Pakistan & Syed Noman Ali Bukhari, Advocate High Court & Hilal Zubair Advocate** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

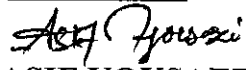
AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

Dated _____/2023


(CLIENT)

ACCEPTED


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.
(BC No. 10-7327)


(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,

OFFICE:
Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell No. 0302-5548451
0333-9103240
0306-5109438
0310-9503909


HILAL ZUBAIR
Advocate