

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

/Service Appeal No. 447/2016

Date of Institution ... 15.04.2016

Date of Decision ... 09.03.2020

Sher Alam, Primary School Teacher, Government Primary School, Chak Nisatta,
Tehsil and District Charsadda. ... (Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa through Secretary Elementary and Secondary
Education Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

MR. IMRAN KHAN,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents

MIAN MUHAMMAD
MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT:

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

02. Sher Alam, hereinafter referred to as an appellant has preferred the instant
service appeal under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act
1974 against impugned order dated 20.05.2015, whereby the appellant was though
reinstated into service but denied back benefits by treating the period i.e 24.06.2009
to 25.04.2014 as extra ordinary leave and trial period was considered as period
under suspension against which he filed departmental ^{Appeal} and it was rejected on
15.12.2015, hence the present service appeal instituted on 15.04.2016.



FACTS:

03. Facts giving rise to the instant service appeal are that the appellant was serving as Primary School Teacher in Education Department. He was implicated in a criminal case vide FIR No. 324 U/S 302/324/148/149 PPC Police Station Prang, Charsadda dated 24.06.2009. He remained absconder in the circumstances beyond his control. The Court of Additional Sessions Judge-I, Charsadda vide his judgment dated 20.04.2015 acquitted the appellant. On acquittal, the appellant reported to the department for duty. The department i.e District Education Officer (M), Charsadda reinstated him in service but with immediate effect vide order dated 20.05.2015. In the same order the period of absence when he was absconder i.e 24.06.2009 to 25.04.2014 was treated as Extra Ordinary Leave and the trial period from 26.04.2014 till his exoneration from charges/date of reinstatement in service i.e (20.05.2015) to be considered as period under suspension as per rules. The order dated 20.05.2015 being impugned, was departmentally appealed against which was turned down vide letter dated 15.12.2015 upholding the decision dated 20.05.2015.

ARGUMENTS:

04. Learned counsel for the appellant argued that the appellant was required to have been treated under FR. 54 and the period should have been treated with all back benefits. The impugned order has been passed in hest and the ends of justice have not been met. The learned counsel for the appellant further contended that the appellant has a family of minors dependent on him but he has been put to suffer due to non-provision of arrears for the period mentioned above.

05. Learned Additional Advocate General, on the other hand argued that FR. 54 is not mandatory as it is optional and left to the will of the competent authority with the word "may". FR. 54 stipulates that:-

"F.R.54---Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period fo his absence from duty---

(a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or

(b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed.

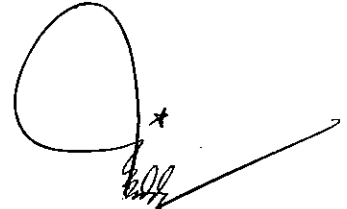
In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty unless the revising appellate authority so directs.

06. The learned Additional Advocate General further contended and referred to two judgments of this Tribunal in service appeal No. 138/2013 titled Hayat Gul and service appeal No. 612/2014 titled Shakir Ullah. Moreover, he also referred to various judgments of the august Supreme Court of Pakistan, the spirit of which is that "no work no pay"

CONCLUSION:

07. From the record it transpires that the appellant was implicated in FIR No. 324 under Section 302/324/148/149 PPC dated 24.06.2009, where-after he remained absconder for six years and did not surrender before law of the land to take its due course. After his arrest and submission of supplementary challan against him, the appellant faced trial and finally acquitted by the Additional Sessions Judge-I, Charsadda vide order dated 20.04.2015. Pursuant to his acquittal,

he reported to his department and he was reinstated in service by the impugned order dated 20.05.2015. As he did not actually worked during the period between 24.06.2009 to 25.04.2014, therefore, it has rightly been treated as leave without pay and trial period between 26.04.2014 to 20.05.2015 as period under suspension. This Tribunal, therefore, finds no cogent reason to interfere in and change the impugned order of District Education Officer (M), Charsadda dated 20.05.2015. The service appeal is therefore dismissed having no substance or merit in it. Parties are left to bear their own costs. File be consigned to the record room.



(MIAN MUHAMMAD)
Member



(MUHAMMAD AMIN KHAN KUNDI)
Member

ANNOUNCED
09.03.2020

06.01.2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 09.03.2020 before D.B.


Member


Member


ORDER

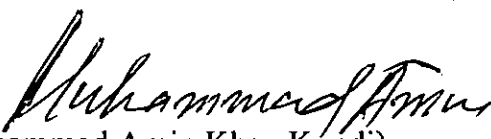
09.03.2020

Appellant with counsel present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the instant appeal is dismissed having no substance or merit in it. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
09.03.2020


(Mian Muhammad)
Member


(Muhammad Amin Khan Kundi)
Member

30.08.2019

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 16.10.2019 before D.B.



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

16.10.2019

Clerk to counsel for the appellant present. Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant was busy before the Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 21.11.2019 before D.B.



Member



Member

21.11.2019

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.01.2020 before D.B.



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

04.04.2019

Nemo for the appellant. Mr. Riaz Painsdakhel learned Asst; AG for the respondents present.

Due to general strike on the call of Bar Council learned counsel for the appellant is not in attendance.

Adjourned to 14.05.2019 before D.B.


Member


Chairman

14.05.2019

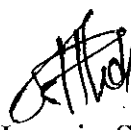
Counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to complete breakdown of electricity. Adjourned to 04.07.2019 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

04.07.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 30.08.2019 before D.B.


(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

14.09.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourned. To come up for arguments on 08.11.2018 before D.B


(Hussain Shah)

Member


(Muhammad Hamid Mughal)

Member

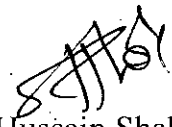
08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 21.12.2018.


READER

21.12.2018

Junior to counsel for the appellant Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not available today. Adjourned. To come for arguments on 19.02.2019 before D.B.


(Hussain Shah)

Member


(Muhammad Amin Kundi)

Member

19.02.2019


Clerk to counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Request^{is} made for adjournment due to engagement of learned counsel for the appellant before Peshawar High Court Peshawar today. Adjourned to 04.04.2019 D.B.



Member


Chairman

02.01.2018

Clerk of the counsel for appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Hameed-ur-Rehman, AD (litigation) for the respondents also present. Clerk of the counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 05.03.2018 before D.B.



(Ahmad Hassan)
Member(E)


(M. Amin Khan Kundi)
Member (J)

05.03.2018


Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 04.05.2018 before D.B.


(Muhammad Hamid Mughal)
Member


(Muhammad Amin Khan Kundi)
Member

04.05.2018

The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come on 20.07.2018


READER

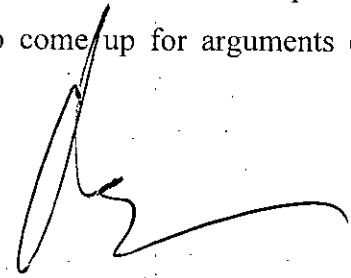
20.07.2018

Due to engagement of the undersigned in judicial proceeding before S.B, further proceeding in the case in hand could not be conducted. To come on 14.09.2018, D.B


Member (J)

22.02.2017

Clerk to counsel for the appellant and Mr. Wasal Muhammad ADO (Legal) alongwith Assistant, AG for respondents present. Rejoinder not submitted and requested for time to file rejoinder. To come up for arguments on 19.06.2017 before D.B.



(MUHAMMAD AAMIR NAZIR)
MEMBER



(AHMAD HASSAN)
MEMBER

19.06.2017

Agent to counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Agent to counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 23.10.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member

23.10.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Rejoinder received. Learned counsel for the appellant seeks adjournment for arguments. Adjournment granted. To come up for arguments on 02.01.2018 before D.B.



Member



Chairman

22.08.2016

Agent to counsel for the appellant, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Additional AG for respondents present. Written reply by respondents not submitted and requested for further time. Request accepted. To come up for written reply/comments on 01.11.2016 before S.B.

Member

01.11.2016

Clerk to counsel for the appellant and Mr. Hameed ur Rehman, AD (Litigation) alongwith Mr. Ziaullah, GP for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 29.12.2016 before S.B.

MEMBER

29.12.2016

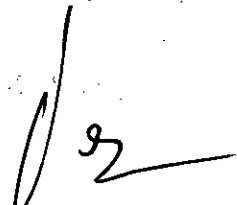
Junior to counsel for the appellant and Mr. Wisal Muhammad, ADO alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.02.2017.

Chairman

20.05.2016

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 20.05.2015 vide which though he was reinstated in service, however, his abscondion period with effect from 24.06.2009 to 25.04.2014 was treated as extra-ordinary leave without pay. Learned counsel stated before the Court as per FR-54 the appellant is entitled for the salary of the period mentioned above.

Since the matter required further clarification, hence pre-admission notice be issued to the office of learned Additional Advocate General to assist the Court as to whether the appellant is entitled for salaries for the period he remainder absconder as per FR-54 or otherwise. To come up for further preliminary hearing on 13.6.2016 before S.B.


Member

13.06.2016

Counsel for the appellant, Mr. Murad Khan, Supdt. for respondents No. 2 & 3 and Mr. Zahoor Rahman, Asstt. Registrar for respondent No. 4 alongwith Addl. AG for the respondents present. Preliminary arguments heard.

In view of the observations of this Tribunal recorded in order sheet dated 20.05.2016 the appeal is admitted to regular hearing. Subject to deposit of security and process fee notices be issued to the respondents for written reply/comments for 22.08.2016 before S.B.

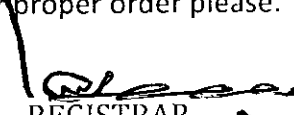

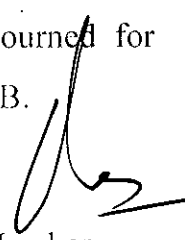
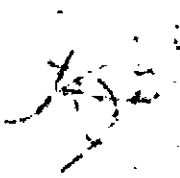
Appellant Deposited
Security & Process Fee


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 447/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26.04.2016	<p>The appeal of Mr. Sher Alam resubmitted today by Mr. Sajid Amin Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2	28-4-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>6-5-2016</u></p> <p> CHAIRMAN</p>
	6.05.2016	<p>Clerk of counsel for the appellant present. Requested for adjournment. Adjourned for preliminary hearing to 20.5.2016 before S.B.</p> <p> Member</p> <p></p>


The appeal of Mr. Sher Alam PST GPS chak Nisatta Tehsil and District Charsadda received to-day i.e. on 15.04.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal may be got signed by the appellant.

2- Annexure-D of the appeal is illegible which may be replaced by legible/better one.

No. 620 /S.T,

Dt. 15/4 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Sajid Amin Adv. Pesh.

Sir

Re Submitted after completion



BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 447/2016

Sher Alam, Primary School Teacher, Government
Primary School, chak Nisatta, Tehsil and District Charsadda.
(Appellant)

VERSUS

Govt of Khyber Paktunkhwa through Secretary Elementary
and Secondary Education Khyber Pakhtunkhwa Peshawar and
others.
(Respondents)

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4	Copy of Judgment and order of acquittal	B	8-20
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6	Copies of the departmental Appeal and rejection order dated 15.12.2015	D & E	22-26
7	Vakalatnama		27

Appellant ~ ~

Through


SAJID AMIN
Advocate Peshawar

&

ZARTAJ ANWAR
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 447/2016

A.W.F. Province
Service Tribunal
Diary No 380
Dated 15-4-2016

Sher Alam, Primary School Teacher, Government
Primary School, chak Nisatta, Tehsil and District Charsadda.
(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Charsadda.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Order dated 20.05.2015, whereby the appellant has been though reinstated into service but the appellant has been denied back benefits by treating the period i.e 24.06.2009 to 25.04.2014 as extra ordinary leave and trial period has been considered as period under suspension, against which the departmental appeal has been rejected vide order dated 15.12.2015.

Prayer in Appeal: -

On acceptance of this appeal the impugned order dated 20.05.2015, to the extent of treating the period i.e 24.06.2009 to 25.04.2014 as extra ordinary leave may please be set aside, similarly the order dated 15.12.2015, may also be set-aside and the appellant may be allowed all arrears of salary and back benefits of service for the intervening period i.e from the date of Removal i.e 24.06.2009 till re-instatement i.e 20.05.2015.

Filed to-day
15/4/16

re-submitted to-day
and filed.

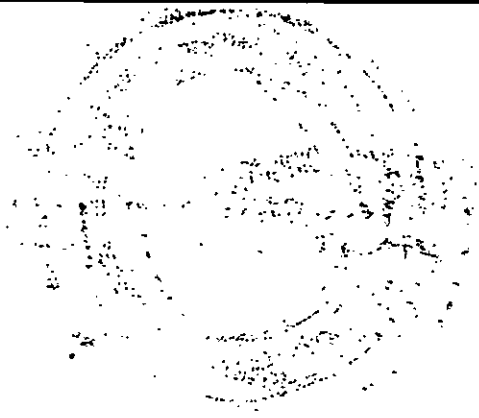
26/4/16

Respectfully Submitted:

1. That the appellant is serving in the Respondents' department as Primary School Teacher.
2. That ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance.
3. That while serving in the said capacity, the appellant was falsely implicated in a criminal case under section 302/324/148/149 PPC, vide FIR No.324, dated 24.06.2009 of Police Station Prang, Charsadda. The appellant duly informed his department about his false implication in criminal case. Since there were serious threats to the live of the appellant from his enemies, therefore he could not join his duty. *(Copy of the FIR is attached as Annexure A)*
4. That after facing trial, the appellant was acquitted from criminal charges by the Learned Additional Sessions Judge vide his judgment and order dated 20.04.2015. *(Copy of the judgment of the A.S.J. Charsadda dated 20.04.2015 is attached as Annexure B)*
5. That after obtaining copies of the acquittal order, the appellant duly reported the matter to the respondent. The respondent resultantly reinstated the appellant in service with immediate effect vide order dated 20.05.2015. However, the alleged absconder period has been treated as extra ordinary leave and trial period has been considered as period under suspension. *(Copy of the order dated 20.05.2015, is attached as Annexure attached as Annexure C).*
6. That partially aggrieved from the order dated 20.05.2015, the appellant filed his departmental appeal. However the same has been rejected vide order dated 15.12.2015. However the order was never communicated to the appellant. The appellant time and again inquired about the outcome of his departmental appeal, however he was not given any response, lastly he came to know on 17.03.2016 that his request for back benefits has been turned down vide letter dated 15.12.2015. *(Copies of departmental appeal and rejection order dated 15.12.2015 is attached as Annexure D & E).*
7. That the appellant prays for the acceptance of the instant appeal inter alia on the following grounds:-

GROUND OF APPEAL:

- A. That the appellant have not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That the case of the appellant is covered under FR-54 which provides that:
“F.R.54---Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty—
a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or
b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed.
In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty unless the revising appellate authority so directs.
 Since the appellant has been Honourable acquitted in criminal case, therefore on his reinstatement he cannot be denied the back benefits of service to which he would have been entitled had he been in service.
- C. That it has also been held by the Superior courts in a number of reported cases that all acquittals are honorable and there can be no acquittal that can be termed as dis-honourable, reliance is places on **1998 SCMR 1993 and 2001 SCMR 269.**
- D. That since the absence of the appellant was not willful but was due to his false implication in criminal case, moreover the respondents were fully aware of the registration of criminal case against the appellant, therefore under the law/rules when the appellant is reinstated on his acquittal from criminal case, then he under no circumstance can be denied the back benefits for the period he remained out of service.
- E. That the appellant was falsely implicated in FIR, and due to threats to his life and blood shed enmity, he had to go under ground and therefore he remained out of service during that period. The absence period of the Appellant was thus beyond hid control and he cannot be made suffered for the events which were beyond his control.
- F. That the appellant has never committed any act or omission which could be termed as misconduct, his absence from duty



was not willful but it was due to his false implication in criminal case. Since the appellant have honorably acquitted in the criminal case, and subsequently reinstated, thereafter treating the absence period as leave without pay is uncalled for and liable to be set aside.


- G. That during the intervening period the appellant never remained in gainful employment, therefore on his reinstatement he is entitled for the grant of all benefits also.
- H. That the appellant also seeks permission of this honorable Tribunal to rely on additional grounds at the time of hearing of the appeal.

It is, therefore, humbly prayed that On acceptance of this appeal the impugned order dated 20.05.2015, to the extent of treating the absconder period as extra ordinary leave and trial period as period under suspension and rejection order dated 15.12.2015 may please be set-aside and the appellant may be allowed all arrears of salary and back benefits of service.

Appellant

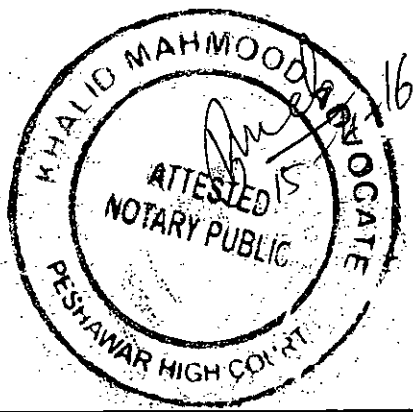
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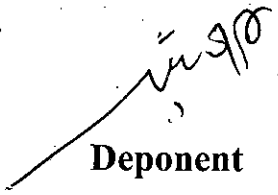

SAJID AMIN
Advocate Peshawar

&

ZARTAJ ANWAR
Advocate Peshawar

AFFIDAVIT

I, *Sher Alam, Primary School Teacher, Government Primary School, chak Nisatta, Tehsil and District Charsadda*, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.




Deponent

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2016

**Sher Alam, PST Teacher, Govt. Primary School, chak Nisatta,
Tehsil and District Charsadda.**

(Appellant)

VERSUS

Govt of Khyber Paktunkhwa through Secretary Elementary and
Secondary Education Khyber Pakhtunkhwa Peshawar and
others.

(Respondents)

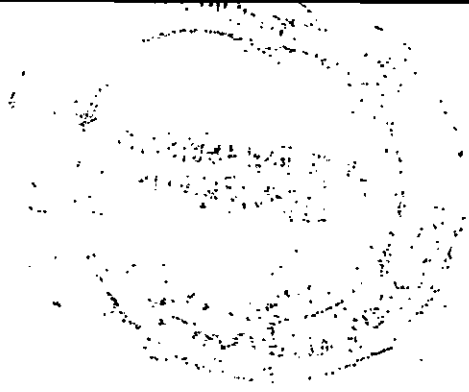
**APPLICATION FOR CONDONATION OF DELAY,
IF ANY IN FILING THE TITLED APPEAL**

Respectfully submitted:

1. That the applicant has today filed the accompanied appeal before this Honorable Tribunal in which no date of hearing is fixed so far.
2. That the applicant prays for condonation of delay if any in filing the instant appeal inter alia on the following grounds:-

GROUND OF APPLICATION

- A. That the applicant has falsely been charged by the complainant. The applicant duly informed the department about his false implication, however since there were severe threats to the appellant and his family therefore it was not possible for the applicant to join his duties.
- B. That soon after his acquittal, the applicant was reinstated into service but without arrears and back benefits vide order 20.05.2015 against which his departmental appeal was rejected vide 15.12.2015. However the order was never communicated to the appellant. The appellant time and again inquired about the outcome of his departmental appeal, however he was not given any response, lastly he came to know on 17.03.2016 that his request for back benefits has been turned down vide letter dated 15.12.2015. Since, the appellant pursued his case diligently and never remained negligent in pursuing his remedy, therefore delay if any in filling the titled appeal is not




willful but due to the reason stated above, and deserve to be condoned.

- C. That the delay, if any, in filing the instant appeal was not willful nor can the same be attributed to the applicant as it was due to the non communication of the rejection order to the applicant, therefore the applicant cannot be made suffered for the omission of respondent for not communicating the rejection order . Hence delay if any deserves to be condoned.
- D. That it has been consistently held by the superior courts that appeal filed with in 30 days from the date of communication of the order on departmental representation / appeal would be in time. ***Reliance is placed on 2013 SCMR 1053 & 1997 SCMR 287 (b)***.
- E. That valuable rights of the appellant are involved in the instant case in the instant case, hence the delay if any in filing the instant case deserves to be condoned.
- F. That it has been the consistent view of the Superior Courts that cases should be decided on merit rather than technicalities including limitation. The same is reported in 2014 PLC (CS) 1014 2003 PLC (CS) 769.

It is therefore humbly prayed that on acceptance of this application the delay if any in filing the instant appeal may please be condoned.

Applicant

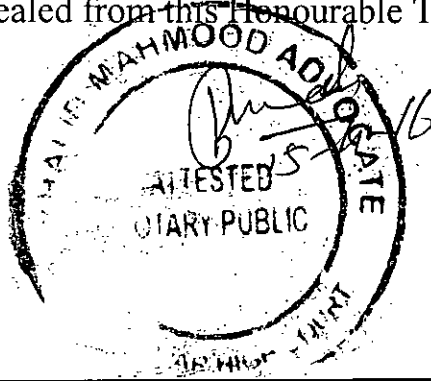
Through


SAJID AMIN
Advocate Peshawar


ZARTAJ ANWAR
Advocate Peshawar

AFFIDAVIT

I, Sher Alam, Primary School Teacher, Government Primary School, chak Nisatta, Tehsil and District Charsadda, do hereby solemnly affirm and declare on oath that the contents of the above noted application for condonation of delay are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.




Deponent

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ASIP-211-2006

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ANNEX B

In The Court Of
**KHALID KHAN ADDITIONAL SESSIONS JUDGE-I,
CHARSADDA**

Sessions Case No:
Date of institution:
Date of Decision:

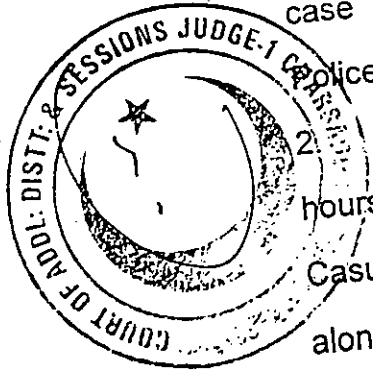
127/14 SC
May 31, 2014
April 20, 2015

THE STATE ...VERSUS... 1) Sher Alam S/o Mujrim Khan (2) Imran
S/o Mukhtiar (3) Sher Muhammad S/o
Banaras Khan all residents of Nisatta,
District Charsadda.

Charged vide FIR # 324
Dated 24.06.2009
U/S 302/324/148/149 PPC
Police Station, Prang

JUDGMENT:

1. Accused Sher Alam, Imran and Sher Muhammad faced trial in
case FIR # 324, Dated 24.06.2009, U/s 302/324/148/149 PPC,
Police Station, Prang.



2. Brief facts of the instant case are that on 24.06.2009 at 13.30
hours, Ali Askar S/o Bashir Ahmad reported to the local police at
Casualty DHQ Hospital, Charsadda that on the eventful day, he
along with his brother Fakhre Alam, deceased Muhammad Ishaq
and Basheer had come to Charsadda in their Motorcar
No.5358/LHR. That they were going back to their village, while
Bashir de-boarded for purchasing "Choly". At 12:30 hours, from
Charsadda side a Motorcar No.5100 speedily overtook vehicle of the
complainant party, and from the said vehicle, Sher Muhammad,
Imran, Sher Alam, Qasim and Javed duly armed with deadly
weapons de-boarded and signaled vehicle of the complainant to
stop. That, thereafter, the accused came near the vehicle of
complainant and started firing upon the complainant party. As a

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result of firing of accused facing trial Sher Muhammad, Imran and Sher Alam; Muhammad Ishaq got hit and died on the spot, whereas, with the fire shots of Qasim and Javed; the complainant and his brother got hit and injured. Motive disclosed by the complainant is blood feud between the parties. Report of the complainant was reduced in the shape of Murasila, on the basis of which the instant F.I.R was registered.

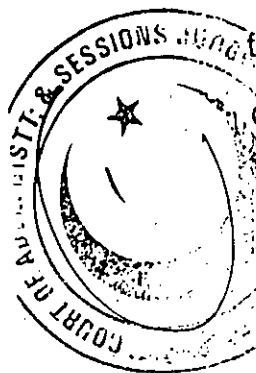
3. Initially, challan u/s 512 Cr.PC was submitted against all the accused. Upon the arrest of accused Qasim and Javed, supplementary challan was submitted against them and after trial, they were acquitted, whereas, accused facing trial were declared proclaimed offenders. After the arrest of accused facing trial, supplementary challan was submitted against them and case in hand came up for trial. During trial, relevant copies were provided to the accused u/s 265-C(1) Cr.PC on 02.07.2014. Charge was framed on 09.07.2014, wherein, accused facing trial denied the allegations and opted to face trial. Prosecution was, therefore, allowed to produce its evidence.

4. Prosecution produced 12-PWs, in order to substantiate the charge. The gist of their deposition is given below:-

(PW.1) Masood Khan SI, arrested accused facing trial vide arrest card Ex. PW1/1. He produced the accused facing trial for obtaining their police custody vide his application Ex: PW1/2, which was refused and the accused were remanded to judicial lockup. He recorded statements of accused u/s 161 Cr.PC and after completion of investigation, handed over the case file to the SHO Amir Nawaz Khan who submitted challan against the accused. He claimed his signatures as correct on the documents prepared by him.

(PW.2) Wali Ullah S/o Musharaf Shah, identified the dead body of deceased Muhammad Ishaq before the police at the time of report and before the doctor at the time of PM examination.

Allego

(PW.3) Dr. Abdur Rasheed Rashid MO, on 24.06.2009 at 01.30 PM, examined injured Ali Asghar S/o Bashir Ahmad r/o Amalyan Nisatta and found the following:-

The injured was fully conscious.

A single grazing, bleeding firearm wound about 1/4" long on left index finger tip. First aid given, no bony involvement.

Duration of the injury less than one hour.

Weapon used firearm and the nature of injury was simple. (injury less)

His report in this regard is Ex: PW.3/1.

On the same day at 01.32 PM, he also examined injured Fakhre Alam and found the following:-

Injured fully conscious.

A single bleeding firearm wound on mid lateral part of left arm, about 1/4" x 1/4" in diameter. First aid given. Advised X-Ray left arm both views. Admitted in male surgical ward. Duration of the injury

was less than one hour, caused by firearm. Nature of the injury was declare as simple after admission No.323/68 dated 24/25/06/2009

and as per that record there was no bony lesion, so nature of injury was declare as simple. The medico legal report is Ex: PW3/2.

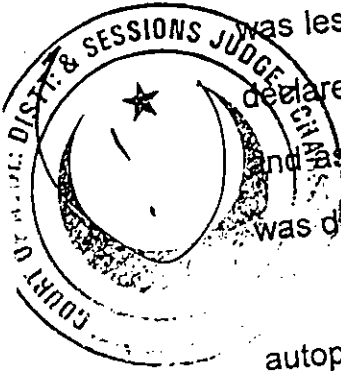
On the same day i.e. 24.06.2009 at 01.45 PM, he conducted autopsy on the dead body of the deceased Mohammad Ishaq S/o Jan Ali and found the following:

Condition of the body:-

Pale yellow color, aged about 25/26 years clothed in sky blue shalwar, qamees and white banyan. Six fire arm cuts on qamees and one on banyan found.

Wounds:-

1. Firearm entry wound on left side of neck below left mandibular joint about 1/4x1/3" in diameter.
2. Corresponding exit firearm wound of No.1 anteriorly in the byparietal junction about 1/1" in diameter.



Alleged

- 3. Firearm entry wound on the right upper auxiliary line about 1/4x1/4" in diameter.
- 4. Corresponding exit firearm wounds of No.3 in mid left scapula about 1/2x1/2" in diameter.
- 5. Corresponding firearm exit wound of No.5 in right upper posterior shoulder about 1/2x1/2" in diameter.

Internal examination:-

Thorax:- Forth and fifth ribs fractured on right side and thorax wall injured. Plurae intact, larynx and trachea both injured. Right lung and left lung in both upper part injured, pericardium and heart injured and blood vessels is injured.

Abdomen:- Pharynx injured and rest of the organs of the abdomen were found intact. Stomach was intact and empty.

Cranium and spinal cord:-

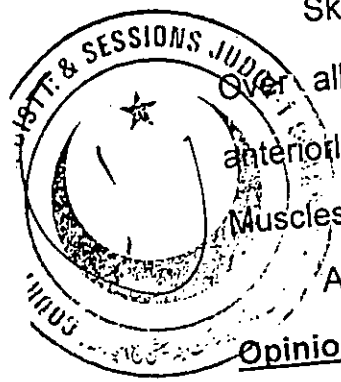
Skull fractured, third and fourth survival vertebrae fractured. all brain and brain membranes injured and ruptured in anteriorly.

Muscles, Bones and joints:-
As mentioned above.

Opinion:-

In his opinion deceased Mohammad Ishaq died due to severe trauma to his vital organs, brain, heart, lungs with severe and extensive hemorrhage and anoxic shock, all leading to the sudden death of the deceased. Probable time that lapsed between injury and death instantaneous. And time between death and PM 01 to 1 hour and 15 minutes. The PM report is Ex: PW3/3 consisting of six sheets including the pictorial. The injury sheet of the deceased Mohammad Ishaq Ex: PW3/4 and inquest report Ex: PW3/5 also bear his endorsements. He claimed his signatures as correct on the documents prepared by him.

(Pictorial)

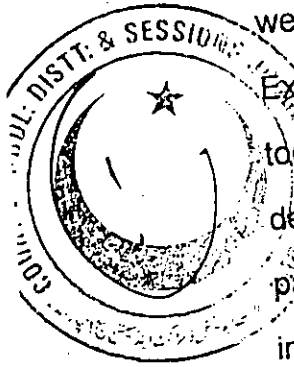


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(PW.4) Waris Khan No.16, is marginal witness to the recovery memo Ex: PW4/1 vide which the Investigation Officer took into possession a sealed phial having a spent bullet sent by the doctor and produced to the Investigation Officer in his presence.

(PW.5) Dr. Javed Iqbal Orthopedic Surgeon, stated that injured Fakhr-e-Alam was advised for operation to him, as he was referred to him and he/PW.5 made his operation on 26.06.2009 and a foreign body was recovered from his body during operation and was discharged on 29.06.2009. The discharge slip is Ex: PW5/1.

(PW.6) Said Ghalib Khan (Rtd.) SI, conducted investigation in the instant case. He prepared site plan Ex:PW6/1, at the instance and pointation of eyewitnesses Ali Askar and Bashir. During the spot inspection, he recovered and took into possession a motorcar bearing registration No.LHR-5358 in which the deceased and injured were present at the time of occurrence vide recovery memo Ex:PW6/2 in presence of marginal witnesses. He also recovered and took into possession blood through cotton from the place of deceased Ishaq and injured Fakhr-e-Alam, packed and sealed in parcel vide recovery memo Ex. PW6/3. He also recovered and took into possession spent bullet P-1 sent by the doctor in a phial vide memo Ex: PW6/4. Similarly, he also took into possession blood stained garments of the deceased Ishaq consisting of Qamees P-2, Shalwar P-3 sky colour, Banyan P-4 which were sealed in a parcel and also took into possession one shirt P-5 blood stained having corresponding cut mark belonging to injured Fakhr-e-Alam, brought by constable Maazullah No. 137 and sealed the same in a parcel and prepared recovery memo is Ex:PW6/5. He sent the blood stained garments of the deceased, injured and blood through cotton to the FSL vide his applications Ex: PW 6/6 and Ex: PW6/7, respectively, and the result thereon are Ex: PW6/8 and Ex: PW6/9, respectively. He also sent spent bullet to the FSL vide his application



Attest

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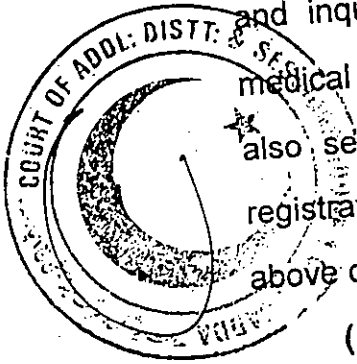
Ex: PW6/10 and the result thereof is Ex: PW6/11. As the accused were avoiding their lawful arrest, therefore, vide his applications Ex: PW6/12 and Ex: PW.6/13, he applied for and obtained warrants u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC and handed over to the DFC concerned for doing the needful. He recorded statements of PWs u/s 161 Cr.PC and after completion of investigation, he handed over the case file to the SHO concerned for onward submission. He also annexed the motive FIR which is Ex: PW6/14. He claimed his signatures as correct on the documents prepared by him.

(PW.7) Sher Ali SI, reduced the report of complainant in the shape of Murasila Ex: PA/1. He prepared injury sheet of Ali Askar Ex: PW7/1 and injury sheet of Fakhr-e-Alam Ex: PW7/2. He also prepared the injury sheet of deceased Muhammad Ishaq Ex: PW7/3 and inquest report Ex: PW7/4 and sent them to the doctor for medical treatment and P.M examination through FC Maazullah. He also sent the Murasila to the concerned Police Station for the registration of the case. He admitted his signatures as correct on the above documents.

(PW.8) Amir Nawaz Khan SHO, submitted supplementary challan against the accused facing trial.

(PW.9) Mohammad Irsaal DFC, executed warrants u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC against accused facing trial. The warrants, notices and reports of PW.9 are Ex: PW9/1 to Ex: PW9/20, respectively.

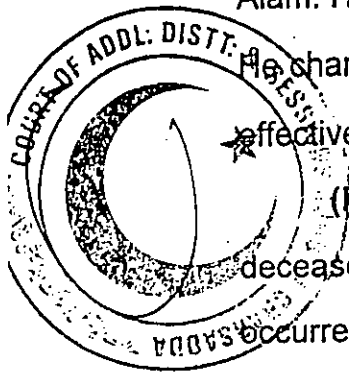
(PW.10) Maazullah No.137, escorted the dead body of deceased from causality DHQ Hospital Charsadda to mortuary and after PM examination, the doctor handed over to him blood stained clothes of the deceased and one phial having a spent bullet, which he produced to the Investigation Officer. His statement was recorded under section 161 Cr. PC.



Attyal
[Signature]

(PW.11) complainant Ali Askar stated in support of his report Ex: PA/1. He further stated that the site plan was prepared at his instance and at the instance of PW Basheer. He is also marginal witness to recovery memo Ex:PW6/2 vide which the I.O recovered and took into possession car bearing No. LHR-5358 Toyota Corolla and from the seat of the motorcar some blood were taken through cotton. He is also marginal witness to the recovery memo Ex: PW6/3 vide which the IO took into possession some blood through cotton from the place of deceased and some blood from the place of injured Fakhre Alam. Similarly, he is marginal witness to the recovery memo Ex: PW6/5 through which the I.O took into possession the clothes of the deceased Ishaq; one white qamees blood stained having corresponding cut belong to injured Fakhre Alam. He claimed his signatures as correct on the above documents.

He charged the accused for the murder of Mohammad Ishaq and for effective firing upon his life and at the life of his brother ~~Fakhre~~ ^{Fakhre} Alam.



(PW.12) Fakhre Alam S/o Bashir Ahmad stated that deceased Muhammad Ishaq was his first cousin. On the day of occurrence he alongwith his brother Ali Askar, deceased Muhammad Ishaq, Bashir Ahmad had come to Tehsil Bazaar in their motorcar bearing No. LHR-5358 which was driven by him. On the way return to their village when they reached near Taj Plaza, there his father Bashir Ahmad got down from the motorcar mentioned above for purchasing of Choley and other household articles. At this time a motorcar bearing No. 5100 came there with rashly and stopped in front of their car from which Sher Muhammad, Imran, Sher Alam, Qasim and Javed duly armed with deadly weapons got down and came near their car and all the accused started firing upon them with their respective weapons. As a result of the firing of accused facing trial, Muhammad Ishaq got hit and died, while he and his brother Ali Askar sustained injuries with the fire shots of Qasim

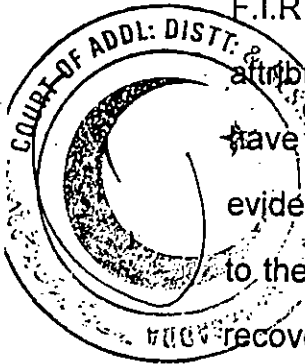
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and Javed. He claimed to be the witness of the occurrence and charged the accused facing trial for the murder of his cousin Ishaq and acquitted accused for his injury and for the injury of Ali Askar. Motive for the offence was previous blood feud. His statement was recorded by the police u/s 161 Cr. PC.

5. Thereafter, the prosecution closed its evidence and statements of the accused were recorded u/s 342 Cr.PC. Accused did not opt to produce evidence in their defense nor opted to be examined on oath u/s 340(2) Cr.PC, Hence, arguments of learned Assistant Public Prosecutor duly assisted by private counsel for the complainant and learned counsel for accused were heard and record was perused.

6. Learned state counsel assisted by private learned counsel for complainant has argued that accused directly charged in the prompt F.I.R for day light occurrence and role of injuries to the deceased attributed to the accused facing trial. That injured eye witnesses have deposed against the accused by giving confidence inspiring evidence and despite lengthy cross-examination nothing favourable to the accused has been brought on record. That though empty not recovered but a spent bullet recovered from the body of PW Fakhre Alam. That there is no question of false implication. That there are three entry wounds on the deceased for which three accused facing trial have been charged. That medical evidence supports prosecution case. That motive for the offence is there. That accused facing trial have remained absconders for long time, which also corroborates the prosecution case. That prosecution has established its case against accused facing trial beyond shadow of doubt and accused facing trial may be convicted and sentenced with maximum sentence provided by law.

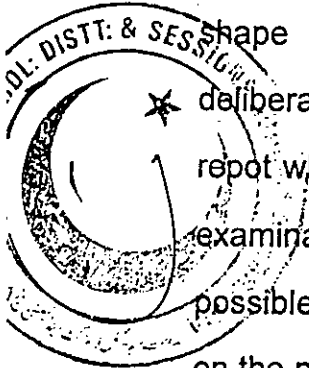
7. On the other hand learned defence counsel has argued that the alleged eye witnesses are highly interested and so the same



Alleged

Requires

Requires to be carefully evaluated. That no independent witness has come forward even in support of the alleged recoveries or about the alleged presence of the accused on the alleged scene of occurrence. That alleged eyewitness/complainant was not believed against co-accused. That though one of the alleged eyewitnesses, namely, Fakhr-e-Alam produced and examined by the prosecution, but from his statement too the prosecution has not establish its case against the accused facing trial. That in all 5 persons were charged in the instant case. That medical evidence is contradicting the alleged eyewitnesses. That as per report the injured and deceased were brought by the passer byes to the hospital and in the said report presence of alleged eyewitness Bashir has not been mentioned which shows that the said Bashir was not present at all at the time of alleged occurrence. That the contents of the report in the shape of Murasila also shows that the same is the result of deliberation and consultation apart from the one hour delay in the report which has not been explained. That time of report and time of examination of the alleged injured is one and the same which is not possible and the same also speaks of deliberation and consultation on the part of complainant party. That no reason given for coming to Charsadda by complainant party. That description of weapons has not been given in the report. That the alleged eyewitnesses have allegedly received injuries but the same are minor injuries as per available record, while role of firing attributed to five persons from a very closed range and the alleged motorcar has neither received any bullet mark nor the same motorcar has been produced in the court. That there is no other evidence of the nature to connect the accused facing trial with the alleged offence. That prosecution has failed to prove its case against the accused facing trial beyond shadow of reasonable doubt and in the circumstances abscondence



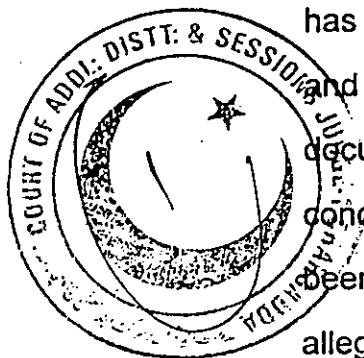
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alone is no evidence against the accused. That accused facing trial may be acquitted from the charges leveled against them.

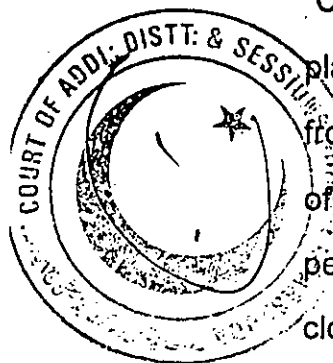
8. In the instant case ocular account is that of PW-11 and PW-12, who have allegedly received injuries in the alleged occurrence, but being closed relatives of the deceased, their statements are evaluated carefully.

In the instant case report was made in the shape of Murasila which is delayed by one hour and perusal of the said Murasila would reveal that in the start of the same the words and spaces are different than the words and spaces at the end before the signature of the complainant wherein the accused have been named for the alleged offence and on the other hand report is of 01.30 p.m. and as per the said report/Murasila at the end the author of the Murasila has stated about preparation of injury sheets of the injured and the deceased and after preparation of the said documents the injured and deceased were referred to the concerned doctor which suggests that some time have been consumed, but strangely the examination of the alleged injured was made at 01.30 P.M and 01.32 P.M by the doctor and the same also speaks of overwriting. The foregoing situation is suggesting of preliminary inquiry before the report in the instant case. In the FIR complainant has not shown the purpose of coming to Charsadda, whereas, PW-12 has stated in his cross examination that they had met one Azmat in connection with business of poultry but the said Azmat has not been produced in support of his stance by the prosecution and this stance of PW-12 is an improvement as the same is not supported or corroborated by any other piece of evidence. In the FIR



Azmat
[Signature]

presence of the complainant party on the alleged spot is shown as one Bashir had to purchase "choley" but as per Murasila the injured and deceased were brought to the casualty of DHQ Hospital, Charsadda by the passers by and the said Bashir was not named in the Murasila for taking the deceased and injured to the hospital. Similarly, in the site plan point No.4 was given to the said Bashir, but no one shown in the site plan selling "Choley" and neither the said "Choley Farosh" examined in the instant case, whereas, in court statement PW.11 has stated of purchasing some articles and PW.12 has stated of purchasing "Choley" and other household articles instead of purchasing Choley as stated in the FIR. Furthermore, in the presence of sons, sending father for purchasing "Choley" is also not appealable to mind. According to site plan Ex: PW.6/1, deceased and PW.12 are shown in the front seat of the car, while PW.11 is shown in the rear seat of the same and as per PW.11 and PW.12, all the five persons made firing on the complainant party from very close distance, even then the role of causing injuries to the deceased is attributed to three accused facing trial, while role of causing injuries to PW.11 and PW.12 is attributed to acquitted co-accused two in number, which also in the circumstances is not possible to have been noticed as alleged and is not appealable to mind. Furthermore, five persons were making firing from such a close range then why PW.11 and PW.12 have received minor injuries and have not been done to death. Despite the alleged firing by five persons said motorcar has not received any bullet mark, whereas, the accused have been shown to have fired from left side as stated in the cross-examination of



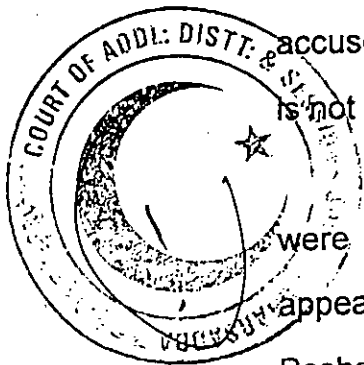
Accepted


(18)

PW.12 and shown in the site plan Ex: PW.6/1, but as per medical evidence the deceased has received an entry wound on the right upper axillary line about ¼" x ¼" in diameter which is also not possible to have been received from the firing as alleged by PW.11 and PW.12 as site plan Ex: PW.6/1 prepared allegedly at the pointation of PW.11 and PW.12. Despite the alleged firing from a very close range, weapons have not been described by PW.11 and PW.12, though PW.11 and PW.12 have allegedly received injuries in the alleged occurrence which are ~~allegedly~~ of the nature belying the story of prosecution and thus the testimonies of PW.11 and PW.12 are not trustworthy nor confidence inspiring as discussed above. There is no other evidence of the nature to connect

accused with the alleged offence and abscondance alone is not evidence against the accused in the circumstances.

Previously co-accused, namely, Qasim and Javed were tried and acquitted by the learned trial court and appeal against acquittal also dismissed by the Hon'ble Peshawar High Court, Peshawar vide order dated 29.01.2014, though previously only one alleged eye witness, namely, Ali Askar was examined while rest of the alleged eye witnesses were abandoned by the prosecution, but despite the examination of another eye witness Fakhre Alam as PW.12, prosecution have its case against accused facing trial now of doubt as discussed above in detail. by extending the benefit of doubt to the accused facing trial, the accused facing trial, namely, Sher



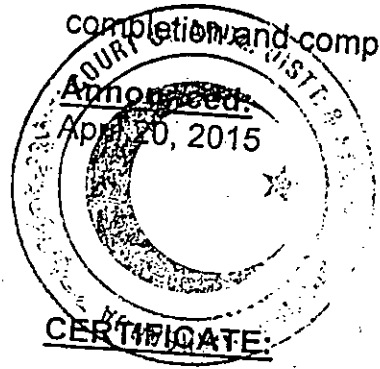
Ali Askar

70

be set free forthwith if not required in any other case in custody.

9. Case property be kept intact till the expiry of period for appeal/revision, where after, be dealt with in accordance with law.

File be consigned to the Record Room after its necessary completion and compilation.



(Signature)

KHALID KHAN
Additional Sessions Judge-I
Charsadda

CERTIFICATE:

It is hereby certified that this judgment consists of (13) pages.
I have read over each page, corrected and signed.

(Signature)

Additional Sessions Judge-I
Charsadda

Accepted
(Signature)

21

ADJUSTMENT

APPRO: C

Consequent upon the exoneration from charges of murder by the Honorable Court of Additional Session Judge Charsajda. Mr Sher Alam PST GPS Check Nisatta is hereby reinstated in service with immediate effect.

The absconder period w.e.f; 21/06/2009 to 25/04/2014 is treated as extra ordinary leave and the trail period from 26/04/2014 till the exoneration from charges/date of reinstatement in service is considered as period under suspension as per Rules.

(SIRAJ MUHAMMAD)
DISTRICT EDUCATION OFFICER
(MALE) CHARSAJDA

Enclst No 5914-17 F; No 48 B/Suspension/ dated 20/5/2015.

Copy forwarded to the:-

1. District Accounts Officer Charsajda
2. SDEO (M) Charsajda with the remarks that before starting his salary it may be ensured that the opponent party has not filed any appeal in upper court and no stay order issued.
3. Official concerned
4. Office file

20/5/15
DISTRICT EDUCATION OFFICER
(MALE) CHARSAJDA

Musa

MSB

Any other relief, which may be deemed proper in the circumstances of the case may also be granted.

AND

entitled for the same. 24.06.2009 to 20.05.2015 for which he is legally salary of appellant with all back benefits w.e.f. be issued to the concerned department to release the pay may kindly be set aside and directions may please benefits and treating the appellant's service without (Male), Charredda, to the extent of non-awarding back impugned order dated 20.05.2015 passed by DRO On acceptance of this departmental appeal the

ORDER IN APPEAL

Departmental appeal against the order dated 20.05.2015 passed by District Education Officer (Male), Charredda, whereby the absconder period w.e.f. 24.06.2009 to 20.04.2014 is treated as extraordinary leave and the trial period from 20.04.2014 till the expiration from charges/date of retirement in service, is considered as period under suspension to be void.

Departmental Appeal/Representation No. _____ of 2015

In Re:

STATEMENT

DIRECTOR EDUCATION, KPR

Annex - D

22

BEFORE THE DIRECTOR EDUCATION, KPK.
PESHAWAR.

In Re.

Department Appeal/ Representation No. _____ of 2015

Departmental appeal against the order dated 20.05.2015 passed by District Education Officer (Male), Charguddin, whereby the absconder period w.e.f. 24.04.2009 to 25-04-2014 is treated as extraordinary leave and the trial period from 26.04.2014 till the exonerated from charges/ date of re instrument in service, is considered as period under suit order as per rule.

Prayer in Approx.

On acceptance of this departmental appeal the impugned order dated 20.05.2015 passed by DEO (Male), Charsadda, to the extent of non-awarding back benefits and treating the appellant's service without pay may kindly be set aside and directions may please be issued to the concerned department to release the salary of appellant with all back benefits w.e.f. 24.06.2009 to 20.05.2015 for which he is legally entitled for the same.

AND

Any other relief, which may be deemed proper in the circumstances of the case may also be granted.

Respectfully Sheweth:

1. That the appellant was appointed as PST Teacher in Education Department and serving the department efficiently and with great care of duty.
2. That the appellant was proceeded departmentally by his department on account of false charge and concocted FIR, which was lodged against the appellant.
3. That the Honourable Additional Sessions Judge, ~~Benapur~~ ^{Changanassery} vide his judgment dt.20.06.2015 honorably acquitted the appellant from the charges levelled against him and ultimately, the department reinstated the appellant in service but at the same time, the absconder period w.e.f. 24.06.2009 to 25.04.2014 is treated as extraordinary leave and the trial period from 26.04.2014 till the exoneration from charges/ date of reinstatement in service is considered as period under suspension as per rules.
4. That appellant remained out of service from the date of dismissal on account of concocted FIR and false implications and remained un-employed during the said period.
5. That the appellant being aggrieved from the said impugned order dated 20.06.2015 by not awarding back benefits to the appellant w.e.f. 24.06.2009 to

Accepted
to

Respectfully Sheweth.

1. That the appellant was appointed as PST Teacher in Education. Department and serving the department efficiency and with great care of duty.
2. That the appellant was proceeded departmentally by his department on account of false charge and concerned FIR, which was lodged against the appellant.
3. That the Honourable Additional Session Judge, Charsadda vide his judgment dt. 20.05.2015 honourably acquitted the appellant from the charges levelled against him and ultimately, the department reinstated the appellant in service but at the same time, the absconder period w.e.f. 24.06.2009 to 25.04.2014 is treated as extraordinary leave and the trial period from 26.04.2014, till the exoneration from charges/ date of reinstatement in service is considered as period under suspension as per rules.
4. That appellant remained out of service from the date of dismissal on account of concocted FIR, and false implication and remained un-employed during the said period.
5. That the appellant being aggrieved from the said impugned order dated 20.03.2015 by not awarding back benefits to the appellant w.e.f. 24.06.2009 to

24

20.05.2015, approaches this Honourable Forum, inter alia, on the following grounds:

GROUND:

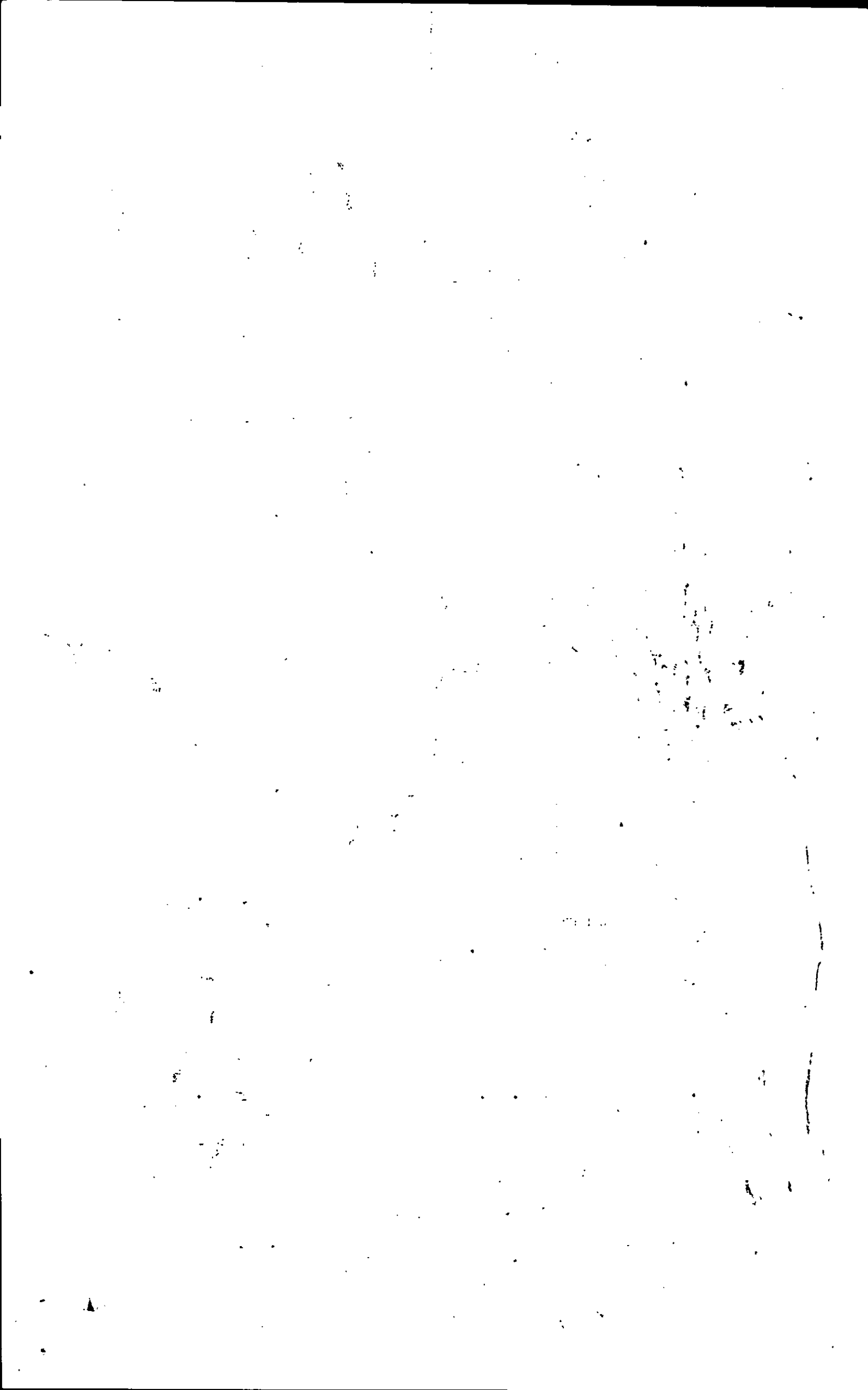
- A. That the order dated 20.05.2015 passed by DEO (Male) (Impugned herein) to the extent of treating the appellant's service without pay, is against law, facts and record of the case, hence untenable and liable to be set aside.
- B. That the departmental authority has passed an order without judicial application of mind by depriving the appellant from his back benefits; had this authority looked into the case deeply such impugned order would not have passed by authority.
- C. That the appellant was awarded major punishment of dismissal from service on account of concocted FIR and due to blood-shed enmity, the appellant remained absconder and remained out of service in that period, which is beyond the control of appellant, therefore, non-granting of back benefits to the appellant is the violation of basic fundamental rights of the appellant.
- D. That appellant was awarded major penalty of dismissal without any justification of law and facts, as a result of dismissal from service, he suffered alot financially & mentally by illegal exercise of power of authority. Such treatment meted-out by the EDO (Male) with the appellant is highly illegal, unethical, irrational and by

Alfa
e

20.05.2015 approaches as this Honourable Forum, inter alia, on the following grounds :

G R O U N D S

- A. That the order dated 20.05.2015 passed by DEO (Male) (Impugned herein) to the extent of treating the appellant's service without pay, is against law, facts and record of the case, hence untenable and liable to be set aside.
- B. That the departmental authority has passed an order without adjudicial application of mind by depriving the appellant from his back benefits; had this authority looked into the case deeply such impugned order, would not have passed by authority.
- C. That the appellant was awarded major punishment of dismissal from service on account of concocted FIR and due to blood-shed enmity, the appellant remained absconder and remained out of service in that period, which is beyond the control of appellant, therefore, non-granting of back benefits to the appellant, is the violation of basic fundamental rights of the appellant.
- D. That appellant was awarded major penalty of dismissal without any justification of law and facts, as a result of dismissal from service, he suffered alot financially & mentally by illegal exercise of power of authority. Such treatment meted-out by the EDO (Male) with the appellant is highly illegal, unethical, irrational and by



M. M. S.

Dated: / / 2015

Shri. A. M. S. (PST), GPS Chak Nisaha, Tehsil and District, Charsadda

M. M. S.
Appellant

Any other relief which may be deemed proper in the circumstances of the case may also be granted.

AND

which he is legally entitled for the same. back benefits with effect from 24.05.2009 to 20.05.2015 for department to address the salary of appellant with all and directions may please be issued to the concerned appellant's service without pay may kindly be set aside extent of non-awarding back benefits and treating the 20.05.2015 passed by DDO (Male), Charsadda, to the of the instant appeal, the impugned order dated It is therefore respectfully prayed that on acceptance

reinstated in service with all back benefits. before the competent court of law, he deserves to be unemployed for such period except pursuing his case in any profit oriented activity and remained years and did not save anywhere or engaged himself period, appellant remained out of service for almost 6 account of concocted FIR and after honorable acquittal, he was reinstated in service, during this period, appellant remained out of service for almost 6 years and did not save anywhere or engaged himself in any profit oriented activity and remained unemployed for such period except pursuing his case before the competent court of law, he deserves to be reinstated in service with all back benefits.

II.

no section of imagination is sustainable in the eyes of law.

(Signature)

no stretch of imagination is sustainable in the case of law.

E. That the appellant was dismissed from service on account of concocted FIR and after honourable acquitted, he was reinstated in service, during this period, appellant remained out of service for almost 6 years and did not serve anywhere or engaged himself in any profit orientated activity and remained unemployed for such period except pursuing his case before the competent court of law, he deserves to be reinstated in service with all back benefits-

It is therefore most humbly prayed that on acceptance of the instant appeal the impugned order dated 20.05-2015 passed by DEO (Male), Charsadda, to the extent of non-awarding back benefits and treating the appellant's service without pay may kindly be set aside and directions may please be issued to the concerned department to please the salary of appellant with all back benefits w.e.f. 24.06.2009 to 20-05-2015 for which he is legally entitled for the same.

AND

Any other relief, which may be deemed proper in the circumstances of the case may also be granted.

Appellant

Sher Alam

(PST), GPS Chak Nisatta,
Tehsil and District, Charsadda.

Date d ____/____/2015



50

ANNEX:- E
72

78

OFFICE OF THE
DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

No. 4301 / dt. 15/12/2015

To

THE SUB DIVISIONAL EDUCATION OFFICER
(MALE) CHARSADDA.

SUBJECT:-

APPEAL FOR SALARY.

Memo:-

I am directed to refer to the subject cited above and to state that re-instatement order of the concerned teacher issued by this office is absolutely accurate and legitimate, as per rules.

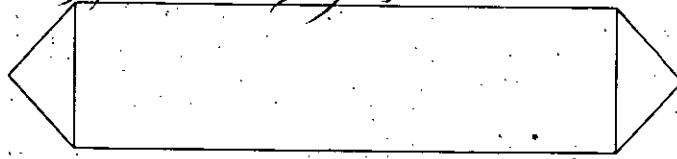
DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

24

14/12/15

Agreed to

بعدالت ظہر بخیر ان خوان سرور کے مندرجہ ذیل



مورخہ

مقدمہ

دعویٰ

جرم

2 مخائب

بنام

دعویٰ عالم

محمد سعید

باعث تحریر آنکہ

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

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

20

ماہ

المرقوم

العبد گواہ العبد

Sajid Hussain

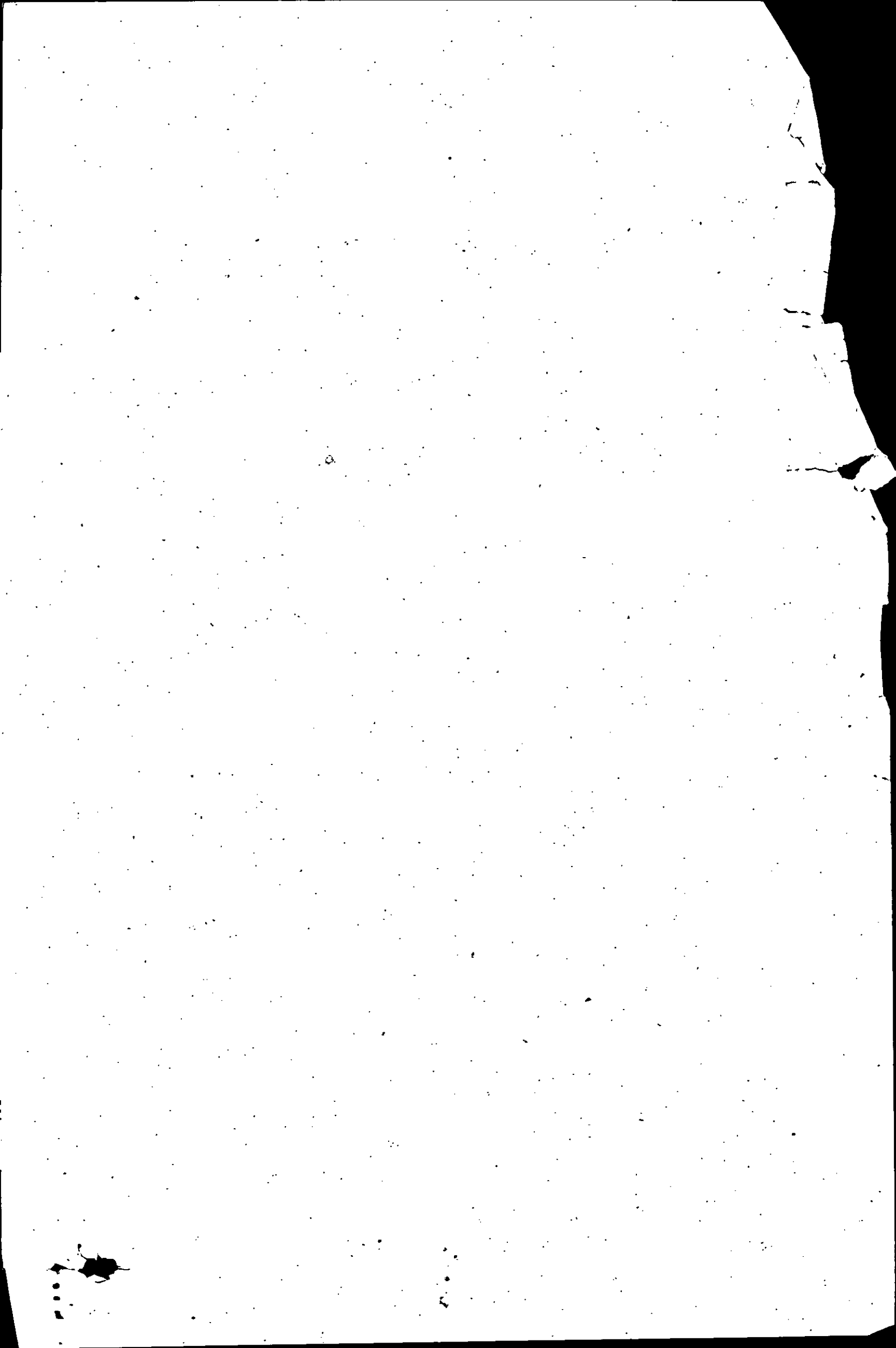
کے لئے منظور ہے۔

مقام کے لئے

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BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. 447/2016

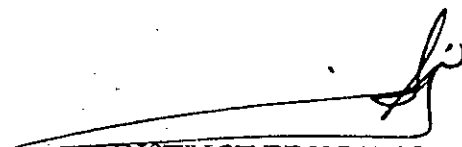
Sher Alam

Vs

Govt of KPK & others

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DISTRICT EDUCATION OFFICER
(MALE) CHARSADDA

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. 447/2016

Sher Alam

Vs

Govt of KPK & others

Written comments on behalf of Respondents

Preliminary Objections:

Respectfully Sheweth:

- A. That the Appellant has no locus standi and cause of action.
- B. That the present Appeal is wrong, baseless and not maintainable, it shows no cause to be taken for adjudication, therefore, the Appeal is liable to be rejected/ dismissed.
- C. That the Appeal is unjustifiable, baseless, false, frivolous and vexatious, hence the same is liable to be dismissed with the order of special compensatory costs in favour of Respondents.
- D. That no legal right of the appellant has been violated, therefore, the appellant has no right to file the instant appeal.
- E. That the Appellant is completely estopped/precluded by his own conduct to file this Appeal.
- G. That the Appellant has not come to this Hon' able Tribunal with clean hands. The Appeal also suffers from mis-statements and concealment of facts and as such the Appellant is not entitled to equitable relief.
- H. That the Appellant has no right to file the instant Appeal and the Hon' able Services Tribunal has got no jurisdiction to adjudicate upon and the Appeal is liable to be dismissed.
- I. That the instant appeal is barred by law and limitation.

PARA WISE REPLY ON FACTS:

1. That the Para needs no comments.
2. That the Para is related to the personal information of the appellant, therefore, needs no comments, however, the impugned order has rightly be issued.

3. The Para reveals that the appellant willfully absent from his duties, therefore, it is a famous maxim that” when there is no duty there is no pay”.
4. That the Para needs no comments.
5. That the Answering respondents have acted in accordance with the law, rules and policy.
6. That the first part of the Para is self-explanatory while the rest of the Para is incorrect because the appellant had filed a departmental appeal before the competent authority which has been rejected.
(Copy of departmental appeal and rejection order is annexed with the appeal as Annexures D & E).
7. That the Answering respondents amongst other grounds prays for the dismissal of instant appeal.

PARA WISE REPLY ON GROUNDS:

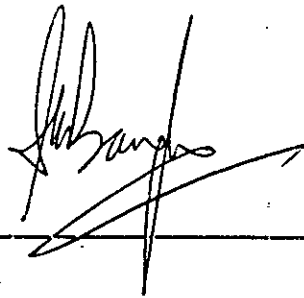
- a. That the Answering respondents have acted in accordance with law, rules and policy.
- b. Incorrect, the legal proposition as quoted do not relate to the appellant, ‘as the appellant never performed a single day as duty, therefore, is not entitled to any benefit. There are plethora of judgments of this Hon’ble Tribunal on the instant issue in hand some of them are recently delivered by this Hon’ble Court in the appeal titled Hayat Gul VS Government Appeal No. 138/2013 dated 20/09/2016 and titled Shakir Ullah VS Government Appeal No. 612/2016 dated 21/09/2016.
(Copy of judgment attached as Annexure A).
- c. Incorrect, the Para is also quoted wrongly as the appellant had not performed any duties, therefore, when there is no duty there will be no pay.
- d. Incorrect, if the appellant was innocent then he should had hand over himself to the law enforcing agencies and contest his case according to law.
- e. That the Para is elaborately replied in the Para D to grounds.
- f. Incorrect, the appellant remained willfully absent from his duties, therefore, have no right for the arrears of his salaries.
- g. Incorrect, the Para is based on factual proposition, therefore, needs documentary evidence. Hence appellant is not entitled for any benefits.
- h. That the Answering respondents seek permission to advanced other grounds/arguments at the time of hearing.

PRAYER

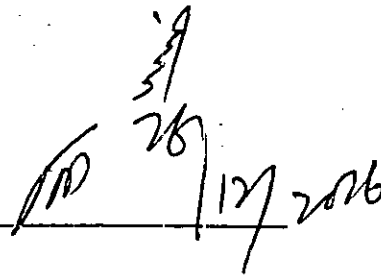
IT IS, THEREFORE, MOST HUMBLY PRAYED THAT ON ACCEPTANCE OF THE WRITTEN PARA WISE REPLY TO THE APPEAL OF APPELLANT THE APPEAL MAY PLEASE BE DISMISED AND THE IMPUGNED TERMINATION ORDER DATED 20/05/2015 & 15-12-2015 MAY BE DECLARED AS LEGAL AND IN ACCORDANCE WITH LAW, RULES AND POLICY.

Respondents

1. The Secretary E&SE KPK.



2. The Director E&SE KPK.



3. The District Education Officer (Male) Charsadda.



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. 447/2016

Sher Alam


Vs

Govt of KPK & others

AFFIDAVIT

I Mr. Siraj Muhammad DEO (M) Charsadda do hereby solemnly affirms that the contents of the Para-wise comments submitted by respondents are true and correct and nothing has been concealed intentionally from this Hon' able court.

Deponent


Siraj Muhammad
DEO (MALE)

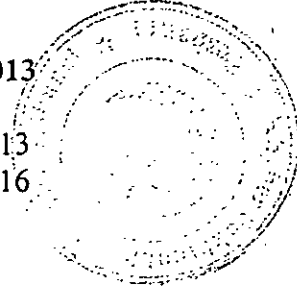
Classified CNIC: 17301-2831355-9

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 138/2013

Date of institution ... 17.01.2013

Date of judgment ... 20.09.2016



Hayat Gul S/o Haleem Gul, Senior English Teacher (SET)
Government Middle School Kot Charsadda.

... (Appellant)

VERSUS

1. Secretary Elementary & Secondary Education KPK Peshawar.
2. Director Elementary & Secondary Education KPK Peshawar.
3. Executive District Officer (E&SE) Charsadda.
4. Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar.

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 11.09.2012 OF RESPONDENT NO. 1
WHEREBY THE PERIOD OF SUSPENSION IN RESPECT OF THE
APPELLANT HAS BEEN TREATED AS EXTRA ORDINARY LEAVE
WITHOUT PAY AND AGAINST WHICH THE DEPARTMENTAL APPEAL OF
THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE
LAPSE OF STATUTORY PERIOD.

Mr. Fazal Shah Mohmand, Advocate

.. For appellant.

Mr. Usman Ghani, Senior Government Pleader

.. For respondents.

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-


Facts giving rise to instant appeal are that the

appellant joined the Education Department as PTC Teacher on 05.02.1974. That on 14.04.2003, the appellant was involved in a false murder case of the PS Charsadda vide FIR No. 412, and was suspended vide order dated 01.09.2003. That the appellant was acquitted from the charges by the Court of Learned ADJ-II Charsadda vide order and judgment dated 16.01.2010. That after acquittal from the charges the appellant was reinstated in service vide Notification dated 22.07.2010 and vide the same notification it

was also held that the period from 14.04.2003 to 23.10.2009 will be decided later on subject to the approval of the Finance Department. That the appellant was posted at GMS Kot Charsadda vide Notification dated 27.07.2010. That finally the period of absence from 14.04.2003 to 23.10.2009 was treated as extra-ordinary leave without pay vide order dated 11.09.2012. That the appellant preferred departmental appeal before respondent No. 2 on 10.10.2012 which was not responded so far despite the lapse of statutory period and hence the instant service appeal with a prayer that on acceptance of this appeal the impugned order dated 11.09.2012 of respondent No. 1 may kindly be set-aside and the appellant may kindly be paid the salaries of the period from 14.04.2003 to 23.10.2009 with consequential benefits.

2. The learned counsel for the appellant argued that the impugned order was illegal and void ab-initio, the appellant had not been treated in accordance with law and respondents violated all norms of justice. He further argued that ex-parte action was taken against the appellant, no inquiry was conducted and opportunity of personal hearing was not afforded to the appellant before passing of the impugned order. He further contended that the appellant had been acquitted of the charges on the basis of which he was suspended by the competent court of law and as per law and dictum of the superior court in such circumstances, he was entitled to the arrears of pay for the period he remained absent from duty and in this regard he made a reference to FR-54 which on reinstatement allowed full pay for the period of absence. He prayed that the impugned order dated 11.09.2012 may be set-aside and the appellant may be allowed arrears of pay for the period he remained absence from duty.

3. The learned Senior Government Pleader while arguing the case stated that the appeal was not maintainable due to non-joinder of necessary party i.e Finance Department. He further argued that being involved in a criminal case the appellant remained fugitive from law and did not perform any duty during the long period of absence from 14.4.2003 to 23.10.2009 adding further that the said period of absence was already treated as leave without pay on the advice of Finance Department as a hardship case. He also relied on this

 Service Tribunal judgment dated 20.05.2015 in Service Appeal No. 23/2013 titled

"Muhammad Alam-vs-District Education Officer Charsadda and others and prayed that being identical in nature the instant appeal may also be decided and dismissed on the analogy of the said case.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record, it transpired that the appellant was involved in a murder case vide FIR No. 412 dated 14.04.2003. He was initially suspended by the relevant authority on 01.09.2003 where-after he absconded and did not surrender to the law enforcement agency. On his acquittal on 16.01.2010 he was reinstated by the department on 22.07.2010. The respondent-department in consultation with Finance Department treated the period of absconsion of the appellant from 14.04.2003 to 23.10.2009 as extra-ordinary leave without pay as a hardship case on the strength of Rule 12 (4) of the Khyber Pakhtunkhwa Revised Leave Rules 1981. It is evident from the record that the appellant instead of surrendering to law went in hiding and did not perform any duty during the absconsion period from 14.4.2003 to 23.10.2009 and on reinstatement the unauthorized absence from duty was treated as extra-ordinary leave (without pay) as a hardship case. We in the circumstances, do not find any merits for treating the period of unauthorized absence of the appellant as duty for the purpose of drawal of arrears of pay as such payment of salaries could not be justified in such circumstances and in this regard the arguments of learned Senior Government Pleader carries weight which is based on the principle of 'No work No pay' as held by the superior courts in various judgments. Being devoid of merits, the appeal is dismissed accordingly. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.09.2016

Edl- Abdul Latif, Member

Edl- Pir Balqish Shah, Member

21-09-2016

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20.09.2016

Date
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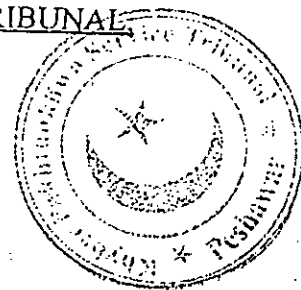
04-10-2016
04-10-2016

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 612/2014

Date of institution ... 28.04.2014

Date of judgment ... 21.09.2016



Shakir Ullah S/o Umar Khan, Ex-Chowkidar GMS Mani Khela
R/o Mani Khela, Tehsil & District Charsadda.

... (Appellant)

VERSUS

1. Secretary Education Khyber Pakhtunkhwa, Peshawar.
2. Director Education School & Literacy, Peshawar.
3. District Education Officer (Male) Charsadda.
4. Sub-Division Education Officer (Male) Charsadda.
5. District Account Officer, Charsadda.

... (Respondents)

APPEAL UNDER SECTION 10 OF SERVICE TRIBUNAL ACT 1974 AGAINST
OFFICE ORDER Endst No. 5568-68 DATED 03.08.2013 OF THE
RESPONDENT NO. 3 WHEREBY THE SUSPENSION PERIOD w.e.f 23.05.2009
to 30.04.2012 WAS TREATED AS LEAVE WITHOUT PAY AND AS SUCH
SALARIES OF SUSPENSION PERIOD WERE WITHHELD.

Mr. Javed Ali Muhammadzai, Advocate
Mr. Ziaullah, Government Pleader

.. For appellant.
.. For respondents.

MR. ABDUL LATIF
MR. PIR BAKHSH SHAH

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

ATTESTED

JUDGMENT

MR. ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeal are that

the appellant was appointed as Chowkidar at GMS Mani Khela vide office order dated 01.08.1984. That during his service, the appellant was falsely involved in a murder case vide FIR No. 308 dated 22.05.2009 Under Section 302/34 PPC, Police Station Sardheri. That the services of the appellant were suspended vide office order dated 29.07.2009 w.e.f 23.05.2009. That after trial, the Sessions Judge Charsadda acquitted the appellant vide judgment and order dated 16.07.2013. That after acquittal the appellant approached to the

respondents for salaries of suspension period. That respondent No. 4 told the appellant that he is going to submit pension paper to the concerned authority and he will be paid his entire outstanding salaries alongwith pension amount. That during process of preparation of pension papers, on 10.01.2014 the appellant came to know that respondent No. 3 vide order dated 03.08.2013 has ordered to treat the services of suspension period w.e.f 23.05.2009 to 30.04.2012 of appellant as leave without pay. That the appellant preferred departmental appeal against the impugned order to the respondent No. 2 on 13.01.2014 but the same has not been decided by the respondent No. 2/appellate authority till date and hence the instant service appeal with a prayer that on acceptance of this service appeal the impugned order dated 03.08.2013 may kindly be set-aside and respondents may also be directed to release the due salaries of period w.e.f 23.05.2009 to 30.04.2012 of the appellant.

2. The learned counsel for the appellant argued that the impugned order dated 03.08.2013 was illegal, against the law and rules on subject. He further argued that no show-cause notice what so ever was issued to the appellant before passing the impugned order dated 03.08.2013 and thus appellant condemned unheard. He contended that the appellant had been honorably acquitted from the charges by the competent court of law and the appellant was entitled to be paid salaries of suspension period. He further contended that under Article 193 C.S.R the respondents were bound to release all salaries of suspension period to the appellant. He prayed that on acceptance of this service appeal the impugned order dated 03.08.2013 may kindly be set-aside and respondents may also be directed to release the due salaries of period w.e.f 23.05.2009 to 30.04.2012 of the appellant.

3. The learned Government Pleader resisted the appeal and argued that the appeal was not maintainable. He further argued that being involved in a criminal case the appellant remained fugitive from law and did not perform any duty during the long period of absence from 23.05.2009 to 30.04.2012 adding further that the said period of absence was already treated as leave without pay and in the light of Notification of Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing No. SOR-1(E&AD)1-19/81/Vol-IV dated 23rd July 2011. He also relied on this Service Tribunal

judgment dated 20.05.2015 in Service Appeal No. 23/2013 titled "Muhammad Alam-vs-District Education Officer Charsadda and others and decision dated 20.09.2016 in Service Appeal No. 138/2013 in case titled "Hayat Gui-vs-Secretary Elementary & Secondary Education and others and prayed that being identical in nature the instant appeal may also be decided and dismissed on the analogy of the said case.

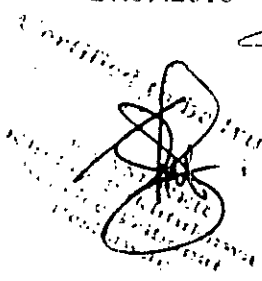
4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that the appellant was involved in a murder case vide FIR No. 308 dated 22.05.2009. He was suspended by the relevant authority on 29.07.2009 where-after he remained behind the Bar. On his acquittal on 16.07.2013 he approached to the department for release of his salaries. The respondent-department in light of Notification of Government of Khyber Pakhtunkhwa Establishment and Administration Department Regulation Wing No. SOR-1(E&AD)1-19/81/Vol-IV dated 23rd July 2011 denied the payment of salaries for the period he remained absent from duty and treated the absence period of the appellant w.e.f 23.05.2009 to 30.04.2012 as leave without pay. We in the circumstances, do not find any merits for treating the period of unauthorized absence of the appellant as duty for the purpose of drawal of arrears of pay as such payment of salaries could not be justified in such circumstances and in this regard the arguments of learned Government Pleader on the principle of 'No work No pay' as held by the superior court in various judgments relied upon during the course of arguments. Being devoid of merits the appeal is dismissed accordingly. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.09.2016

sd/- Abdul Latif, Member

sd/- Pirs Bakhtish Shah, Member



Date of Presentation of _____ 21-09-2016
Number of Words _____ 1200
Copies for _____ 8
Urgent _____
Total _____ 8
Name of Officer _____
Date of Completion _____ 04-10-2016

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 447/2016

Mr. Sher Alam PST Government High School, Chak Nisata Tehsil &
District Charsada. **(Appellant)**

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary (E & SE) Khyber
Pakhtunkhwa, Peshawar & others. **(Respondents)**

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully submitted:

ON PRELIMINARY OBJECTIONS:

1. Contents incorrect and misleading, the appellant has been illegally denied the back benefits hence he has got the necessary cause action and locus standi to file the instant appeal.
2. Contents incorrect and misleading, the appeal being filed well in accordance with the prescribed rule and procedure hence maintainable in its present form and also in the present circumstances of the case.
3. Contents incorrect and misleading, appeal is strong on merits.
4. Contents incorrect and misleading, rights of the appellant have been violated.
5. Contents incorrect and misleading no rule of estoppel is applicable in the instant case.
6. Contents incorrect and misleading, the appellant has come to the tribunal with clean hands. Moreover, all facts necessary for the disposal of appeal are brought before this honorable court and nothing has been concealed.
7. Contents incorrect and misleading, the appellant is an aggrieved civil servant, and moreover the matter relates to its term and condition of his service hence only this Honorable Tribunal has got jurisdiction to entertain and adjudicate the instant appeal.

8. Contents incorrect and misleading the appeal is filed well within the prescribed period of limitation.

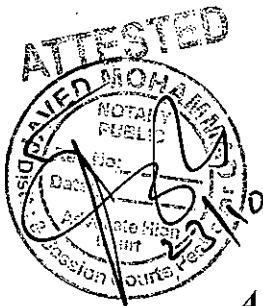
ON FACTS

1. Contents need no comments, however contents of para 1 of the appeal are true and correct.
2. Contents need no reply to the extent of admission, rest of the Para of the reply is incorrect, contents of Para 2 of the appeal are true and correct.
3. Contents of Para 3 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
4. Contents of Para 4 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
5. Contents of Para 5 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
6. Contents need no comments to the extent of admission, rest of the Para is incorrect. Contents of Para 6 of the appeal are correct.
7. Contents of Para 7 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.

GROUND

The Grounds (A to h) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

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



Through

Appellant

ZARTAJ ANWAR

Advocate, Peshawar.

AFFIDAVIT

I do, hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honourable Tribunal.

Deponent