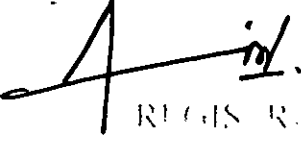


FORM OF ORDER SHEET

Court of _____

Appeal No. _____ 2267/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	
1-	31/10/2023	<p>The appeal of Mr. Rizwan Ullah was moved to me by registered post through Mr. Muhammad Waqas Advocate. It is fixed for preliminary hearing before touring Single Bench at D.I.Khan on</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Rizwan Ullah son of Azam Khan Ex-Constable no. 312 District Police Tank received today i.e on 10.10.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexure-D of the appeal is illegible be replaced by legible/better one.
- 2- Chamber/Gmail address and contact number of the counsel engaged is not mentioned on the index of the appeal/wakalatnama.

No. 3377 /S.T.

Dt. 11/10 /2023.

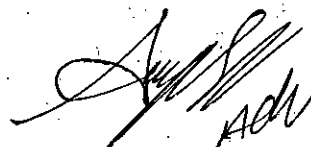

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Waqas Adv.
High Court D.I.Khan.

Respected sir:

- 1- A better copy of objection no-1 is available at page no. 12-A
- 2- object no. 2 has Gmail number on index and wakalatnama.

Throug Counsel
mohammad waqas Advocate


Adv

28/10/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

In service Appeal No. 2267/2023

Rizwan Ullah
(Appellant)

VERSUS

IGP KPK etc
(Respondents)

I N D E X

S.No.	Description of documents	Annexure	Page
1.	Memorandum of Appeal along with affidavit		1-7
2.	Copy of FIR along with better copy	A	8-9
3.	Copy of order #117/PA dated 19/01/2022	B	10
4.	Copies of departmental appeal and impugned dated 22/06/2022	C & D	11-12
5.	Copies of decision of Honourable High Court's order dated 05/10/2022	E	13-17
6.	Copy of departmental appeal dated 08/06/2023	F	18-19
7.	Vakalatnama	--	20

Dated: 07/10/2023

Yours humble appellant


Rizwan Ullah


Muhammad Waqas
Advocate

Cell#0345-9823802

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**PESHAWAR**Service Appeal No. 2267/2023

Rizwan Ullah son of Azam Khan caste Kundi r/o near Bilal Masjid, village Gul Imam Tehsil & District Tank. Ex-Constable#312 District Police Tank. Cell#0305-9529998.

(Appellant)**VERSUS**

1. Provincial Police Officer/IGP, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer/DIG Police, Region Dera Ismail Khan.
3. District Police Officer, Tank.

..... **(RESPONDENTS)**

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER No. 117/PA DATED 19/01/2022 ISSUED BY RESPONDENT NO. 3, WHEREBY THE APPELLANT WAS DISMISSED FROM REGULAR SERVICE AND AGAINST THE ORDER No. 4208/ES OF RESPONDENT NO. 2 DATED 22/06/2022 VIDE WHICH HE DISMISSED THE DEPARTMENTAL APPEAL AS WELL AS INDECISION OF DEPARTMENTAL APPEAL OF APPELLANT.

PRAYER:

On acceptance of the instant appeal and by setting aside all the impugned orders bearing 117/PA dated 19/01/2022 issued by respondent No. 3 and the impugned order No. 4208/ES dated 22/06/2022 issued by respondent No.2 and the respondents be directed to reinstate the appellant in service with all back benefits.

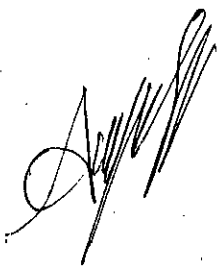
Note: Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of respondents.

Respectfully Sheweth;

The appellatant humbly submits as under;

1. That the appellatant is a law abide citizen of Pakistan and is enjoying well reputation in the society and is educated person having domicile of District Tank.
2. That the appellatant was appointed as Constable in Police Department Tank and performed his duties with zeal and zest and to the entire satisfaction of his superiors.
3. That the appellatant was charged in a false and factitious criminal case vide FIR#379 dated 17/11/2018 u/s 324,337-F(iv)/34 PPC registered at Police Station Gul Imam Tank. Copy of the FIR is annexed as **Annexure-A**.
4. That thereafter the petitioner was placed under suspension and closed to Police Line Tank for departmental proceedings. The petitioner was charge sheeted and inquiry was conducted by the respondents against the appellatant.
5. That the criminal trial of above mention case was proceeded in the court of learned Senior Civil Judge/Judicial Magistrate Tank in which the appellatant was awarded punishment of 5 years simple imprisonment along with fine of Rs. 20000/- vide judgment dated 14/01/2022.
6. That thereafter the respondent#3 issued the impugned order No. 117/PA dated 19/01/2022 vide which the appellatant was awarded major punishment of dismissal from service without assigning any independent cogent reasons. Copy of order dated 19/01/2022 is annexed as **Annexure-B**.
7. That feeling aggrieved by the order dated 19/01/2022, the appellatant preferred a departmental appeal/representation to the respondent#2 being appellate authority and disclosed all the true facts and acknowledging the real happenings with the appellatant but the appellate authority vide office order No. 4208/ES dated 22/06/2022 rejected the appeal of the appellatant. Copies of departmental appeal and impugned dated 22/06/2022 are annexed as **Annexure-C&D**.

8. That the appellant challenged the conviction order dated 14/01/2022 of the learned trial court before the Honourable Peshawar High Court Bench Dera Ismail Khan and the Honourable court was pleased to set aside the impugned conviction order of Senior Civil Judge Tank and the case of appellant is remanded back to the trial court for decision afresh on merits after recording pro & contra evidence vide its judgment dated 05/10/2022. Copies of decision of Honourable High Court's order dated 05/10/2022 are enclosed as **Annexure-E**.
9. That, as the conviction of appellant is set aside and the trial of case is still pending adjudication before the learned Senior Civil Judge Tank, hence, appellant is entitled to be reinstated into service.
10. That the appellant filed a departmental appeal vide Diary No. 2086 dated 09/06/2023 to the respondent#2 for reinstatement of his service till final decision of criminal trial. The respondent#2 sent the same appeal to the respondent#3 with directions to submit further comments regarding the matter vide Desp: No. 4121/ES dated 09/06/2023. Copy of departmental appeal is annexed as **Annexure-F**.
11. That impugned order No. 117/PA dated 19/01/2022 and subsequently impugned orders of the appellate authority are based on mala fide and against the law, thus, the appellant left with no other remedy, the appellant approaches this honourable tribunal seeking reinstatement in service with all back benefits in consequence of setting aside impugned orders on gracious acceptance of the instant petition on grounds hereinafter preferred.

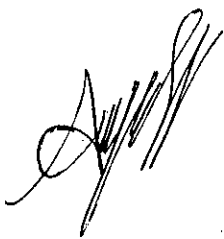


G R O U N D S

- a. That the orders passed by the departmental authorities, impugned hereby are arbitrary, discriminatory, legally and factually incorrect, ultra virus, void ab initio and militate

against principle of natural justice, thus, are liable to be set aside and mala-fide.

- b. That the appellant is innocent and has been subjected to the penalty for no fault on his part. The trial of the case FIR#379 dated 17/11/2018 u/s 324,337-F(iv)/34 PPC registered at Police Station Gul Imam Tank is still pending adjudication before the learned Judicial Magistrate Tank and there is likelihood of acquittal of appellant, hence, the impugned orders are liable to be set aside. Hence, on this sole ground the impugned orders are liable to be set aside and the service appellant is entitled to be reinstated with all back benefits.
- c. That it is a matter of record that appellant has been vexed in clear defiance of law and principle laid by the superior courts as well as the tribunals as could be gathered from the facts and circumstances of the case.
- d. That the respondents/department awarded major penalty i.e. removal from service before the guilt of appellant by the learned trial court. Even then the punishment awarded to the appellant is too harsh.
- e. That the respondent#2 was bound to decide the Departmental appeal of the appellant but the same is not decided as yet, hence, the appellant does not have any remedy except to invoke the jurisdiction of this honourable tribunal.
- f. That the inquiry officer has not conducted the inquiry according to the law which needs serious interference by this honourable Tribunal to meet the ends of justice.
- g. That the appellant had sufficient length of service i.e. approximately 16 years rendered for the department while adjudicating the matter of departmental authority utterly ignored not only the provisions of law on the point but the rights, too, of the appellant including fringe benefits and by imposing the harshest of the penalties in defines of law



5

as aforesaid, deprived the family of appellant of its only means of earning livelihood.

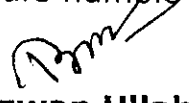
- h. That the respondents while adjudicating in the matter of departmental proceedings and the appeal/representation of the appellant were disposed of the entire matter in a slip shot manner through the orders impugned hereby, thus, the award of impugned punishment is patently unwarranted, illegal, ultra virus, nullity in law and apparently motivated for extraneous reasons and is not maintainable in law.
- i. That the petition of appeal is duly supported by law and rules formulated there under, besides the affirmation/affidavit annexed hereto.
- j. That this honourable Tribunal is competent and has ample powers to adjudge the matter under reference/appeal.
- k. That counsel for the appellant may graciously be allowed to raise additional grounds at the time of arguments.

It is, therefore, humbly requested that the instant service appeal may kindly be accepted and the appellant may graciously be reinstated into service with all back benefits.

Any other relief deemed appropriate in circumstances of the case may also be allowed in favour of appellant in the large interest of justice.

Dated: 07/10/2023

Yours humble appellant


Rizwan Ullah


Muhammad Waqas
Advocate

8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. _____/2023

Rizwan Ullah
(Appellant)

VERSUS

GOVT of KPK etc
(Respondents)

CERTIFICATE

Certified that appellant have not filed an appeal regarding the subject controversy, earlier in this august Tribunal.

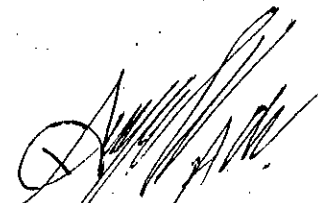
Dated: ___/10/2023


Appellant

NOTE

Appeal with enclosure along-with required sets thereof are being presented in separate file covers.

Dated: 07/10/2023


Appellant's counsel

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. _____/2023

Rizwan Ullah
(Appellant)

VERSUS

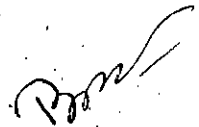
GOVT of KPK etc
(Respondents)

AFFIDAVIT

I, **Rizwan Ullah**, appellant herein, do hereby solemnly affirm on oath:-

1. That the accompanying appeal has been drafted by counsel following our instructions;
2. That all para-wise contents of the appeal are true and correct to the best of my knowledge, belief and information;
3. That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein, based on exaggeration or distortion of facts.

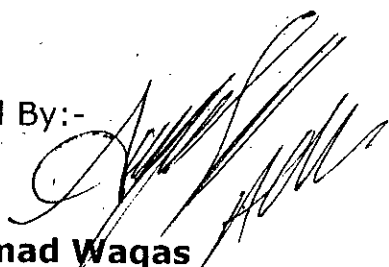
Dated: 07/10/2023



Deponent

CNIC# 12201-7204322-9

Identified By:-



Muhammad Waqas
Advocate

(14)

Better Copy

P = (9)

ابتدائی اطلاعی رپورٹ

(فائل) ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ فوجداری

ضلع ٹانک۔

تھانہ گل امام

تاریخ وقت وقوعہ 17/11/2018 وقت 08:30 بجے صبح ویلہ۔

نمبر 379

۱۔ تاریخ و وقت رپورٹ 17/11/2018 وقت 09:40 بجے چاکیدگی 17/11/18 وقت 10:30 بجے۔

۲۔ نام و سکونت اطلاع دہندہ مستغیث : عصمت اللہ ولد عبدالصمد خان قوم بلوچ سکنہ گل امام ہمر 23/24 سال۔

PPC 324/34

۳۔ مختصر کیفیت مجرم (معدومہ)

۴۔ جائے وقوعہ فاصلہ تھانہ سے اور سمت : گلی شارع عام نزد خانہ عبدالقیوم واقع دیہہ گل امام جانب جنوب غرب بفاصلہ تقریباً 6/7 کلومیٹر از تھانہ۔

۵۔ نام و سکونت ملزم : (1) رضوان اللہ، (2) ظاہر خان پسران اعظم خان اقوام کنڈی ساکنان گل امام۔

۶۔ کارروائی جو تفتیش کے متعلق کی گئی ہو۔ : رسیدگی مراسلہ پر چلے گیا۔

۷۔ تھانہ سے روانگی کی تاریخ و وقت : بہ سبیل ڈاک۔

ابتدائی اطلاع نیچے درج کرو

تحریری مراسلہ منجانب محمد رحمان 46/1/IHC شی حال انچارج رپورٹنگ سنٹر سول ہسپتال ٹانک بغرض قانچی مقدمہ بدست فرید زمان 172/LHC موصول ہو کر ذیل ہے ایفیر انچارج تھانہ گل امام رپورٹ عصمت اللہ ولد عبدالصمد خان قوم بلوچ سکنہ گل امام ہمر 23/24 سال شناختی کارڈ نمبر 1-2938162-12201 موبائل نمبر 9354587-0343 مورخہ 17/11/18 وقت بالا بجے بحالت مضروبیت بمقام امیر جنسی روم DHQ ہسپتال ٹانک رپورٹ کرتا ہے کہ امروز بوقت بالا بجے وقوعہ بالا پر موجود تھا کہ اس دوران مسلمان رضوان اللہ، ظاہر خان پسران اعظم خان اقوام کنڈی ساکنان دیہہ ام آئے اور کہا کہ آپ یہاں پر کیوں کھڑے ہو میں نے بجا کہا کہ یہ گلی شارع عام ہے اور آپ کا گھر بھی یہاں سے دور ہے۔ اس بات پر غصہ ہو کر ہر دو کسان بالانے پستول ہائے اپنے اپنے بڑھا شلوار سے نکالے اور دونوں نے مجھ پر فائر کیا۔ ظاہر کا فائر مس ہوا جبکہ رضوان اللہ بالاکے فائر سے میں بائیں ہاتھ پر لگ کر زخمی ہوا بعد واقعہ ملزمان بھاگ نکلے وہاں پر موجودہ گان حبیب اللہ ولد عبدالغفار۔ عبدالکریم ولد جان عالم ساکنان دیہہ ام نے مجھے سنبھالا اور وقوعہ کو پیشم خود دیکھا ہے۔ وجہ عداوت قبل ازیں ملزمان بالا اور ہمارے مابین لڑائی جھگڑا ہوا تھا جس کا خانگی راضی نامہ بھی ہوا تھا میں اپنی اوپر بہ نسبت قتل فائرنگ کر کے زخمی کرنے کا برخلاف ہر دو کسان متذکرہ بالا دعویٰ دار ہوں۔ العبد نشان انگوٹھا مدعی۔ کارروائی پولیس حسب گفتہ سائل رپورٹ حرف بحرف درج بالا ہو کر پڑھ کر سنائی و سمجھائی گئی جس نے صحت رپورٹ کو درست تسلیم کر کے زیر رپورٹ خود اپنا دایاں انگوٹھا مثبت کیا جس کی میں تصدیق کرتا ہوں۔ مضروب کا نقشہ ضرر علیحدہ مرتب کر کے بغرض علاج معالجہ و رائے ڈاکٹری زیر حفاظت کا نشیبل شفیع اللہ 326 حوالہ جناب ڈاکٹر صاحب کیا جاتا ہے مضمون رپورٹ سے صورت جرم بالا کی پائی جا کر رپورٹ بشکل مراسلہ بغرض اندراج مقدمہ بلحاظ علاقہ تھانہ گل امام بدست فرید زمان 172/LHC ارسال تھانہ ہے۔ مقدمہ درج رجسٹر کر کے تفتیش کا بندوبست فرمایا جاوے۔ دستخط انگریزی محمد رحمان 46/1/IHC تھانہ شی حال انچارج رپورٹنگ سنٹر CH ٹانک 17/11/18 کارروائی تھانہ آمدہ مراسلہ حرف بحرف درج بالا ہو کر پرچہ مجرم بالا چاک کیا جا کر نقل FIR بمراہ تفتیش حوالہ انچارج INV سٹاف کی جاتی ہے پرچہ گزارش ہے۔

Attest





P = (10) ANNEXURE - B
OFFICE OF THE
DISTRICT POLICE OFFICER
DISTRICT TANK

No. 117 /PA

dated

Tank the

19/01/2022

ORDER

This order is aimed to disposed of the departmental proceeding initiated against Constable Rizwan Ullah No. 312 of this District Police, who was charge Sheeted on the allegation who was deployed as Security Guard with District Nazim Tank vide DD No. 37 dated 19.11.2018 of Police Lines, Tank. He was involved in heinous crime of attempt to murder vide case FIR NO. 379 dated 17.11.2018 u/s 324/34 PPC PS Gul Imam for which he was placed under suspension and closed to Police Lines Tank, but absented himself from lawful duty without any leave or permission w.e from 19.11.2018 to 22.01.2019 (total 64-days) vide DD report No. 31 dated 19.11.2018.

Mr. Iftihar Ali Shah the then DSP/HQRs, Tank was nominated as Inquiry Officer and conducted the departmental inquiry who submitted his finding report in which he was held responsible for the allegation levelled against him. A final show cause notice was issued and served upon him properly, his reply to the Final Show Cause Notice was received and requesting therein that the absence period of above-mentioned period remained keep pending till the decision of the court.

Mr. Mohammad Arif the then DPO Tank, passed interim office order vide OB NO.390 dated 30.05.2019, the enquiry papers keep pending till the decision of the court and his pay als released.

The instant case vide FIR NO.379 dated 17.11.2018 U/S 324/337 F (VI)34 PPC FS Gul Imam was instituted before the Court of Senior Civil Judge Tank on 24.02.2020 which has been decided vide judgement dated 14.01.2022 in which defaulter Constable Rizwan Ullah No.312 has convicted and sentenced to 05 years rigorous imprisonment. He is also levied with fine Rs.20000/- (Twenty Thousand Rupees) and in default of payment of fine he will undergo 01-month simple imprisonment.

Now, in the light of above judgement, I, SAJJAD AHMAD SAHIBZADA, District Police Officer, Tank in exercise of power conferred upon me under the Police Rules 1975 with amendment 2014, hereby award him Major Punishment of "DISMISSAL FROM SERVICE" with immediate effect.


(SAJJAD AHMAD SAHIBZADA)
District Police Officer,
Tank.

No. 118 /PA

dated

Tank the

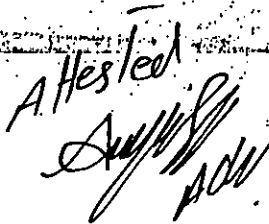
19/01/2022

Copy to:-

1. The Regional Police Officer, DI Khan Region for favour of kind information.
2. Pay officer, Reader, OHC and SRC for further necessary action.

OB No 24
of 20/1/22

(SAJJAD AHMAD SAHIBZADA)
District Police Officer,
Tank.

Attested


بخدمت جناب ڈپٹی انسپکٹر جنرل آف پولیس ڈیرہ اسماعیل خان رینج

عنوان: رحم اپیل بابت بحالی ملازمت - C-Annexure - (11) P =

جناب عالی!

گزارش کی جاتی ہے کہ من سائل کو بحوالہ مقدمہ نمبر 379 مورخہ 17.11.2018 بجرم
324/337F(iv)/34 PPC تھانہ گل امام میں مورخہ 14.01.2022 کو عدالت سول جج ٹانک نے پانچ سال
قید اور مبلغ 20000 روپے جرمانہ کی سزا سنائی، جس پر ضلعی پولیس آفیسر ٹانک نے بحوالہ آرڈر نمبر 24 مورخہ
20.01.2022 کو محکمہ پولیس ضلع ٹانک سے ملازمت سے برخاست کیا ہے۔ مورخہ 04.02.2022 کو پشاور ہائی
کورٹ ڈیرہ اسماعیل خان رینج نے ضمانت پر رہا کیا ہے۔ فیصلہ عدالت لف ہے۔

چونکہ عدالت نے سول جج ٹانک کا فیصلہ منسوخ کر کے سائل کی ضمانت کنفرم کی ہے۔

لہذا بذریعہ درخواست استدعا کی جاتی ہے کہ سائل کو عدالت کے فیصلہ تک دوبارہ ملازمت پر بحال کیے
جانے کا حکم صادر فرمائیں۔

سائل تاحیات دعا گور ہے گا۔

مورخہ: 23.02.2022

عارض

سائل سابقہ کنسٹیبل رضوان اللہ 312 سکنہ گل امام ٹانک
Bin

0343.1969939

Attested

[Handwritten Signature]

P-12
Annexure-D
4



OFFICE OF THE
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN REGION
esl.rpo.dik@gmail.com

1536
27/6/22
22 06/2022

No. 4208 /ES Dated DI Khan the

ORDER

This order disposes of a departmental appeal filed by Ex-Constable Riazwan Ullah No.312 of District Police Tank against the impugned order of Major Punishment (Dismissal from Service) by the DPO Tank, passed vide his office OB No. 24 dated 20.01.2022, on the following allegations:

"He was deployed as security guard with District Nazim Tank via DD No.37 dated 19.11.2018 of Police Lines, Tank. He was involved in heinous crime of attempt to murder vide case FIR No.379 dated 17.11.2018 u/s 324/34PPC PS Gul Imam Tank for which he was placed under suspension and closed to Police Lines Tank but absented himself from lawful duty without any leave or permission w.e.f. 19.11.2018 to 22.01.2019 (total 64 days) vide DD report No.31 dated 19.11.2018"

2. DPO Tank served the appellant with the charge sheet. Enquiry into the matter was got conducted into through Mr. Ifikhar Ali Shah, the then DSP HQrs. Tank, who concluded that allegation stood proved against the appellant. Thereupon, the appellant was served with the Final Show Cause Notice by the DPO Tank. In his reply to the Final Show Cause Notice the appellant requested that decision on the period of absence may be kept pending till the decision of the court.

3. The then DPO Tank, vide an interim order vide OB No.390 dated 30.05.2019, released his pay and ordered to keep the subject inquiry pending till the decision of the court in case vide FIR No.379 dated 17.11.2018 u/s 324/337F(VI)34 PPC PS Gul Imam Tank. Senior Civil Judge Tank, vide Judgment dated 14.01.2022 convicted the appellant and sentenced him to undergo rigorous imprisonment for 05 years. He also fined him to pay Rs. 20,000/- (Twenty Thousand Rupees) in default of which he was sentenced to undergo simple imprisonment for 01-month.

4. Consequent upon conviction of the appellant by the honourable court, DPO Tank awarded him major punishment of "Dismissal from Service" vide the impugned order OB No.24 dated 20.01.2022.

5. The appellant preferred an appeal against the impugned order on 23.02.2022. His appeal was sent to DPO Tank for comments and provisions of his service record vide this office Endorsement No.1310/ES dated 28.02.2022. DPO Tank, vide his office Letter No.608/EC dated 20.03.2022, furnished comments on the subject appeal wherein he justified and supported the punishment inflicted on him by his impugned order.

6. The appellant appeared before the undersigned, in orderly room held on 19.05.2022 and prayed for reinstatement in service. His involvement in a criminal case (FIR No.379 dated 17.11.2018 u/s 324/337F(VI)34 PPC PS Gul Imam, District Tank) and his conviction in the same by the honourable court (Senior Civil Judge Tank, vide Judgment dated 14.01.2022) coupled with absence from duty for 64 days (w.e.f. 19.11.2018 to 22.01.2019, vide DD report No.31 dated 19.11.2018) falls under the definition of misconduct as defined u/s 2(iii) of the Police Rules, 1975. Even if he had not been convicted by the court his involvement and prosecution in a criminal case would have been sufficient grounds to suggest that he was an ill disciplined police officer with weak self-control. Such an officer cannot be unleashed upon the people of this division.

7. Keeping in view the above, I, SHAUKAT ABBAS, PSP, Regional Police Officer, Dera Ismail Khan, in exercise of the powers conferred upon me under Rule-11, clause-4 (a), of the Police Rules 1975, do not intend take a lenient view. I, therefore, **REJECT** his appeal and uphold the impugned order of major punishment of Dismissal from Service passed by the DPO DI Khan OB No.24 dated 20.01.2022.

(SHAUKAT ABBAS) PSP
Regional Police Officer
Dera Ismail Khan

Encl: No. & Date Here
Copy to DPO [redacted] w.r.t letter No.608/EC dated 20.03.2022 (Encl: Service Roll & Fauji Missal)

OB/OTC/EC/sikgal
For N/A and complex 20

(SHAUKAT ABBAS) PSP
Regional Police Officer
Dera Ismail Khan

OR No 798
of 27.6.22

Attested
[Signature]

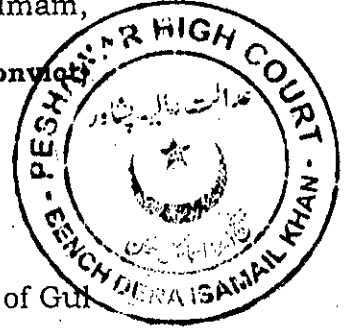
BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
DERA ISMAIL KHAN BENCH.

Criminal Appeal No. _____ -D of 2022

Filed today 359
 Addl. Registrar
 26/1/2022

Rizwanullah son of Azam Khan, caste Kundi, resident of Gul Imam,
 Tehsil & District Tank.

(Appellant/Convicted)



VERSUS

1. The State
 2. Asmatullah son of Abdul Samad, caste Baloch, resident of Gul Imam, Tehsil & District Tank (Complainant)
- (Respondents)

APPEAL UNDER SECTION 410 CR.P.C. AGAINST THE
 JUDGMENT/ORDER DATED 14.01.2022 PASSED BY
 THE LEARNED SENIOR CIVIL JUDGE (J) TANK, IN
 CASE NO.274/2021, VIDE WHICH THE APPELLANT
 HAS BEEN CONVICTED & SENTENCED UNDER
 SECTION 324 & 337-L(2) PPC IN CASE FIR
 No.379 DATED 17.11.2018 U/s 324,
 337F(VI)/34 PPC P.S. GUL IMAM, TANK, AS
 FOLLOWS:

- I. CONVICTED U/s 324 PPC AND SENTENCED TO 05 YEARS RIGOROUS IMPRISONMENT AND FINE OF Rs.20,000/- OR IN DEFAULT THEREOF TO SUFFER ONE MONTH S.I.
- II. CONVICTED U/s 337-L(2) PPC AND SENTENCED TO 02 YEARS SIMPLE IMPRISONMENT AND TO PAY DAMAN

ATTEST.

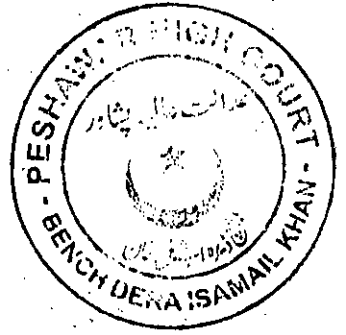
[Signature]
 06/10/22
 EXAMINOR
 Peshawar High Court Bench,
 Dera Ismail Khan

Cr.A No.34-D of 2022 (SB) (Grounds)

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.A No.34-D/2022.

Rizwanullah
Versus
The State etc.



JUDGMENT

For Appellant: M/S Saif ur Rehman Khan and Muhammad Yousaf Khan, Advocates.
For the State: Mr. Rehmatullah, Asstt: Advocate General.
For Respondent: Mr. Farooq Akhtar, Advocate.
Date of hearing: 05.10.2022.

MUHAMMAD FAHEEM WALLI, J.- This judgment shall dispose of two appeals bearing Cr.A.No.34-D of 2022 and Cr.A.No.35-D of 2022, as both the appeals have arisen from one and the same judgment dated 14.01.2022, rendered by learned Senior Civil Judge (J), Tank, whereby the appellants after facing trial in case FIR No.379 dated 17.11.2018, under sections 324, 337-F(vi)/34 PPC of police station Gul Imam, District Tank, have been convicted and sentenced as under:-

(1) Accused Rizwanullah convicted Under Section 324 PPC, and sentenced to five years rigorous imprisonment with fine of Rs.20,000/- or in default thereof, to undergo one month simple imprisonment;

(2) He has been further convicted under section 337-L(ii) PPC and sentenced to two years simple imprisonment with payment of Rs.30,000/- as Daman to the injured or in default thereof, to undergo one month simple imprisonment;

[Signature]
05.10.2022
EXAMINOR
Peshawar High Court Bench
Dera Ismail Khan

(3) Accused Tahir has been convicted for common intention under section 324 PPC and sentenced to two years simple imprisonment.

All the sentences have been ordered to run concurrently. Benefit of Section 382-B, Cr.P.C. has been extended to the convicts.

2. Brief facts of the case as narrated in the FIR, registered on the basis of murasila, in brief, are that on 17.11.2018 at 9:40 hours, complainant Asmat Ullah, in injured condition, reported the matter to Muhammad Rehman IHC No.461 at Emergency Room of DHQ Hospital, Tank, to the effect that on said date at about 8:30 hours, he was present in the thoroughfare near the house of one Abdul Qayyum, meanwhile, accused Rizwanullah and Tahir Khan came there and asked him that why he was standing there, whereupon he replied that it is a throughfare and a public place and that they have no concern with the same. The accused infuriated, pulled out their pistols from trouser of Shalwar and started firing at him, as a result of firing of accused Rizwan Ullah, he sustained injury on his left arm, whereas firing of co-accused Tahir Khan got missed. After commission of the occurrence, the accused decamped from the spot. Besides the complainant, the occurrence is stated to have been witnessed by Habib Ullah and Abdul Ghaffar. Motive for the occurrence is stated to be previous grudge. He charged the accused for commission of the offence.

ATTEST
06/10/2018
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

3. On completion of the investigation, complete challan against the accused was submitted before the trial Court, where at the commencement of trial, prosecution produced and examined as many as eleven witnesses, whereafter, accused was examined under section 342, Cr.P.C. wherein they denied the allegations and professed innocence, however, neither they wished to be examined on oath in terms of Section 340(2), Cr.P.C., nor produced defence evidence. The learned trial Court after hearing arguments convicted the accused and sentenced them as mentioned above, hence, the instant criminal appeal.

4. Arguments heard and record scanned.

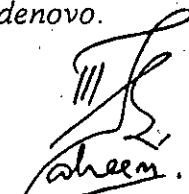
5. Without touching merits of the case, suffice it to say that in the charge framed by learned trial Court, the appellants have not been charged for the offence under section 337-L(ii) PPC, however, even then they have been convicted under said section of law, which is against the mandatory provision of law. Even no specific question with regard to injuries that fall under section 337-L(ii) PPC has been put to the accused in their statements under section 342, Cr.P.C. No doubt, Section 227, Cr.P.C. empowers the Court to alter the charge at any stage of proceedings before pronouncement of the judgment and such alteration has been made conditional in a manner that every such alteration or addition shall be read and explained to the accused and after such alteration evidence is to be led by the prosecution. In addition, a specific question is also to be put to the accused in that regard in his statement under section 342,

ATTEST
06/10/03
EXAMINOR
Jesnowar High Court Bench,
Dera Ismail Khan

Cr.P.C. Nothing of the sort has been done in the present case. When faced with this situation, learned counsel for the parties candidly conceded and agreed to remand the case to the trial Court.

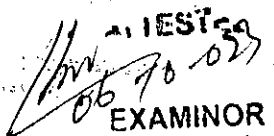
6. In view of what has been discussed above, both the appeals are allowed, the impugned judgment is set aside and the case is remanded back to the trial Court for trial *denovo*.

Announced:
Dt: 05.10.2022.
Kifayat/PS*


JUDGE

(S.B)
Hon'ble Mr. Justice Muhammad Faheem Wali




EXAMINOR
Dera Ismail Khan

Annexure-F P=18

To

The Deputy Inspector General of Police,
Dera Ismail Khan Region.

Subject: APPLICATION TO REINSTATE THE SERVICE OF
APPLICANT AS CONSTABLE WITH ALL BACK
BENEFITS.

Respected Sir,

The applicant humbly submits as under;

1. That the applicant was appointed in the police department Tank as Constable and applicant performed his duties with zeal, zest and honest. In this respect service record of applicant is evident.
2. That meanwhile the applicant was charged in a criminal case FIR#379 dated 17/11/2018 u/s 324, 337-F(VI)/34 PPC registered at Police Station Gul Imam District Tank, Copies annexed.
3. That initially the criminal trial of the above mentioned case was decided by the learned Senior Civil Judge (Judicial) Tank and the applicant was convicted u/s 324 PPC for five years (SI) and fine of Rs. 20000/- vide judgment dated 14/01/2022. Copies annexed.
4. That, after conviction, the service of the applicant was dismissed from service vide order OB No. 24 dated 20/01/2022 issued by the District Police Officer Tank. Copies annexed.
5. That thereafter the applicant preferred a departmental appeal to your good self for re-instatement of his service but the same was dismissed vide office order No. 4208/ES dated 22/06/2022. Copies annexed.
6. That, the applicant, feeling aggrieved by the conviction order of the learned Senior Civil Judge (Judicial) Tank, filed a Criminal Appeal against conviction before the Honourable Peshawar High Court Bench Dera Ismail Khan and the Honourable court was pleased to accept the appeal of the appellant by setting aside the

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dt. 9-6/23

Attested
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Adv.

P = (19)

conviction order dated 14/01/2022 vide its judgment dated 05/10/2022 and remanded the case back to the trial court for trial denovo. Copies annexed.

7. That as the Honourable Peshawar High Court Bench Dera Ismail Khan has set aside the conviction order dated 14/01/2022, hence, applicant is entitled to be reinstated into service with all back benefits. Copies annexed.

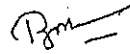
8. That the applicant is a poor fellow having family as well as school going children while the job of applicant is a sole source of income of the applicant, hence, the applicant is entitled to be reinstated into service on humanitarian grounds.

9. That your good-self has got vast and ample powers to reinstate the service of applicant with all back benefits.

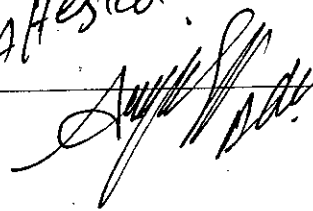
It is, therefore, humbly prayed that the applicant may kindly be reinstated into service as Constable with all back benefits.

Dated 08/06/2023

Humble Applicant



RizwanUllah
Constable#312
r/o Gul Imam Tank.
Cell#0305-9846002
0305-9529998

Attested




MUHAMMAD WAQAS

Advocate

bc-21-3738

Date of Issue: June 2022

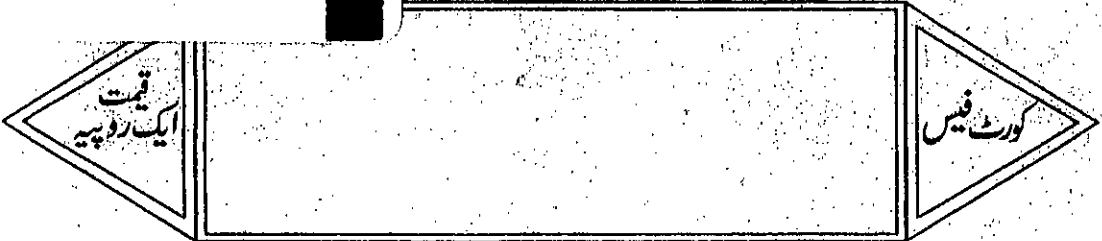
Valid upto: June 2025



Secretary
KP Bar Council

P = (20)

وکالت نامہ



بعدالت جناب سید سید محمد شکیل شاہ
 منجانب اسٹریٹ
 رضوان اللہ بنام آئی جی - جی بی وسید
 دعویٰ یا جرم
 تفصیل دعویٰ یا جرم ایسیل

باعث تحریر آئندہ

مقدمہ مندرجہ بالا عنوان میں اسٹریٹ طرف واسطے سید سید محمد شکیل شاہ پر آئی جی - جی بی وسید کی پیشی یا تصفیہ مقدمہ مقام اسٹریٹ کیلئے

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ میں ہر پیشی پر خود بذریعہ اختیار خاص رو بروعدالت حاضر ہونا رہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر منظر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا۔ تو صاحب موصوف ایسے کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف صدر مقام بکھری کے علاوہ کسی جگہ یا بکھری کے اوقات سے پہلے یا پیچھے یا بروعدت تھیل بیروی کر لے کے ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام بکھری کے علاوہ کسی جگہ یا بکھری کے اوقات سے پہلے یا پیچھے یا بروعدت تھیل بیروی کر لے کے ذمہ دار نہ ہوں گے۔ اور مقدمہ صدر بکھری کے علاوہ اور جگہ سماعت ہونے یا بروعدت تھیل یا بکھری کے اوقات کے آگے پیچھے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا عین واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخلہ صاحب موصوف میں کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ، یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر فانی اپیل گرانٹی و ہر قسم درخواست پر دخیل و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر عائلی یا راضی نامہ لہلہ بر حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ ہر دن از بکھری صدر بیروی مقدمہ مذکورہ نظر فانی و اپیل و گرانٹی و برآمدگی مقدمہ یا منوشی ڈگری یا طرف یا درخواست غم انتہائی یا قرتی یا گرانٹی عمل از لہلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا ایسی طبعہ عکاسہ بیروی کا اختیار ہوگا اور تمام ساختہ پر داخلہ صاحب موصوف میں کردہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو کی کاروائی یا بصورت درخواست نظر فانی اپیل یا گرانٹی یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا ہیر سز کو اپنے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور دوران مقدمہ میں جو کچھ ہر جائزہ التواہ پڑیگا، وہ صاحب موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھنا ہے۔ تاکہ مندرجہ

موند 07 مارچ 2022ء

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد العبد العبد
 رضوان اللہ - - اسٹریٹ
 12201-7204322-9
 Accepted by
 [Signature]