

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	18.09.2017	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p align="center">Service Appeal No. 28/2016</p> <p align="center">Date of Institution ... 11.12.2015 Date of Decision ... 18.09.2017</p> <p>Dr. Farman Ullah S/O Muhammad Altaf Hussain, R/O Village Masti Khan Bandda P/O Kojaki Kalay Tehsil Takht Nasrati District Karak-----Appellant</p> <p align="center">Versus</p> <p>1. Government of Khyber Pakhtunkhwa, Through Secretary Health, Civil Secretariat Peshawar.</p> <p>2. Chief Secretary Govt. of Khyber Pakhtunkhwa Civil Secretariat, Peshawar-----Respondents</p> <p align="center"><u>JUDGMENT</u></p> <p><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Appellant with counsel and Mr. Muhammad Jan, Deputy District Attorney on behalf of the official respondents present.</p> <p>2. The appellant Farman Ullah has <u>been</u> filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents wherein he has made impugned order dated 09.02.2015 of the respondents No. 1 whereby he was awarded of major penalty of removal from service with immediate effect on the</p>

Dr. Farman

ground of willful absence from duty w.e.f 05.01.2014.

3. Learned counsel for the appellant has argued that initially the appellant was appointed as Dental Surgeon (BPS-17) through Public Service Commission on contract basis and later on his services were regularized vide order dated 19.07.2008; that due to enmity and involvement of the appellant in the criminal case the appellant was constrained to apply for Extra Ordinary Leave which was granted by the sanctioning authority w.e.f 06.01.2012 to 04.01.2014. Further argued that before the expiry of the afore mentioned sanctioned leave the appellant again submitted an application for grant of 18 months leave and he was under the legitimate expectancy that he would be allowed further leave, however instead the appellant was removed from service vide impugned order dated 09.02.2015 on the ground of willful absence. While assailing the impugned order the learned counsel for the appellant contended that the appellant has not been treated in accordance with law and that the prescribed procedure as well as requisite codal formalities were not complied with prior to the issuance of the impugned order. Further argued that the absence of appellant from his duty cannot be termed as a willful absence or even absence in as much as the appellant duly applied for the grant of further leave as sufficient leaves were available in his leave account. Learned counsel for the appellant vehemently stressed that the impugned order is not tenable and is liable to be set aside.

4. Learned Deputy District Attorney while opposing the present

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appeal argued that the present appeal is incompetent and barred by limitation. Further argued that the appellant remained absent from his duties for a period of more than one year without any permission and as such was rightly removed from service. Further argued that the respondent department adopted the proper procedure and completed all the codal formalities before issuance of the impugned order. Further argued that application of the appellant for the grant of further leave was rejected and mere submitting leave application is not sufficient for the accrual of right of leave.

5. Arguments heard. File perused.

6. Instant case is a case simplicitor of unauthorized absence from duty w.e.f 05.01.2014 till the issuance of impugned order dated 09.02.2015.

7. Vide impugned order not only the appellant but fourteen other medical doctors too were removed from service on the ground of willful absence from duty, after issuance of notices to resume duty within the stipulated period.

8. It may be mentioned that the representation/appeal of the appellant before the appellate authority against the impugned order dated 09.02.2015 was filed on the 13.04.2015 i.e after more than sixty days of the issuance of impugned order and as such the representation/appeal of the appellant was not entertained being not filed within the prescribed timeline. It is settled principle of law that when appeal of the employee was time barred before the appellate authority then the appeal before the tribunal is also not competent.

By
Lawyer

Similarly, the appellant has not filed the present appeal within 120 days of passing of the order dated 09.02.2015 made impugned in the present appeal, hence the learned Deputy District Attorney correctly pointed out that the present appeal filed on 11.12.2015 against the impugned order dated 09.02.2015 was not filed within the prescribed period of limitation.

9. Perusal of file would show that the appellant already earned his acquittal in the criminal case in the year 2008 vide judgment/order dated 02.08.2008 passed by learned Additional Sessions Judge Karak at Takht-e-Nusrati while the appellant was sanctioned extraordinary leave w.e.f 06.01.2012 till 04.01.2014 and no further leave was sanctioned to the appellant.

10. The appellant has not bothered to contact his department himself or through his agent to know as to whether leave has been sanctioned or not. The august Supreme Court of Pakistan in the judgment titled ZIA UR RAHMAN----Petitioner Vs Divisional Superintendent Postal Services Abbottabad and other respondents (2009 SCMR 1121) held that mere submission of application for leave by an employee to his department would not mean that leave has been granted in his favor and he is duty bound to enquire from the department himself about the fate of his request for grant of leave.


11. In the light of above, the appellant has not been able to make out his case on limitation as well as on merits. Consequently, the present appeal is hereby dismissed. Parties are left to bear their own

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costs. File be consigned to the record room after its completion.



(GUL ZEB KHAN)
MEMBER



(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
18.09.2017

18.09.2017

Appellant with counsel present. Learned Deputy District Attorney for the respondents present. Vide separate judgment of today of this Tribunal placed on file, the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room after its completion.

ANNOUNCED

18.09.2017



(Gul Zeb Khan)
Member



(Muhammad Hamid Mughal)
Member

31.03.2017


Appellant with counsel and Mr. Usman Ghani, Senior Government Pleader for respondents present. Learned Senior Government Pleader for respondents requested for adjournment. Adjourned. To come up for arguments on 16.05.2017 before D.B.



(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

16.05.2017

Counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant: AG for the respondent present. Learned Assistant: AG requested for adjournment on the ground that relevant record is not available and requested for time to produce the all relevant record. Request accepted. The respondent department are directed produced all the relevant record on the next date of hearing. To come up for record and arguments on 20.07.2017 before D.B.



(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

20.07.2017

Appellant alongwith his counsel present. Mr. Yar Gul, Senior Clerk alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Relevant record of appellant as alleged absence notices, inquiry report and publication in the newspaper not produce by the respondents despite issuance of direction in order sheet dated 16.05.2017. Last opportunity is given to the respondents with direction to submit all the relevant record of the appellant on or before the next date. Adjourned. To come up for record and arguments on 18.09.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

28/16

13.06.2016

Counsel for the appellant and Mr. Zahir Shah, Clerk alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 01.11.2016.


Chairman

01.11.2016

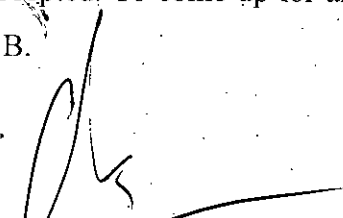
Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment. Request accepted. To come up for arguments on 20.2.17 before D.B.


(ABDUL LATIF)
MEMBER


(PIR BAKSH SHAH)
MEMBER

20.02.2017

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 31.03.2017 before D.B.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(AHMAD HASSAN)
MEMBER

11.02.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as M.O when subjected to inquiry on the allegations of wilful absence and removed from service vide impugned order dated 9.2.2015 communicated to the appellant on 1.4.2015 where-against he preferred departmental appeal on 13.4.2015 which was rejected on 8.10.2015 and communicated to the appellant on 12.11.2015 and hence the instant service appeal on 7.1.2016.

That the prescribed procedure of publication of notice in two leading newspapers was not adopted and the inquiry was not conducted in the prescribed manners. That the Secretary was not competent authority and that the impugned order should have been issued by the Chief Secretary who was the competent authority. That the appeal of the appellant was decided by the Chief Secretary while the appellate authority was the Chief Minister and as such the impugned order and proceedings there-after including inquiry proceedings are violative of law and not tenable.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 14.4.2016 before S.B.


Chairman

14.4.2016

Counsel for the appellant and Mr. Muhammad Arshad, SO alongwith Addl; A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 13.06.2016 before S.B.


Chairman


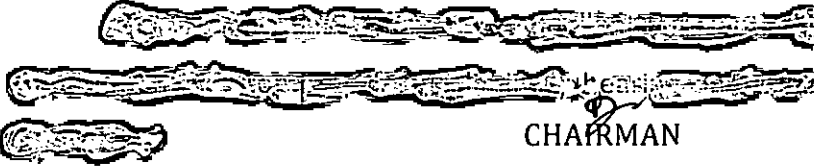
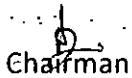
Appellant Deposited

Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 28 / 2016


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	07.01.2016	<p>The appeal of Dr. Farmanullah resubmitted today by Mr. Muhammad Asghar Khan Kundi Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>25-1-16</u>.</p> <p style="text-align: center;"> CHAIRMAN</p>
2	25.01.2016	<p>Agent of counsel for the appellant present. Seeks adjournment. To come up for preliminary hearing on 11.2.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Dr. Farmanullah Son of Muhammad Altaf Hussain received to-day i.e. on 11.12.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

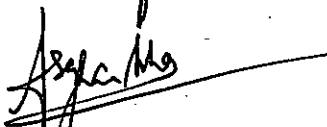
1. Appeal may be got signed by the appellant.
2. Copy of regularization order mentioned in para-1 of the memo of appeal (Annexure-A) is not attached with the appeal may be placed on it.
3. Annexures of the appeal may be attested.
4. Wakalat Nama in favor of appellant may be placed on file.
5. Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1923 /S.T,

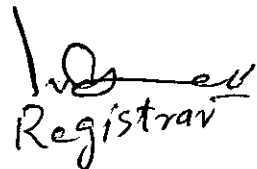
Dt. 14/12 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

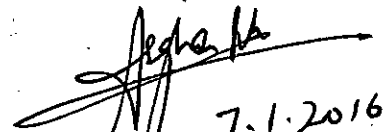
Mr. Muhammad Asghar Khan Kundi Adv. Pesh.

It is requested that time for resubmission may kindly be extended.

29.12.2015

Time is extended upto 11-1-2016


Registrar

Resubmitted after compliance with the needful


7.1.2016

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR

In Re:
Service Appeal No. 28 /2016

Dr. Farman Ullah.....**Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa,
Through Secretary Health & Others.....**Respondents**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-9
2.	Affidavit		10-11
3.	Addresses of Parties		11-12
4.	Copy of the Order dated 19.07.2008 is annexure "A"	A	12-14
5.	Copy of FIR	B	15-
6.	Copy of judgment dt.26.10.2006	C	17-28
7.	Coy of Order of High Court dated 21.04.2009	D	29-34
8.	Copy of Order of Supreme Court	E	35-36
9.	Copy of the Application for extension	F	37-
10.	Copy of order dated 09.02.2015	G	38
11.	Copy of the appeal	H	39-41
12.	Copy of letter dated 08.10.2015	I	42
13.	Wakalatnama		

Appellant 

Through


Muhammad Asghar Khan Kundi
Advocate High Court

Dated 09.12.2015

①

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR

In Re:
Service Appeal No. 28 /2016

G.W.P. Tribunal
Service Tribunal
Case No: 1440
11-12-2015

Dr. Farman Ullah
S/o Muhammad Altaf Hussain,
R/o Village Masti Khan Banda,
P/O Khojaki Kalay
Tehsil Takht Nasrati District Karak.....**Appellant**

V E R S U S

- ✓ 1. Government of Khyber Pakhtunkhwa,
Through Secretary Health,
Civil Secretariat, Peshawar
2. Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.....**Respondents**

**APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT AGAINST THE ORDER DATED
09.02.2015 OF THE RESPONDENT
NO.1 WHEREBY THE APPELLANT
HAS BEEN AWARDED MAJOR
PENALTY OF REMOVAL FROM
SERVICE.**

Filed to day
[Signature]
Registrar

also submitted to day
and filed.

[Signature]
Registrar

7/11/16

Respectfully Sheweth:-

1. That the appellant was appointed as Dental Surgeon (BPS-17) through Public Service Commission on contract basis and later on his services were regularized vide order dated 19.07.2008. (Copy of the Order dated 19.07.2008 is annexure "A").
2. That due to certain unavoidable circumstances appellant was constrained to apply for Extra Ordinary Leave and the same was granted by the leave sanctioning authority vide order dated 05.01.2012 with effect from 06.01.2012 to 04.01.2014. The major reason for this leave was appellant's nomination in a murder case vide FIR No.203, dated 26.10.2006, P.S Takht Nasrati District Karak. The appellant underwent trial and was acquitted by the learned Additional Session Judge, Karak vide judgment dated 02.08.2008. The appeal against the acquitted was dismissed by Honourable High Court vide order dated 21.04.2009. The August Supreme Court of petitioner also dismissed the appeal against acquitted vide order dated 17.09.2014. (Copies of

the FIR is annexure "B" judgment dated 26.10.2006 is annexure "C" order of High Court dated 21.04.2009 is annexure "D" and order of Supreme Court is annexure "E". *Copy of leave granting order is Annex E/1*

3. That before the expiry of the above-mentioned sanctioned leave, the appellant again submitted an application for further grant of 18 months leave with half pay as sufficient leaves were available in his leave account under the relevant rules. (Copy of the application for extension in leave is annexure "F").
4. That the appellant's domestic problems, especially his involvement in legal battles, were so material and unavoidable in its nature that he was compelled and was left with no other option except to apply for further leave on the score of half pay to which he was legally entitled.
5. That appellant was under legitimate expectancy on the score of his leave account that he will be allowed for the applied leave and the authority had also assured the appellant regarding the same.

6. That to utter surprise of the appellant; he has been removed from his service vide order dated 09.02.2015 on the score of willful absence. (Copy of the order dated 09.02.2015 is annexure "G")
7. That on gaining knowledge of the order dated 09.02.2015 the appellant submitted a Departmental appeal dated 13.04.2015 to the respondent No.1 for setting aside the order of removal from service dated 09.02.2015, praying for reinstatement with all back benefits. (Copy of the appeal is annexure "H").
8. That the appellant time and again asked the respondent No.1 & 2 regarding the fate of his departmental appeal, however every time he was told that the appeal is pending. The appellant received a phone call on 10.11.2015 from medical Superintendent Mian Rashid Hussain Shaheed Hospital Pabbi that an official letter in the name of the appellant is lying in the office. The appellant received the same on 12.11.2015 from the said Medical Superintendent and came to know that the appellant's appeal has been declined vide said letter dated 08.10.2015. (Copy of the letter dated 08.10.2015 is annexure "I").

9. That aggrieved of the same and finding no other efficacious remedy, the appellant is constrained to approach this Honourable Tribunal on the following amongst other grounds:-

G R O U N D S:

- A. That the impugned order of removal from service is against the law and facts on record hence; liable to be set aside.
- B. That the impugned order dated 09.02.2015 states that "the competent authority is pleased to impose the major penalty of "Removal from service". The said order has been signed by the respondent No.1; however under the rules the competent authority in case of the appellant is respondent No.2 i.e. Chief Secretary, Govt. of Khyber Pakhtunkhwa and not the respondent No.1. The impugned order is, therefore, illegal and void ab initio.
- C. That the respondent No.2 while adjudicating upon the appellant department's appeal failed to comply with the provisions of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules 1986.

- E. That all public power are in the nature of trust and public functionaries are presumed to be the repository of such trust. Competent authorities by no stretch of imagination are presumed to place hurdles in the way of the legitimate rights of its employees. Instead, they are bound to eliminate hurdles and technicalities. In the case of the appellant the authorities have violated the norms of public trust.
- F. That section 16 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides that all civil servants are liable for prescribed disciplinary actions and penalties in accordance with prescribed procedure. The prescribed procedure has been laid down in the Efficiency and Discipline Rules 2011. No procedure whatsoever has been adopted by the competent authorities before terminating the service of the appellant. In the absence of conformity with such rules and procedure, the impugned penal order cannot be held to have been notified as a valid order.

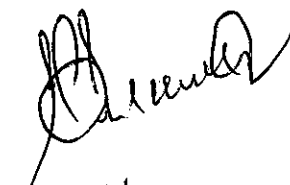

- 3
- G. That the impugned order of removal from service has not been communicated to the appellant. The same is apparent from the incorrect address of the appellant mentioned in the impugned order. Appellant got the information through his friend in the first week of April 2015 and thereafter immediately rushed to the office of respondent No.1 and received a copy thereof.
- H. That similarly the declining of the appeal letter dated 08.10.2015 was also not communicated to the appellant. The same was sent on incorrect address and was handed over to the appellant on 12.11.2015. The malafide on the part of the respondents is apparent from the impugned order dated 09.02.2015 and also from the letter dated 08.10.2015.
- I. That no notice from absence of duty, prior to the disciplinary proceeding has been served upon the appellant as mandated by law. The entire proceedings have been conducted in an ex parte manner. Similarly, no publications in the leading newspapers have been made to fulfill the requirement of law.

- J. That the impugned order is very harsh and does not commensurate with the gravity of alleged misconduct. On this score alone the impugned order is not sustainable in the eyes of law, justice fair play and equity and is liable to be interfered with.

- K. That the appellant seeks leave of this Honourable Tribunal to raise additional ground at the time of arguments.

It is, therefore most humbly prayed that on acceptance of this appeal, the impugned order of removal from service dated 09.02.2015 may very graciously be set aside and the appellant be reinstated in service with all back benefits.

Appellant
Through

Muhammad Asghar Khan Kundi
Advocate High Court

Dated 09.12.2015

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL**

In Ref.

Service Appeal No. _____ of 2015

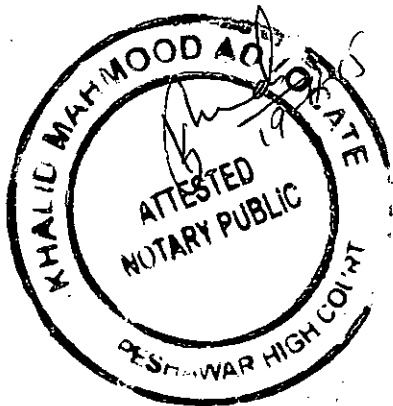
Dr. Farman Ullah.....**Appellant**

VERSUS

Govt, of KPK and others.....**Respondents**

AFFIDAVIT

I, Muhammad Arif S/o Muhammad Ayaz (Attorney of the appellant)R/o Masti Khan Banda Tehsil Takhk Nasrati, Distt karak, do hereby solemnly affirm and declare that the contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



M. Arif
DEPONENT
CNIC # 14203-4609881-3

(11)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR

In Re:
Service Appeal No. _____/2015

Dr. Farman Ullah.....**Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa,
Through Secretary Health & Others.....**Respondents**

ADDRESSES OF PARTIES

APPELLANT:-

Dr. Farman Ullah
S/o Muhammad Altaf Hussain,
R/o Village Masti Khan Banda, P/O Khojaki Kalay
Tehsil Takht Nasrati District Karak

RESPONDENTS:-

1. Government of Khyber Pakhtunkhwa,
Through Secretary Health,
Civil Secretariat, Peshawar
2. Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar

Through

Appellant


Muhammad Asghar Khan Kundi
Advocate High Court

Dated 09.12.2015

Appointment Letter

Annex A

1

GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Dated April 09, 2008

REGULARIZATION

SOH (E-113-18/2008) The Competent Authority, is pleased to order that following Medical Officers / Dental Surgeons (BS-17) appointed in prescribed manner through NWFP Public Service Commission, on contract basis shall be deemed to have been regularized in terms of section 19 of the NWFP Civil Servants Act 1973 (NWFP Act XVIII of 1973) as amended vide NWFP, Civil Servants (Amendment), Act, 2004 (NWFP Act No. IX of 2005) with effect from 23.07.2005 i.e the date of commencement of the said act.

S.No	Name / Father's Name / Domicile	Date of Joining	Present place of Posting
1.	Dr. Muhammad Ishtaq S/O Malik Subha Khan / D.I.Khan	29.03.2004	RHC Karri Wam FR Tank
2.	Dr. Seddiq Aslam S/O Hazrat Khan / Karak	Do	DHOH Karak
3.	Dr. Ijaz Rehmatullah S/O Rehmatullah / Lakki Marwat	Do	DHOH Abbotabad
4.	Dr. Muhammad Zeeshan Qazi S/O Qazi Muhammad Yousof / Peshawar	Do	RHC Manki sharif District Nowshera
5.	Dr. Bashir Ur Rehman S/O Abdul Ghaffar Khan / Buner	Do	KCD Peshawar
6.	Dr. Anwar Khan Wazir S/O Muhammad Nawaz Khan / FR Bannu	Do	RHC Dag Ismail Khel District Nowshera
7.	Dr. Shahi Ullian Khan S/O Malik Mir Azam Khan / FR Kohat	Do	HMC Peshawar
8.	Dr. Umar Nasir S/O Umar Zada / Nowshera	04.02.2005	Under EDC (H) Dir Lower
9.	Dr. Tariq Ahmad S/O Juma Khan / Mardan	Do	TMO AMC A/Abad
10.	Dr. Muhammad Reza S/O Alta Muhammad / D.I.Khan	Do	EDO (H) D.I.Khan
11.	Dr. Shafaqat Ali Shah S/O Liaqat Ali Shah / Peshawar	Do	TMO AFID Rawalpindi
12.	Dr. Robina Nazish D/O Hussain Muhammad / Karak	Do	RHC Landiwan Lake Marwat
13.	Dr. Shahab Adil S/O Adil Marjan / Karak	Do	KCD Peshawar
14.	Dr. Ismail S/O Noor Alam Khan / Buner	Do	RHC Khazana Swat
15.	Dr. Muhammad Sartaj Khan S/O Muhammad Darwain Khan / Mardan	Do	RHC Mastuj, Chitral
16.	Dr. Sadia Ayub D/O Muhammad Ayub / Tank	Do	TMO KCD Peshawar

Part N PI Next Page

**GOVERNMENT OF NWFP
HEALTH DEPARTMENT**

Dated April 03, 2003

NOTIFICATION

No.SOH (E-II)-318/2008. The Competent authority is pleased to order that the following Medical Officers/**Dental Surgeons (BS-17)** appointed in prescribed manner through NWFP Public Service Commission, on contract basis shall be deemed to have been **regularized** in terms of section 19 of the NWFP Civil Servant Act, 1973 (NWFP of XVIII of 1973) as amended vide NWFP, Civil Servants (Amendment) Act, 2002 (NWFP Act No.IX of 2005) with effect from 23.07.2005 i.e. the date of commencement of the said act.

S.No.	Name/Father's name/Domicile	Date of joining	Present place of posting
1)	Dr. Muhammad Ishfaq S/o Malik Subha Khan D.I.Khan	29.03.2004	RHC Karri Wam FR Tank
2)	Dr. Saddiq Aslam S/o Hazrat Khan/ Karak	Do	DHQH Karak
3)	Dr. Ijaz Rehmatullah S/o Rehmatullah /Lakki Marwat	Do	DHQH Abbottabad
4)	Dr. Muhammad Zeeshan Qazi S/o Qazi Muhammad Yousaf /Peshawar	Do	RHO Manki Sharif District Nowshera
5)	Dr. Bashir ur Rehman S/o Abdul Ghaffar Khan S/o Buner	Do	KCD Peshawar
6)	Dr. Anwar Khan Wazir S/o Muhammad Nawaz Khan/FR Bannu	Do	RHO Manki Sharif District Nowshera
7)	Dr. Shafi Ullah Khan S/o Malik Mir Azam Khan /FR Kohat	Do	HMC Peshawar
8)	Dr. Umar Nasir S/o Umar Zada/ Nowshera	Do	Under EDO (H) Dir Lower
9)	Dr. Tariq Ahmad S/o Juma Khan So Mardan	Do	TMO AMC A/Abad
10)	Dr. Muhammad Raza S/o Atta Muhammad /D.I.Khan	Do	EDO (H) D.I.Khan
11)	Dr. Shafaqat Ali Shah S/o Liaqat Ali Shah /Peshawar	Do	TMO AFID Rawalpindi
12)	Dr. Robina Nazish D/o Hussain Muhammad/Karak	Do	RHC Landiwah Lakki Mawat
13)	D.r Shahab Adil S/o Adil Marjan/ Karak	Do	KCD Peshawar
14)	Dr. Ismail S/o Noor Alam Khan/Buner	Do	RHC Khazana Swat
15)	Dr. Muhammad Sartaj Khan s/o Muhammad Darwaish Khan /Mardan	Do	RHC Maatul Chitral
16)	Dr. Sadia Ayub D/o Muhammad Ayub/Tank	Do	TMO KCD Peshawar

n

15.	Dr. Sadia Nishtar D/O Tariq Nishtar/ Peshawar	Do	CH Rehana, Haripur
16.	Dr. Munir Khan S/O Zaman Khan/ Mardan	Do	DHQH Mardan
17.	Dr. Zia Ur Rehman Qureshi S/O Shamsul Arteen/ Charsadda	Do	DHQH Mardan
18.	Dr. Mubarak Zeb S/O Taj Bakht Sultan/ Shangla	Do	DHQH Shangla
19.	Dr. Mammad Qazali S/O Sher Dad Khan/ Karak	Do	RHC Nari Panos, Karak
20.	Dr. Muhammad Shahid Khan Khattak S/O Gul Hamid Shah/ Bannu	Do	TMO AMC A/ Abac
21.	Dr. Syed Murad Ali Shah Binori S/O Syed Roicar Ali Shah Binori/ Malakand	Do	EDO (H) Malakand
22.	Dr. Ajmal Khan S/O Bakht Zamin Khan/ Swat	Do	RHC Chuprial Swat
23.	Dr. Najma Knatoon D/O Hussain Gul Khan/ Kurram Agency	Do	KGD Peshawar
24.	Dr. Farhan Raees S/O Raees Khan/ Nowshera	Do	CH Besham, Shangla
25.	Dr. Sadia Farid Malik D/O Malik Muhammad Farid/ Haripur	Do	RHC Badaber Peshawar
26.	Dr. Sarah Hamid D/O Hamid Haroor/ Peshawar	Do	CH Zarghuni Khef FR Kohat
27.	Dr. Ashfaq Ahmad S/O Muhammad Ayub Jani/ Peshawar	Do	CH Muzaffar Kot, Kurram Agency
28.	Dr. Asif Ullah Khan S/O Haq Nawaz Khan/ Tank	Do	CH Jandola FR Tank
29.	Dr. Farman Ullah S/O Muhammad Aftab Hussain/ Karak	Do	RHC Marghuz, Swabi
30.	Dr. Noor Rehman S/O Mian Khan/ Mohmand	Do	CH Ziarat Kaka Sahib, Nowshera
31.	Dr. Murad Usman S/O Usman Udi Din/ Nowshera	Do	RHC Nizampur, Nowshera
32.	Dr. Waseed Ullah S/O Shafi Ullah Khan/ Bannu	Do	CH Datta Khef NW Agency
33.	Dr. Uzma Haroon D/O Haroon Ur Rasheed/ D.I. Khan	Do	THQH Kulachi, D.I. Khan
34.	Dr. Sartaj Khan S/O Mian Rais Khan/ Buner	Do	On deputation.
35.	Dr. Nadia Mansoor D/O Abdur Rasheed Khan/ Mohmand	Do	CH Shamshato; FR, Peshawar
36.	Dr. Sultan Zeb Khan S/O Muhammad Khan/ Buner	Do	RHC Gurrabat Kohat
37.	Dr. Janam Raj S/O Seeta Ram/ Buner	Do	CH Pacha Kalley, Buner
38.	Dr. Muhammad Ishfaq S/O Taj Muhammad Khan Wazir/ FR Bannu	Do	Para-Medic Institute D.I. Khan

Mansoor Mansoor

2

15	Dr Sadia Nishtar D/o Tariq Nishtar/ Peshawar	Do	CH Rehana Haripur
16	Dr. Munir Khan S/o Zaman Khan/mardan	Do	DHQH Mardan
17	Doctor Zia Ur Rehman Qureshi S/o Shamsul Ameen/Charsadda	Do	DHQH Mardan
18	Dr Mubarak Zeb S/o Taj Bakht Sultan/Shangla	Do	DHQH Shangla
19	Dr Mammad Qazafi S/o Sher Dad Khan/Karak	Do	RHC Nari Panus, Karak
20	Dr Muhammad Shahid Khan Khattak S/o Gul Hamid Shah/Bannu	Do	TMO AMC/Abad
21	Dr Syed Murad Ali Shah Binori S/o Syed Roidar Ali Shah Binori/Malakand	Do	EDO(H) Malakand
22	Dr Ajmal Khan S/o Bakht Zamin Khan /Swat	DO	RHC Chuprial Swat
23	Dr Najma Khatoon D/o Hussain Gul Khan/Kurram Agency	Do	KCD Peshawar
24	Dr Farhan Raees S/o Raees Khan/Nowshera	Do	CH Besham Shangla
25	Dr Sadia Farid Malik D/o Malik Muhammad Farid/Haripur	Do	RHC /Badaber Peshawar
26	Dr Sara Hamid D/o Hamid Haroon/Peshawar	Do	CH Zarghuri Khel FR Kohat
27	Dr Ashfaq Ahmad S/o Muhammad Ayub Jan/Peshawar	Do	CH Muzaffar Kot Kurran Agency
28	Dr Asifullah Khan S/o Haq Nawaz Khan/Tank	Do	CH Jandola FR Tank
29	Dr Farman Ullah S/o Muhammad Altaf Hussain/Karak	Do	RHC Marghuz Swabi
30	Dr Noor Rehman S/o Mian Khan/Mohmand	Do	CH Ziarat Kaka Sahib Nowshera
31	Dr Murad Usman S/o Usman Ud Din/Nowshera	Do	RHC Nizampur, Nowshera
32	Dr Waheed Ullah S/o Shafi Ullah Khan/Bannu	Do	CH Datta Khel NW Agency
33	Dr Uzma Haroon D/o Haroon Ur Rashid/D.I Khan	Do	THQH Kuladi D.I Khan
34	Dr Sartaj Khan S/o Mian Rais Khan/Bunir	Do	On deputation
35	Dr Nadia Mansoor D/o Abdur Rashid Khan/Mohmand	Do	CH Shamshatoo FR Peshawar
36	Dr Sultan Zeb Khan S/o Muhammad Khan/Buner	Do	RHC Gumbat Kohat
37	Dr Janam Raj S/o Seota Ram/Buner	Do	Ch Pacha Kallay, Bunir
38	Dr Muhammad Ishfaq S/o Taj Muhammad Khan Wazir/FR Bannu	Do	Para-Madic Institute D.I Khan.

(P-3)

39.	Dr. Uzma Habib D/O Taj Muhammad/ Mohmand	Do	Govt: LRH Peshawar
40.	Dr. Khurshid Ali S/O Sain Muhammad/ Malik/ Mansehra	Do	CH Matiani, Peshawar
41.	Dr. Neelofar Khan D/O Ali Khan/ FR Bannu	Do	THQH Mirali Miranshah
42.	Dr. Iftikhar Ahmad Khan S/O Abdur Raziq Khan/ Mohmand	Do	RHC Baitagram, Charsadda.
43.	Dr. Syed Sarwar Shah S/O Muzammil Shah/ Mohmand	Do	Govt: LRH Peshawar
44.	Dr. Kaleem Ullah S/O Sher Qadary/ Bajuar	Do	CH Nawagai Bajuar
46.	Dr. Muhammad Shahid Khan S/O Tahmas Khan/ Mansehra	Do	RHC Chowki, Mansehra
46.	Dr. Nayyar Sultana D/O Juma Khan/ Haripur	Do	RHC Kot Najib Ullah, Haripur.

SECRETARY HEALTH
OFFICE OF THE DIRECTOR GENERAL HEALTH SERVICES NWFP PESHAWAR

No. 1319-1400 ADD Dated Peshawar the: 19/07/2008

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03. M.Ss DHQs Mardan, Shangla and Karak.
04. DHS FATA NWFP, Peshawar.
05. EDOs (Health) Peshawar, Nowshera, Charsadda, Mardan, Swabi, Karak, D.I.Khan, Kohat, Bannu, Haripur, Chitral, Mansehra, Buner, Swat, Shangla, Malakand and Lakki Marwat.
06. Agency Surgeons Bajuar, Kurram and Miranshah.
07. Agency Surgeons FR Peshawar/ Kohat, Tank/ D.I.Khan
08. Accountant General NWFP Peshawar.
09. D.A.Os Nowshera, Charsadda, Mardan, Swabi, Karak, D.I.Khan, Kohat, Bannu, Haripur, Chitral, Mansehra, Buner, Swat, Shangla, Malakand and Lakki Marwat.
10. A.A.Os Bajuar, Kurram, Miranshah FR Peshawar/ Kohat, and Tank/ D.I.Khan.
11. All doctors concerned.

For information and necessary action.

(DR. MANZAR ANWAR KHAN)
ASSISTANT DIRECTOR (DENTISTRY)
DGHS NWFP, PESHAWAR

39	Dr Uzma Habib D/o Taj Muhammad/Mohmand	Do	Govt LRH Peshawar
40	Dr. Khurshid Ali S/o Sain Muhammad Malik/Mansehra	Do	CH Mattani, Peshawar
41	Dr Nelofer Khan D/o Ali Khan/FR Bannu	Do	THQH Mir Ali Miran Shah
42	Dr Iftikhar Ahmad Khan S/o Abdur Raziq Khan/Mohmand	Do	RHC Battagram, Charsadda
43	Dr Syed Sarwar Shah S/o Muzammil Shah/Mohmand	Do	Govt.LRH Peshawar
44	Dr Kaleem Ullah S/o Sher Qadam/Bajuar	Do	CH Nawagai Bajuar
45	Dr Muhammad Shahid Khan S/o Tehmas Khan/Mansehra	Do	RHC Choki, Mansehra
46	Dr Nayyar Sultana D/o Juma Khan/Haripur	DO	RHQ Kot Najibullah, Haripur

SECRETARY HEALTH

Office of the director General health Service NWFP Peshawar
No. 1319-1400 ADD Dated Peshawar the 19/07/2008

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 10. A.A.Os Bajuar, Kurram, Miranshah FR Peshawar/Kohat, and Tank/D.I.Khan.
 11. All Doctors Concerned.
- For information and necessary action.

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DR.MANZAR ANWAR KHAN
ASSISTANT DIRECTOR (DENTISTRY)
DGHS NWFP, PESHAWAR

IN THE COURT OF TARIQ PERVEZ BLOCH,

Session Judge

Additional Sessions Judge, Karak
at Takht-e-Nasrati.

A.M. 17

871
2008

Sessions Case No.....54/2 of 2007.
Date of institution.....04.10.2007.
Date of decision.....02.08.2008.

The State.....
Through Qaisar Iqbal.....(Complainant)

Versus.....

1. Shaukat Fayyaz,
2. Muhammad Ayaz sons of Shalozan,
3. Farmanullah son of Muhammad Altaf Hussain,
4. Muhammad Altaf Hussain son of Mir Bad Shah,
5. Hafeezullah son of Umar Hayat and
6. Khalil ur Rehman son of Gul Sahib Khan all resident of village Haydar Khel, Masti Khan Banda, Tehsil Takhti Nasrati District Karak (Accused Facing Trial)

Case FIR NO.203 dated 26.10.2006,
u/s 302/324/148/149 PPC,
Police Station Takht-e-Nasrati District Karak.

JUDGMENT:

This judgment of mine is about to fix up the fate of the accused facing trial, charged under section 302/324/148/149 PPC, vide case FIR No. 203 dated 26.10.2006, police-station Takht-e-Nasrati.

The FIR read thus;

"The complt, in column No.2, Mr. Qaisar Iqbal, who did appear along with one Umar Hayat son of Sharbat Khan, Amir Jamal son of Umar Khan



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State versus Khaleel ur Rehman etc

resident of the same village, did appear in police station Takht-e-Nasrati and reported the incident in a way that, on the day, the incident did take place, i.e. on 26.10.2006, around at 12.50 hours, they were sitting in the house of one Rafique ur Rehman, meanwhile they did hear bang of firing, therefore, the complt alongwith Umar Hayat and Amir Jamal, his counsel, aforementioned, did come out off the house and did catch sight of one Shaukat Fayyaz, Muhammad Ayaz sons of Shalozan, Muhammad Altaf son of Mir Bad Shah, Hafeez son of Umar Hayat, Khalil ur Rehman son of Gul Sahib Khan and Farman son of Muhammad Altaf r/o Masti Khan Banda, who were armed with topaks, at the Highway, close to the house of Rafique ur Rehman, where the complainants party was sitting. No sooner, the accused party did catch sight of the complainants, they opened up indiscriminate firing upon the complt party that made them rush back into the house of Rafique ur Rehman. The complt alongwith the deceased Abdur Rasheed, the paternal uncle of the complt rushed back into the house of Rafique Rehman. The complt, in order to see if the accused were there outside the house, they did raise themselves over the wall. No sooner they did it, the accused Shaukat Fayyaz, Muhammad Ayaz sons of Shalozan, Altaf son of Mir Bad Shah, Hafeez son of Umar Hayat and Khalil ur Rehman son of Gul Sahib Khan opened up firing at Abdur Rasheed, one of the complainants and it was the fire shot of accused Shaukat Fayyaz son of Shalozan that the deceased Abdur Rasheed did get in the forehead. After the incident, all the accused did take flee off the place of incident.

The scene of incident, apart from the complt, was witnessed by the men, aforementioned. Dispute over women folk was described as motive



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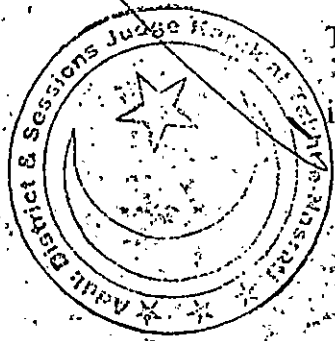
for the commission of the offence. All the accused were earlier charged under section 324/148/149 PPC at 14.35 hours, but owing to the death of the victim Abdur Rasheed, the same day at 20.40 hours, all the accused were charged u/s 302/324/148/149 PPC, hence the FIR.

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Later on the challan was put in court under section 173 Cr.PC against the accused facing trial. Summons to the accused was issued and upon their attendance, the court did supply copies to them u/s 265-C Cr.PC, and framed the charge there against u/s 265-D Cr.PC and since, they didn't plead guilty in the case that's why, the prosecution was accorded the opportunity of leading evidence there against u/s 265-F Cr.PC for, it was the liability of the complt party to prove the case against the accused facing trial under Article 304 r/w Article 117 of the Qanoon-e-Shahadat 1984. In this context the prosecution did come out with the eleven witnesses. The crux of the evidence of the prosecution, in verbatim, is as under:-

PW-1, Noor Aslam, says that he was attached to Reporting Centre, KDA Hospital, Karak. After medical examination of the injured the doctor handed over to him the blood stained garments which he produced before the I.O in the police station. The memo in this respect is ExPW 1/1.

Muhammad Ghani ASI did appear as PW-2. Stated that, during those days he was posted as ASI in police station Takht-e-Nasrati. On the day of occurrence, one Qaisar Iqbal son of Fojdar Khan did appear in the police station at 14.15 hours and reported the matter to him which he did take down and recorded it into FIR No. 203 dated 26.10.2006 police station Takht-e-Nasrati. The same was read over to the complt who after admitting it to be correct signed the same. At 20.40 hours, on 26.10.2006, he was



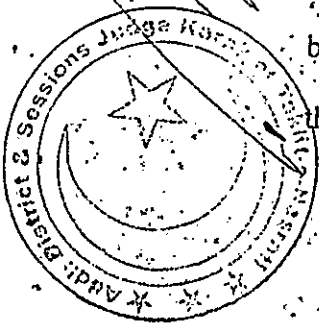
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informed through Jamil Khan from Peshawar that the injured Abdur Rasheed did breathe his last so section 302 PPC was added by him in the FIR and the report in this respect is ExPW 2/1.

Mehmood Khan SHO, PW-3 had submitted complete challan in the case against the accused.

Naeemullah ASI did appear as PW-4. He is marginal witness to the recovery memo ExPW 4/1 vide which the I.O recovered eight empties of 7.62 bore from the places of accused during the spot inspection. The empties are P-1. the I.O prepared the memo and sealed the same into a parcel. The I.O had also taken into his custody one shot gun 12 bore No. 114402 P-2 alongwith bandolier containing 14 live cartridges P-3. He did also recover five empties of 12 bore from the place accorded to accused. Shaukat Fayyaz, one kalakove with fixed charger and one spare charger containing 45 rounds from accused Muhammad Ayaz, vide case FIR No. 205 dated 26.10.2006 under section 13 AO. Similarly one Kalashnikov No. A56-1-1947442 with fixed charger and one spare charger containing 9 live rounds, having been thrown away by accused Farmanullah; vide case FIR No. 206 dated 26.10.2006 u/s 13 AO, police station Takht-e-Nasrati, produced by Amir Khatim Khan SHO, taken into possession as proof of the occurrence through recovery memo and sealed the same into separate parcels vide memo ExPW 2/4.

On the same day, the complt Qaisar Iqbal son of Fojdar Khan had produced one Suzaki Motorcar bearing registration No. 7839, Islamabad, in black, with keys and registration and showed that the accused had come to the spot before the occurrence in the said car and had left it after the



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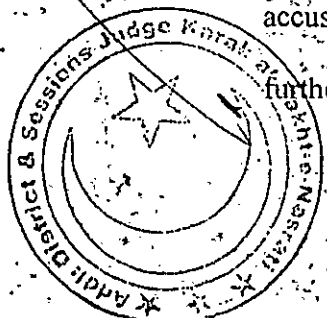
occurrence. The car was taken into possession vide ExpPW 4/3. Similarly, he is also marginal witness to the recovery memo vide which the I.O had taken into his possession blood stained earth P-4, during the spot inspection. The memo is ExpPW 4/4.

In the same manner, constable Noor Aslam No. 374, had brought a gamees with blood stained P-5, belonging to deceased Abdur Rasheed sent by the doctor from civil hospital, Karak. The I.O did take the same into his custody vide memo ExpPW 1/1.

On 05.11.2006 accused Farmanullah produced a registration copy of the motor in question which was already taken by the police into possession. The memo is ExpPW 4/5.

Amir Khatim (Rtd. SHO) did appear as PW-5. Stated that, he was on gusht when he did get information through wireless about the occurrence. He rushed to the spot near Gardi Banda cum Lawaghar Algada. There he received further information that in Lawaghar Algada, firing was going on between the parties, so he approached there. He arrested Shaukat Fayyaz alongwith DB shot gun and 14 live cartridges in a bandolier and five empties of the same bore. He also arrested accused Muhammad Ayaz with 222 bore kalakov alongwith fixed charger and one spare charger containing 45 rounds and accused Farmanullah had thrown away his Kalashnikov with fixed charger and one spare charger containing 9 empties. All the weapons recovered were sealed into a parcel and murasilla in this respect was drafted and was sent to police station for the registration of the case. Both the accused alongwith the weapons, recovered, were handed over to the I.O for further investigation.

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Dr. Muhammad Khalid, Medical Officer, Khyber Medical College did appear as PW-6. Stated that on 28.10.2006 at 07.00 P.M he had conducted autopsy on the dead body of Abdur Rasheed son of Ghazi Marjan r/o Gardi Banda District Karak and found the following.

EXTERNAL APPEARANCE.

Condition of subject: A young man wearing shalwar of blue colour. P.M.L started developing.

INJURIES:

Entry wound on the front of skull 1 X 1 C.M in size. 02 C.M above the right eye. 02 C.M from midline.

Exit wound on the left side of skull 2 x 3 c.m. in size behind the left ear 2 C.M and from midline 07 C.M.

INTERNAL:

Cranium and Spinal Cord.

Scalp; skull Injured. Membranes and brain..... Injured.

Abdomen: Stomach... Empty.

Muscles. Bones Joints.

Skull Fractured.

REMARKS.

In his opinion the deceased died due to injury to the brain due to fire arm. I have handed over the dead body, P.M report to the police.

Probable time between injury and death: Hospitalized.

Between death and PM. 2-5 hours.

His report ExPM, consists of six sheets alongwith pictorial.



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Dr. Gul Sher Khan did appear as PW-7. He on, 26.10.2006 at 01.45 hours had examined Abdur Rasheed son of Ghazi Marjan and found the following.

Injuries:

Fire arm injury to the head.

Patient deeply unconscious with blood stained clothes:

An entry wound 0.5 X 0.5 c.m. on the right side forehead.

Exit wound 1 X 1.5 c.ms. over the left temporal region bleeding from both wounds.

Nature of injury: Dangerous.

Probable duration of injury: Within ½ hours.

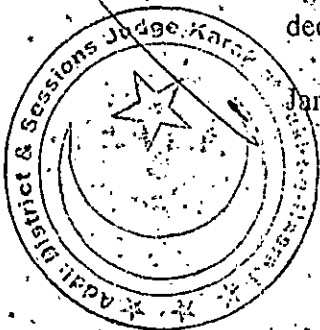
Kind of weapon. Fire arm injury.

The patient was referred to Peshawar on 26.10.2006 at 02.15 hours. His report is ExPM/1.

PW-7(A) is also the statement of Dr. Gul Sher Khan wherein he stated that he belongs to Domail, District Bannu and he is Wazir by caste. He knew Awal Khan because he had to attend his offence in connection of MLC during his stay. He admitted it correct that the victim had produced before him by the local police alongwith the injury sheet for examination.

PW-8, Islam Bad Shah had identified the dead body of Abdur Rasheed, deceased, before the doctor at the time of post mortem examination at mortuary KMC Peshawar.

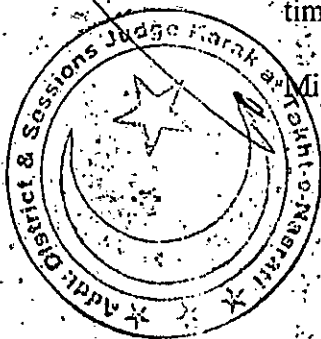
Qaisar Iqbal (Complainant) did appear as PW-9. Stated that the deceased was his nephew. On the day of occurrence, he alongwith Amir Jamal and Umar Hayat were sitting in their hujra. His brother Zaib ur



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District & Sessions Judge, Karakoram

Rehman was to go out of the country, the second day. He went to the house of Rafiq ur Rehman who is brother of Zaib ur Rehman, to see him off. They reached the house of Rafiq ur Rehman at 12.50 p.m. They were sitting in the said house when they heard the bang of fire shots. They went out of the house to see as to what was happened. They saw near the highway, in front of their house, Shaukat Fayyaz, Muhammad Ayaz sons of Shalozan, Hafeezullah son of Umar Hayat, Muhammad Altaf son of Mir Bad Shah, Khalil ur Rehman son of Gul Sahib Khan and Farmanullah son of Altaf while making firing. They, the accused, on seeing the complaint party, did start firing at them and in order to save themselves, the complaint party did run towards the house of Rafiq ur Rehman and entered therein. Abdur Rasheed did also enter the house of Rafiq ur Rehman and climbed over the kitchen to see as to what was going on. They also did climb on a cot to monitor the activities of the accused. Shaukat Fayyaz and other accused fired at them and Abdur Rasheed. Abdur Rasheed was hit with the fire shot of accused Shaukat Fayyaz and fell down whereas the accused did flee off the spot. The injured Abdur Rasheed was placed on a cot and handed over him to other relatives to take him to hospital for treatment, whereas the complaint along with Mir Jamal and Umar Hayat did start for report. They straight went to the police station for lodging the report. Near Emarki, they boarded a datsun and reached to the police station. He lodged the report in the police station at 02.15 p.m. His report was taken down, read over to him and he signed it in token of its correctness. The report is ExPW 9/1. At the time of report Mir Jamal and Umar Hayat were also there with him. SHO

Mir Khatim and Mir Atlas had come to the spot where they pointed out the



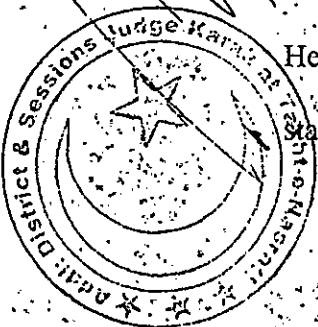
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spot and the site plan was prepared at their instance. The I.O took blood stained earth from the place of deceased. The I.O did also recover empties, eight in number, from the place of accused. He had handed over the suzaki car to the police alongwith its registration. He charged the accused for the commission of the offence.

Mir Jamal did appear as PW-10. Stated that on the day of occurrence Qaisar Iqbal (complt) Umar Hayat and other village people were sitting in their hujra. It was about 12.30 p.m. Meanwhile Qaisar Iqbal stated that his brother Zaib ur Rehman was leaving for Islamabad tomorrow and he want to see him off. He and Umar Hayat also accompanied him to the house of Rafiq ur Rehman who is the brother of Zaibur Rehman. They did sit in the house for a while at 12.40 /45 p.m. when they heard the report of firing and they rushed towards the gate of the house of Rafiq ur Rehman. They saw from the gate that Shaukat Fayyaz, Muhammad Ayaz, Hafeez, Altaf, Khalil and Farmanullah were sitting towards the south of the house at a distance of about 125 paces. No sooner, they saw the complt party, the accused did start firing at them. The complt party did run towards the house followed by Abdur Rasheed, deceased. They climbed over a cot near the southern wall of the house whereas Abdur Rasheed did climb over a small kitchen, having height of 4 feet 6 inches to see as to what was happening outside. Meanwhile all the accused fired again including Shaukat Fayyaz, with whose fire the deceased Abdur Rasheed got hit and fell down on the roof of the said small kitchen. The accused went towards the north from the spot. He alongwith Qaisar Iqbal and Umar Hayat, at once, started to the police station for reperot. They went up to Emarki on foot and thereafter boarded a



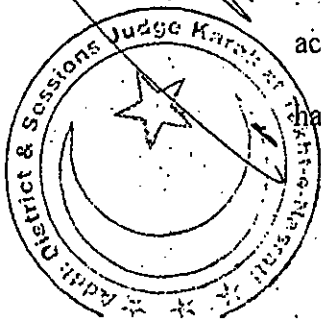
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State versus Khulcel ur Rehman etc

datson and reached the police station at 02.15 p.m. The complt Qaisar Iqbal reported the matter. His report was taken down and read over to him who after admitting it correct, signed the same. Then they came back to their village. The police arrived at the spot at 03.30 p.m. and recorded their statements on the spot. The police did also prepare the site plan at their instance and recovered blood stained from above and below the kitchen. He charged the accused for the offence.

Mir Atlas Khan SI, did appear as PW-11. He was present in the Algada Lawaghar on the day of occurrence in connection with the investigation in case FIR NO. 204, 205 and 206 u/s 13 AO that the copy of FIR was received to him through constable Amal Janan No. 190. He started to the spot alongwith other police party. On the spot, complt alongwith the eye witnesses was present. He prepared the site plan ExpB at their instance. From the place of deceased he collected blood stained earth vide ExpW 4/4. he also recovered 8 empties from the place of accused vide memo ExpW 4/1. He was presented a suzaki car No. B-7839 Islamabad with its keys. He prepared the recovery memo which is ExpW 4/3. He had already arrested accused Shaukat Fayyaz and Muhammad Ayaz in the said 13 AO, therefore, he also arrested the accused in the present case vide card of arrest ExpW 11/1. Amir Khatim SHO had handed over to him a kalakov 222 bore with fixed charger and one spare charger containing 45 rounds and a DB shot gun bearing No. 114402 alongwith a tandolier containing 14 cartridges and five empties, stating that these have been recovered from accused Shaukat Fayyaz and Muhammad Ayaz. The said SHO did also hand over to him a Kalashnikov with fixed charger and one spare charger



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containing 9 rounds having been thrown away by accused Farmanullah while running away from the spot. All the three weapons were taken into custody vide recovery memo. ExpPW 4/2. He recorded the statements of PWs u/s 161 Cr.PC. He also searched the houses of the accused. He produced the arrested accused before the court and obtained custody for them. On 27.10.2006, Noor Aslam constable No. 374 did produce one qamees with blood stained belonging to deceased sent by the doctor which he did take into possession vide recovery memo ExpPW 1/1. He recorded the statements of arrested accused u/s 161 Cr.PC. Subsequently, accused Altaf, Farmanullah, Hafeezullah did appear before him and he arrested them accordingly vide ExpPW 11/2. Farmanullah accused did produce the registration documents of the car which he also took into possession vide ExpPW 4/5. He obtained custody for the accused. He received medical report through Abdul Latif IIC, having been sent by the doctor from KMC, Peshawar. He recorded the statements of formal witnesses. He also arrested accused Khalil and issued his card of arrest ExpPW 11/3, after his BBA petition was turned down. He had sent the blood stained garments, empties and weapons to the FSL for analysis and report and the report thereof was ExpPW 11/4 was received by him. The applications to the laboratory are ExpPW 11/6 and ExpPW 11/7. he also obtained warrants u/s 204 Cr.PC against accused Altaf, Farmanullah, Hafeez and Khalil. His application is ExpPW 11/8. After completion of investigation he did hand over the file to the concerned SHO for submission of challan.



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After the closure of the evidence of the prosecution, the statement of accused u/s 342 Cr.PC were taken down. The accused denied the commission of the offence and they claimed themselves to be innocent.

Since, in this case, no defence evidence was recorded, therefore, the court u/s 265 G (i) Cr.PC heard the SPP for the state assisted by private counsel for the complt, first.

The counsel for the complt, summing up the case, did say that the incident did take place on 26.10.2006 at 12.50 hours and it was reported to the police the same day at 14.15 hours and the FIR was chalked out the same day at 14.35 hours. Initially, the accused facing trial were charged u/s 324/148/149 PPC, but since the same day around at 20.00 p.m. the injured Abdur Rasheed had died, that's why, section 302 PPC was added in the FIR. To the said counsel, it was a prompt report that didn't leave room for meditation, consultation and false implication. It was a day light occurrence. Since, the parties do come off the same vicinity, that's why, there was no question of misidentification. The accused have been directly charged by name and the complt/ prosecution had proved the case, therefore, sought for the conviction of the accused facing trial. In support of his arguments, the counsel for the complt did place his reliance on worthy case laws reported in;

NLR 1994 Criminal 354, titled Habibullah vs. The state.

2006 SCMR 1857, titled Muhammad Ehsan vs. The state.

2006 SCMR 1637, titled Ataulah Khan and others vs. Mst. Surraya Parveen.

PLD 2006 Peshawar 180, titled Ijaz Khan vs APA BARRA, Peshawar and another.



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State versus Khaleel ur Rehman etc

2006 CLC 282, titled Dilbar Khan vs. Talizar Khan and others.

2007 SCMR 324, titled Muhammad Javaid vs. The state.

1997 SCMR 1296, titled Ayaz Ali Shah vs. The state.

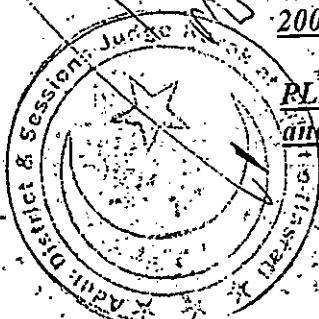
2004 PCr.LJ 1710 Quetta, titled Azizullah and another vs. The state.

PLD 2002 Peshawar 21 titled Haji Din Muhammad vs. Mst. Hajra Bibi and others.

Contra thereto, the counsel for the accused facing trial, in reply, did say that the accused have falsely been implicated in the case. The incident didn't take place in a way the complt has depicted and portrayed it. There is no clue, hint or sign of the involvement of the accused with the commission of the offence. The whole of the story of the prosecution seems to be concocted. To the said counsel, the accused are innocent persons and the complt party has falsely implicated them in the case. Given reference of the site plan, the counsel for the accused facing trial, did say that when all the complts including the deceased were in the house, how was it possible for the accused to have attempted at the lives of the complt including the life of the deceased and most especially, as admitted by the counsel for the complt that, there is no motive for the commission of the offence. To the said counsel, all the accused have falsely been implicated in the case and the complt has failed to establish the guilt of the accused facing trial, therefore, sought for the acquittal of the accused. In support of his arguments, he did place his reliance on worthy case laws reported in;

2007 SCMR 486, titled Akbar Ali vs. The state.

PLD 2007 Supreme Court 637, titled Abdul Mujeed vs. Mulazim Hussain and others.



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2006 SCMR 1846, Lal Khan vs. The state.

1995 SCMR 1730, titled Riaz Masih alias Mithoo vs. The state.

2001 SCMR 56, titled Munir Ahmad alias Munnai vs. The state.

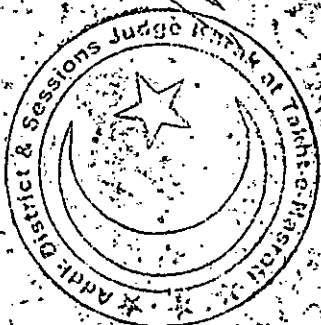
1995 SCMR 127, titled, Mehmood Ahmad and three others vs. The state.

2007 SCMR 1427, Dr. Israr ul Haq vs. Muhammad Fayyaz and another.

In the wake of hearing both the counsel for the parties, the court, by itself, has had a look at the record.

Since, it was the prosecution who had undertaken the burden to prove the guilt of the accused facing trial, u/s 304 PPC r/w Article 117 of Qanoon-e-Shahadat 1984; therefore, the prosecution did get along with eleven witnesses.

The complt, in the FIR, had assailed that, by the time, the incident did take place, it was complt and the deceased Abdur Rasheed with two witnesses i.e. Umar Hayat and Amir Jamal, his cousins, at the house of one Rafiq ur Rehman. The complt also said that they were sitting inside the house. When they heard the bang of fires outside the house of Rafiq ur Rehman, they were sitting in, they did step out of the house and have had a look at the accused facing trial. No sooner they did cast their eyes upon them, the accused fired at them and they did get inside the house in order to save themselves. The FIR does reveal that when the incident did take place, the eye witnesses, who did claim themselves to be present at the place of incident, were the Qaisar Iqbal, the complt, Umar Hayat and Amir Jamal the eye witnesses.



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State versus Khaleel ur Rehman etc

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According to the corpus juries, cases are proved through oral evidence, circumstantial lot and medical evidence. So far as oral evidence does matter, in this context Article 70 and 71 of Qanoon-e-Shahadat 1984 are very specific on the subject.

Article 70 that reads; that *all facts except the contents of documents, may be proved by oral evidence.*

Article 71 of the Act reads; that *oral evidence must, in all cases whatever, be direct.*

Out of the three witnesses, the prosecution did adduce two i.e. the complt himself who did get into the witness stand as PW-9, whereas the other witness Amir Jamal did come out as PW-10 with Umar Hayat, the 3rd eye witness abandoned. So getting to the statement of complt Qaisar Iqbal, PW-9, we see that the witness, in his examination in chief, did say the same way as he did tell to the police by the time he did make report, but in the same in chief, a good deal deviation and tilt has been noted, as in the words of the witness that:

" My brother Zaibur Rehman was to go out of the country on the second day. We went to the house of Rafiq ur Rehmana who is brother of Zaib ur Rehman to see him off. We reached the house of Rafiq ur Rehman at 12.50 p.m."

In the FIR this witness stated that the incident did take place at 12.50 hours. PW-10 who too, claims himself to be the eye witness of the occurrence, in his in chief stated that;

"On the day of occurrence I alongwith Qaisar Iqbal, Umar Hayat and other village people were sitting in our hujra. It

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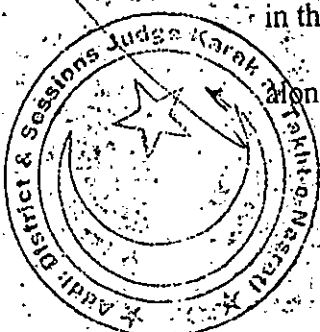
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was 12.30 p.m. In the meanwhile Qaisar Iqbal stated that his brother Zaibur, Rehman is leaving for Islamabad tomorrow and I want to see him off, I and Umar Hayat also accompanied him to the house of Rafiq ur Rehman, who is brother of Zaibur Rehman".

When we take the statements of two witnesses together, PW-9 Qaisar Iqbal, the complt says that his brother Zaibur Rehman was to go out of the country on the next day, therefore, he alongwith the eye witnesses did get to the house of Rafiq ur Rehman and they got there at 12.50 p.m. PW-10 says that Zaibur Rehman was leaving for Islamabad the next day and they were sitting in their own hujra at 12.30 p.m. The court is at a loss to understand as to which of the witness and his statement is to be believed in? Again I will say that one witness i.e. PW-10, says that at 12.30 p.m. they were sitting in their own hujra whereas PW-9, says that they had got to the house of Rafiq ur Rehman at 12.50.p.m.

This makes a damnsight controversy between the statements of the two witnesses. The deceased Abdur Rasheed was the paternal nephew of the complt. In his examination in chief, the complt Qaisar Iqbal, PW-9, stated that when the deceased then injured did sustain the injury, he was placed on a cot in injured condition and he was handed over to other relatives to take him to hospital, and the complt with PW-10 and the abandoned witness, Umar Hayat, started for the police station for making the report. PW-10, simply said that when the dceased then injured was hit in the head, they did bring him down the kitchen, placed him in a cot and he alongwith complt and the-eye witnesses did start for the police station for



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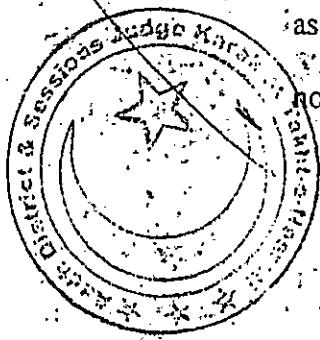
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report. This version of the two witnesses seems to be surprising, for both the witnesses in their respective statements did admit it that by the time the incident did take place, they did leave the injured and they started for the police station. A prudent mind doesn't give in, to this version of the witnesses, for a life of a kith and kin is far more significant than the report. From the statements of both the witnesses, it gets vivid that by the time they did get to the police station, the deceased then injured was not with them and these two witnesses didn't get to the hospital with the injured that makes out as if both the witnesses were not present by the time the incident did take place. The first and the foremost thing in a case for the witness, is to prove his existence at the place of incident as was held by his lordship that, "an eye witness, who claims his presence at the spot, must satisfy the mind of the court through some physical circumstances or through some corroborative evidence in support of his presence at the spot. Court would not base conviction on the sole testimony of a witness, whose credibility is not free off doubt. 2005 PCr.LJ 337.

When we get to the cross examination of PW-9, i.e. the complt Qaisar Iqbal, who in the opening line, did say that he had not stated in the FIR that his brother had to go out of the country on the next day. The witness had stated in his statement that they had reached the house of Rafiq ur Rheman at 12.50 p.m. but when his statement was confronted with the FIR, it was not found there. Similarly the witness said that he had stated in the report that Abdur Rasheed deceased climbed over the kitchen to see as to what was going on outside, but when confronted with the FIR, it was not found. Similarly it was also not found in the FIR that the accused had

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State versus Khaleel ur Rehman etc

decamped towards the Algada/Highway. The witness was well educated, he did M.A and M.Ed and used to serve as Headmaster Govt. High School, Kohat and serving for the last 30 years. It is in the FIR that all the six accused facing trial did fire upon the complts but PW-10 in his cross examination stated that he didn't care if the complt were fired in burst or by single fires by individual accused. When we take the statement of both the witnesses together, most especially in cross examination, it seems fraught with damnsight contradictions and discrepancies up to the brim, pricking the mind with the doubts and suspicions about the non-existence of the witnesses on the spot. It is in the FIR as well as in the statements of the witnesses i.e. PW-9 and PW-10 that all the six accused facing trial did fire at the complt party, but when we get to the recovery memo that speaks of only eight empties at the place of incident.

It is in the FIR as well as in the statements of the PW-9 and PW-10, the complt and the eye witness respectively, that the deceased then injured did sustain the bullet inside the house of Rafiq ur Rehman and when we get to the site plan, all the accused facing trial has been lined up in a row, they being assigned serial # 5 to 10. This scenario of incident, by itself, doesn't appeal to a prudent mind to have taken place in a way as has been portrayed in the site plan. There is no doubt in it that the site plan was prepared at the instance of the complt party. Site plan does show that the complt was inside the house whereas the accused facing trial were out thereof with no sanctuary around for the accused facing trial that could make way for their protection if they were fired upon from inside the house of the Rafiq ur Rehman by the complt party. If the site plan and the version of the



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State versus Khaleel ur Rehman etc

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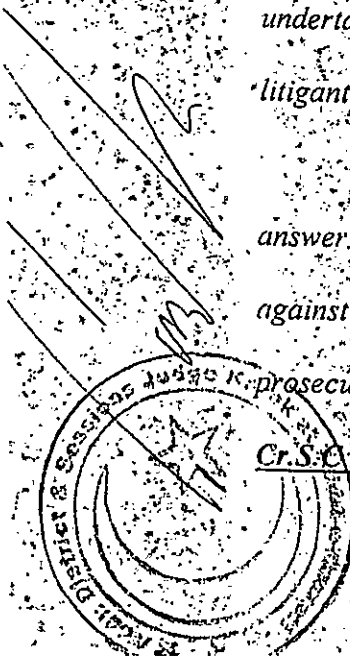
witnesses are given in, the accused did seem to be in far more precarious position than the complts. The complt alleged that they were sitting in the house of Rafiq ur Rehman but the latter didn't come to see the witness stand to say few words for the prosecution. In the evidence vis-à-vis the site plan, it was alleged that the complts were inside the house and when the deceased then injured while raising himself off the place near the kitchen did pull himself up over the compound wall he received the bullet in the forehead and did fall back on the roof of small kitchen and the eyewitnesses too being inside the house of Rafiq ur Rehman were watching all that scene by pulling their heads above the wall. This version of the witnesses doesn't appeal to the mind. This whole scenario, for a moment, if believed in, the accused facing trial were exposed under the open sky and if they were there, accused were in most precarious position than the complt, for the complt and the deceased then injured were safe inside the house whereas the accused facing trial didn't have a sanctuary like that.

Law casts a good deal responsibility on the court, as was held by his lordship that,

"Court is to be extra cautious to ensure that the prosecution is undertaken in the interest of justice and not to satisfy private grudge of a litigant. 2003 YLR 249, for;

the object of criminal trial is to make the accused face the trial, answer it and not to punish an under trial prisoner for the offence alleged against him. The basic idea is to enable to accused to answer criminal prosecution against him rather than to rot him behind the bar. NLR 2002

Cr.S.C.147



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State versus Khaleel ur Rehman etc

There is no doubt in it that presumption of innocence is attached to the accused, and the burden did rest with the prosecution to establish the guilt against the accused facing trial. The prosecution leads the evidence but the;

"Courts on account of their rich experience or sills are required to discover the truth within the periphery of facts before them, keeping in view the probabilities and while using the immense power provided by substantive or procedural law, they should not allow the incompleteness of any episode to be an impediment in the way of drawing proper inference from evidence or circumstances. Courts have not to act mechanically, nor to conduct a trial in a mechanical way nor to pronounce a judgment in a mechanical process. Judgment cannot be illuminative until it is fact finding and focuses on materials on which truth can be based. 2002 PCr.LJ 85.

Similarly it was also held by his lordship that;

"duty is cast upon court of law, to ascertain truth and to dig out irregularities and unnecessary padding up of cases by prosecution. Reliance is rested on worthy case law reported in 2000 MLD 1419.

So for evidence of the prosecution is concerned, no doubt, the prosecution had get along with eleven witnesses, but;

"The court has to see quality of evidence and not quantity thereof especially ocular account, when coming from unimpeachable source. 2002 PCr.LJ 1902.

Not the number of witnesses but quality and credibility of evidence is to be considered. 2001 PCr.LJ 503.



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Article 17 of Qanoon-e-Shahadat 1984 doesn't fix number of witnesses that the prosecution has to lead, what is needed, it is that, the best kind of evidence should come afore for conviction of the accused facing trial, as was held by his lordship that,

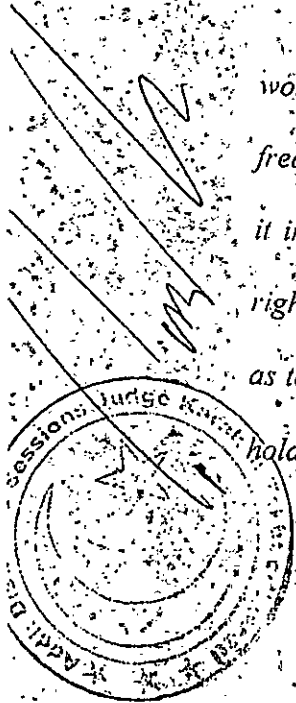
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"The prosecution is required to produce best kind of evidence to establish accusation against the accused facing trial, but it is under no obligation to produce a good number of witnesses because it has an option to produce any many witnesses as are considered by it sufficient to prove the prosecution case. It is the quality of evidence and not the quantity that matters. 2003 PCr.LJ,699.

When we get to the oral evidence led by the prosecution, that seems quite unconvincing even the very existence of the witnesses does breed a good deal doubt. It seems to be overlapped by discrepancies and contradictions and seems to be un-matching with the FIR, the site plan, and recovery memos etc. Such like statements cannot be believed in, by the courts.

We do not mean here that a witness must in all probability should appear a paragon, for;

"Absolute certainty amounting to demonstration of guilt in this work-a-day world is seldom to be had in the affairs of life; and we are frequently obliged to act on degrees of probability which fall very short of it indeed. Practical good sense and prudence consist mainly in judging a right, whether in each particular case, the degree of probability is so high as to justify one in regarding it as a certainty and in acting accordingly. In holding a certain fact or thing as provided, all that a judge need look for is



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a high degree of probability that a prudent man, in any other transaction where the consequences of a mistake are equally important, would act on the assumption that the thing was true as was held in AIR 1933 Oudh quoted in by his lordship in a case reported in PLD 1965 Lahore 296.

It is also held that,

"Perfect proof is seldom to be had; absolute certainty is a myth".

KLR 1982 Cr.C 59.

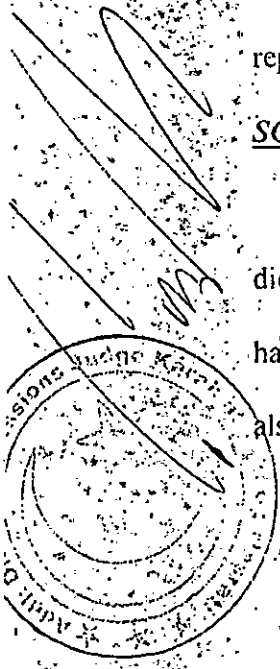
So far as oral account does matter, it seems to be fraught with doubts and suspicions; circumstantial lot doesn't support the prosecution story.

What remains to be seen, it is medical report and in this context two medical officers did appear, one was Dr. Muhammad Khalid, Medical Officer, Medical College, Peshawar, PW-6 whose medical report is ExPM, that gives out the detail of the injuries that the deceased then injured did sustain. The other is the statement of Dr. Gul Sher Khan Medical Officer, RHC Domail, District Bannu, whose medical report is ExPM/1 and the two witnesses did appear as PW-6 and PW-7 respectively. So far as their reports do matter, no doubt, these reports do indicate of corpus delicti vis-à-vis the nature and kind of injuries but it is no evidence that the accused facing trial did do the offence. In this context reliance is placed on worthy case law reported in PLD 2007 Lahore '606 (b) (Riaz vs. The state), and 1995

SCMR 127 (Muhammad Ahmat and 2 others vs. The state).

Here gets in, the duty of the court to see if the accused facing trial did commit the offence or not? It is the evidence of the prosecution that has had to fix the liability on the accused facing trial but before going to it, it is also indispensable to weigh out and see if the evidence led and produced by

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the prosecution by its weight and measure does establish the case of the accused facing trial? So far as, the present case is concerned, eye witnesses have been produced by the prosecution. Their names did appear in the FIR, but so far as their version is concerned, the statements of the two witnesses do match only to the extent of the day of incident. The cross examination of both the witnesses does appear to be pole apart that doubts their credibility. Credibility carries good weight under the jurisprudence. It is an established principle of law that it is not the number of witnesses but the quality and credibility of evidence which is to be considered. In this context, reliance is placed on worthy case law reported in 2001 PCr.LJ 503.

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In my opinion the prosecution has failed to prove the case against the accused facing trial, therefore, the accused facing trial stand acquitted. They are on bail; therefore, surties to them stand absolved off the liability under the bail bonds.

Case property, if any; be kept intact till the expiry of period provided for appeal / revision. File be consigned to the record room

Announced:-
02.08.2008.

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(TARIQ PERVEZ BLOCH)
Additional Sessions Judge Karak
at Takht-e-Nasrati

CERTIFICATE

Certified that this Judgment of mine consists of twenty three (23) pages, each has been read over, signed by me after making necessary corrections therein.



(TARIQ PERVEZ BLOCH)
Additional Sessions Judge Karak
at Takht-e-Nasrati

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IN THE PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT.

Appellate Side. *Acquitted Appeal* Criminal Cas. No. *381* / 2008 *6*

Annex D

District	Date of filing petition	Whether filed by appellant in person or by pleader or agent	Stamp on petition or appeal
<i>Peshawar</i>	<i>08-29-08</i>	<i>By Pleader</i>	<i>NA</i>

(29)

PAISAN IQBAL

Appellant.

SHIKHAI PAVAN vs *THE STATE*

Respondent.

Appeal from the order of *Addl. Sess. Judge, Karak at Takht-e-Nasir*

dated the *02-08-08*

Charge *u/s 302/324/148/149 PPC*

Sentence *Acquitted of the charge.*

GROUND(S) OF APPEAL/REVISION.

Attached (Memo of appeal)

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(Signature)
Peshawar High Court

(Signature)
Mohammad Riaz Khattak
Advocate Peshawar High Court
Address: *(illegible)* Khayber Bazar,
Peshawar.
Ph: 091-2591174-5843158, 5135, 0333-911100

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BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Criminal Appeal No: 381 /2008.

Qaisar Iqbal son Faujdar Kahan resident of Gadi Banda Teshsil Takhte
Nasrathi Karak. Complainant Appellant.

Versu

1. Shaukat Fayaz
2. Mchammad Ayaz sons of Shalawzan,
3. Mohamad Altaf son Mirbadshah.
4. Hafeez son of Umar Hayat
5. Khaleelur Rehman son of Gul Sahib Khan,
6. Faramanullah son of Altaf residents of Masti Khan banda Tehsil
7. *State through A.C. N.W.F.P Peshawar.*
Takhte Nasrathi district Karak. Accd Respondents.

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APPEAL UNDER SECTION 417 (2-A) CrPC AGAINST THE
ORDER OF ACQUITTAL OF ACCD RESPONDENTS VIDE
ORDER DATED 02-08-08 PASSED BY ADDL: SESSION JUDGE
KARAK AT TAKHTE NASRATHI

Prayer in appeal:

TO SET ASIDE THE IMPUGED ORDER AND TO CONVICT THE
ACCD RESPONDENTS ACCORDING TO LAW.

Respectfully Sheweth:

1. Nephew of the appellant, Abdur Rashid, was murdered on
26-10-06 for which the accd respondents were charged vide
FIR 203 dated 26-10-2006 Police Takhte Nasrathi Karak.
Copy of FIR is annexure "A".

FILED TODAY

08 SEP 2008

ATTEST

Peshawar High Court

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No..... of.....

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Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
21.04.2009.	<p><u>Cr. Appeal No. 381/2008.</u></p> <p>Present: Mr. Muhammad Riaz Khattak, Advocate, for the appellant.</p> <p>***</p> <p>TARIO PARVEZ KHAN, C.J.- Some six accused, who were respondents now in this appeal, were charged for killing of deceased, Abdur Rashid, in view of report made by Qaisar Iqbal, complainant.</p> <p>2. Story of the prosecution is that complainant, Qaisar Iqbal (PW-9) and Muhammad Jamal (PW-10) had decided to visit the house of his brother namely, Rafiq-ur-Rehman, as his another brother namely, Zaib-ur-Rehman, was leaving for abroad the next day. It was said that when they were present inside the house of Rafiq-ur-Rehman, there was firing outside whereon complainant Mr. Jamal and Umar Hayat went outside the house to find as to who was making the firing and they saw that the accused-respondents were firing. To save themselves, they reentered the house, followed by deceased Abdur Rashid. It is the case of prosecution, as setup in the FIR and also in the site plan that after they had re-entered the house for</p>

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Peshawar High Court.

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taking shelter, Abdur Rashid deceased, raised his head over the wall to find out as to what next is happening, and that all the six accused fired at him but with the fire shot of accused Shaukat Fayaz deceased Abdur Rashid was hit.

3. Learned counsel for the appellant states that two eyewitnesses have supported the charge against the acquitted accused-respondents and that medical evidence also confirms a single shot, hitting the deceased on the skull and that learned trial Judge without referring to the statement made on Oath in the Court, proceeded to mainly rely on the FIR which is not a detailed document, therefore, acquittal has been wrongly recorded.

4. We have heard learned counsel for the appellant and gone through the record of this case and find that from very outset the story of prosecution appears to be very weak. According to the prosecution's case Qaisar Iqbal (PW-9) along with Mir Jamal (PW-10) visited the house of Rafiq-ur-Rehan, his brother, and would present in his house and the object was to see off Zaib-ur-Rehman but neither Rafiq-ur-Rehman nor Zaib-ur-Rehman have appeared at the trial. Even they had not shown as eyewitnesses in the site plan.

5. It is admitted in the FIR and also in the Court statement that having seen the accused-respondents after first hearing of shots, complainant-party reentered the

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 Peshawar High Court.

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benefit of doubt to the accused-respondents. Therefore, there are no merits in this appeal and the same stands dismissed in limine.

sd/ Tariq Parvez Khan C.J

sd/ Saad Mirza F Khan

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Supreme Court

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Amended

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PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Iqbal Hameedur Rahman
Mr. Justice Umar Ata Bandial

Criminal Petition No. 51-P of 2009

(Against the judgment dated 21.04.2009 passed by the Peshawar High Court, Peshawar in Criminal Appeal No. 381 of 2008)

Qaiser Iqbal

... Petitioner

versus

Shaukat Fayyaz, etc.

... Respondents

For the petitioner:

Mr. Atlas Khan Dagai, ASC

For the respondents:

N.R.

Date of hearing:

17.09.2014

ORDER

Asif Saeed Khan Khosa, J.: After a detailed assessment of the evidence available on the record the learned court below had concluded that the prosecution had failed to prove its case against respondents No. 1 to 6 beyond reasonable doubt. No misreading or non-reading of the record on the part of the learned court below has been pointed out by the learned counsel for the petitioner. Evaluation of the evidence by the learned court below and its conclusion *qua* respondents No. 1 to 6 have not been found by us to be arbitrary or perverse and, thus, no occasion has been found by us for interference with its legitimate exercise of jurisdiction in the matter. This petition is, therefore, dismissed and leave to appeal is refused.



Sd/- Asif Saeed Khan Khosa, J
Sd/- Iqbal Hameedur Rahman, J
Sd/- Umar Ata Bandial

Peshawar
17.09.2014
Not approved for reporting.
Arif

Certified to be true copy

20.9.2014
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

cert



GOVERNMENT OF
KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Am E 1

Dated Peshawar, the 05.01.2012

Register No. 5
Expiry date 5-1-2014

36

NOTIFICATION

No.SO(E)H-II/10-25/2010. Sanction is hereby accorded to the grant of 730-days EOL (without pay) with effect from 06.01.2012 in respect of Dr. Farman Ullah Dental Surgeon (BS-17) MRHS Hospital Pabji District Nowshera.

**SECRETARY HEALTH
KHYBER PAKHTUNKHWA**

Endst. No. & date even.

Copy to the:-

1. Director General, Health Services, Peshawar.
2. DAO, Nowsher.
3. Computer Section.
4. Officer concerned.

(Muhammad Hayat Shah)
Section Officer-II

Copy also available on the website www.healthkp.gov.pk

HRD Building, Health Department Govt. of Khyber Pakhtunkhwa, Khyber Road Peshawar Phone # 091-9210570, Fax # 091-9210419

OFFICE OF THE DG HEALTH SERVICES, KHYBER PAKHTUNKHWA PESHAWAR.

No. 2064-68 /E.I, Dated Pesh: the 17 / / 2012.

Copy to the :-

01. EDO (Health) Nowshera.
02. MS Mian Rashid Hussain Shaheed Hospital Pabji Nowshera.
03. DAO, Nowshera.
04. Doctor concerned.
05. AE-II, DGHS Office Peshawar.

For information and n/action.

ASSISTANT DIRECTOR (P-I)
DGHS KPK, PESHAWAR.

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13/1/12

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Amen F

To

(37)

The Secretary Health,
Government of KPK,
Peshawar

Subject: **APPLICATION FOR EXTENSION IN LEAVE ON HALF PAY.**

R/Sir

1. The applicant is Medical Dental Surgeon BPS-17.
2. The applicant was granted extra ordinary leave vide order dated 05.01.2012 w.e.f 06.01.2015 to 04.01.2014.
3. That the applicant leave is about to expire; however the applicant's is not able to joint service on account of certain unavoidable circumstances, mainly the applicant's family disputes and legal cases.
4. That the applicant would be very great full if he is granted further leave on half pay.

You are therefore requested to kindly extend the applicant leave for 18th month on half pay.

The applicant would be very thankful for this favour

Applicant

Dr. Farman Ullah
S/o Village Masti Khan Banda
Tehsil Takht Nasrati District Karak

Dated 05.12.2013

CCF
JL



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

AM 20 3

Dated Peshawar the 9th February, 2015

32

NOTIFICATION

No. SOE (H-II/10-25/2014): WHEREAS, disciplinary proceedings were initiated against the following doctors for their continuous willful absence from duty:

S. #	NAME OF DOCTOR/FATHER'S NAME/DESIGNATION/PLACE OF LAST POSTING	Date Of Absence
1.	Dr. Amir Hussain shah S/O Nazar Hussain Shah Ex-MO (BS-17) KATH Mansehra	27.10.2010
2.	Dr. Farmanullah S/O Mohammad Altaf Hussain Ex-Dental Surgeon (BS-17) Attached to Mian Rashid Hussain Memorial Hospital Pabbi	05.01.2014
3.	Dr. Jehanzeb Khan S/O Zahir Shah Ex-MO (BS-17) AHQ Hospital Ghalanai Mohmand Agency	01.03.2011
4.	Dr. Liaqat Ali Khan S/O Hijab Gul Ex-MO (BS-17) attached to A/S Mohmand Agency	Since long
5.	Dr. Muhammad Imran Khan S/O Muhammad Ibrahim Khan Ex MO (BS-17) RHC Barawal Distt: Upper Dir	04.11.2011
6.	Dr. Muhammad Ishaq S/O Izat Khan MO (BS-17) Health Department	17.05.2005
7.	Dr. Muhammad Saeed S/O Muhammad Miskeen Ex-MO (BS-17) under transfer from DHQ Hospital Haripur to DHQ Hospital Battagram	12.01.2011
8.	Dr. Muhammad Younas S/O Imam Sadar Ex-Dental Surgeon (BS-17) Type "D" Hospital Shahbaz Ghari Distt: Mardan	07.06.2013
9.	Dr. Musa Khan S/O Sher Zada Ex-MO (BS-17) BHU Gunagar Distt: Shangla	20.09.2013
10.	Dr. Nida Murad D/O Murad Ali Khan Ex-Dental Surgeon (BS-17) RHC Reggi Distt: Peshawar	13.03.2013
11.	Dr. Noor Ali Khan S/O Gul Khan Ex-MO (BS-17) Women & Children Hospital Bannu	05.08.2011
12.	Dr. Sabhatullah Khan Tareen S/O Sakhiullah Khan Tareen Ex-Dental Surgeon (BS-17) THQ Hospital Phar Pura Distt: D.I Khan	15.10.2008
13.	Dr. Saeed-ur-Rehman S/O Ghulam Rasool Khan Ex-MO (BS-17) Health Department	19.03.2014
14.	Dr. Sarfaraz Khan Afridi S/O Lal Bad Shah Afridi Ex-MO (BS-17) Health Department	Working with WHO for the last 13-years un-Lawfully
15.	Dr. Shabana Fida D/O Fida Muhammad Ex-WMO (BS-17) AHQ Hospital Ghalanai Mohmand Agency	02.06.2014

AND WHEREAS, absence notices were served upon them at their home addresses and also through press with the direction to resume duty within stipulated period.

AND WHEREAS, they failed to resume duty in the stipulated period given in the notices.

NOWHEREFORE, exercise of powers conferred under Khyber Pakhtunkhwa Govt: Servant (Efficiency & Discipline) Rules, 2011, competent Authority is please to impose the major penalty of **REMOVAL FROM SERVICE** upon the above mentioned doctors with immediate effect. The period from the date of absence till the date of imposition of penalty in respect of the above, shall be treated as un-authoritised absence from duty without pay.

Sd/-xxxxxx

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

(Back Page)

OFFICE OF THE DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA

No. 3562-606/E.I

Dated: 23/12/2015

- Copy of the above is forwarded to:-
- 01 to 05. MS MRHSMH Pabbi Nowshera/MS KATH Mansehra/MS DHQ Hospital Battagram/MS Women & Children Hospital Bannu/MS DHQH Haripur.
- 06 to 12. DHO Peshawar/Nowshera/Mardan/Dir Upper/Shangla/D.I.Khan/Bannu.
13. DHS FATA, Peshawar.
- 14 to 15. MS AHQ Hospital Ghalanai Mohmand Agency/AHQ Hospital Landi Kotal Khyber Agency.
- 16 to 17. A/S Mohmand Agency/Khyber Agency at Jamrud.
18. AG office Khyber Pakhtunkhwa.
- 19 to 27. DAO Mansehra/Nowshera/Mardan/Dir Upper/Shangla/D.I.Khan/Bannu/Battagram/Haripur.
- 28 to 29. AAO Khyber at Jamrud/Mohmand Agency at Ghalanai.
For information and necessary action.

REGISTERED:-

30. Dr. Amir Hussain Shah S/O Nazar Hussain Shah Village Banda Batang, P.O Public School Distt: & Tehsil Abbottabad.
31. Dr. Farmanullah S/O Mohammad Altaf Hussain, House No. 401, D-3, Near Khyber Park, Phase-I, Hayatabad, Peshawar.
32. Dr. Jehanzeb Khan S/O Zahir Shah Village Pehlwan Qila P.O Shabqadar Fort, Distt: Charsadda.
33. Dr. Liaqat Ali Khan S/O Hijab Gul Village & P.O Sheikh Yousaf Tehsil & Distt: Mardan.
34. Dr. Muhammad Imran Khan S/O Muhammad Ibrahim Khan, House No. 344, St.-9, Sector-P-2, Phase-IV, Hayatabad Peshawar.
35. Dr. Muhammad Ishaq S/O Izat Khan Village Derwaizi, Palosa, Tehsil & Distt: Hangu.
36. Dr. Muhammad Saeed S/O Muhammad Miskeen, House No. E-129, P.O Fs Havalian Cantt: Distt: Abbottabad.
37. Dr. Muhammad Younas S/O Imam Sadar Village Chail Bagh Kally Lund Khwar Tehsil Takht Bhai Distt: Mardan.
38. Dr. Musa Khan S/O Sher Zada House No.155, Street No.66, Sector D-1 Phase-I, Hayatabad Peshawar.
39. Dr. Nida Murad D/O Murad Ali Khan Phase-3, House No. 64, Street No. 5 Sector K-5, Hayatabad Peshawar.
40. Dr. Noor Ali Khan S/O Gul Khan, Village & P.O Shewa Spinwam NW Agency Miranshah.
41. Dr. Sabahatullah Khan Tareen S/O Sakhiullah Khan, House No. 223, Block K-1, Street No. 06, Phase-3, Hayatabad Peshawar.
42. Dr. Saeed-ur-Rehman S/O Ghulam Rasool Khan, Village Alwar Bandar P.O Shaheedan Banda Tehsil & Distt: Karak.
43. Dr. Sarfaraz Khan Afridi S/O Lal Bad Shah Afridi Shaheen Town Street No. 8, Jarud Road P.O Tekal Bala, Near Jchangir Abad Peshawar.
44. Dr. Shabana Fida D/O Fida Muhammad Khan C/O Anwar Khan House #-3, Doctor's Colony Fauji Foundation Hospital Peshawar
For information & Necessary action.


Assistant Director (P-I)
DIRECTORATE GENERAL HEALTH
KHYBER PAKHTUNKHWA PESHAWAR

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To

The Honourable Chief Secretary, Govt. of
Khyber Pakhtunkhwa, Peshawar.

Subject: Departmental appeal/Representation

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That the appellant was appointed as Dental Surgeon through Public Service Commission on contract basis and whereas later on his service were regularized.
2. That due to certain unavoidable circumstances appellant was constraint to apply for Extra Ordinary leave and the same were granted by the leave sanctioning authority with effect from 06-01-2012 to 04-01-2014.
3. That before the expiry of the above mentioned sanctioned leaves the appellant again submitted an application for further grant of 18 months leave with half pay as sufficient leaves were available in his leave account under the relevant rules.
4. That domestic problems were so material and unavoidable in its nature that compelled the appellant; and he was left with no other option except to apply for further leave on the score of half pay to which he was legally entitled.
5. That appellant was under legitimate expectancy on the score of his leave account that he will be allowed for the applied leaves

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and more the authority had also assured the appellant regarding the same.

- 40
6. That to utter surprise of the appellant; he has been removed from his service vide order dated 09-02-2015 on the score of willful absence w.e. from 05-01-2014.
 7. That the absence of appellant from his legal duty cannot be termed as willful absence or even absence. Appellant had duly applied for the same on the score of half pay, which were available in his leave account.
 8. That the impugned order of removal from service has not been communicated to the appellant. Appellant got the information through his friend in the 1st Week of April, 2015 and thereupon immediately rushed/approached the concerned office and thereupon received a copy thereof.
 9. That all public powers are in the nature of trust and public functionaries are presumed to be the repository of such trust. Competent authorities by no stretch of imagination are presumed to place hurdle in the way of legitimate right of its employees rather are bound to eliminate hurdles and technicalities. In the instant case the authority has violated the norms of public trust.
 10. That section 16 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 provides that all civil servants are liable for prescribed disciplinary actions and penalties in accordance with prescribed procedure. The prescribed procedure has been laid down in the Efficiency and Discipline Rules, 2011. No procedure what so ever has been adopted by the penal authority before terminating the service of the appellant. In absence of conformity with such

rules and procedure the impugned penal order cannot be held to have been notified as a valid order.

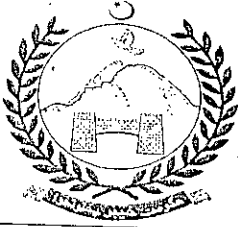
- 11. That vide impugned order almost 15 employee have been removed from service without caring for their gravity of misconduct. All the employees have been penalized with a single stick yard. The case of the appellant is different from other employees, which is obvious and sheer discrimination therefore, the impugned order to the extent of appellant is not maintainable and is liable to be set aside.
- 12. That the impugned order has been passed by incompetent authority; the penal authority has stepped into the shoes of competent authority which illegality is not curable and vitiates the whole proceedings and action there upon.
- 13. That the impugned penalty is very harsh and does not commensurate with gravity of alleged misconduct. On this score as well the impugned order is not sustainable in the eyes of law, justice, fair play and equity and is liable to be interfered with.

It is therefore humbly prayed that on acceptance of this departmental appeal, Your Honour may graciously be pleased to set aside the impugned order of Removal from Service dated 09-02-2015 and re-instate the appellant with all back benefits.

Yours faithfully *Farman Ullah*
 Dr. Farman Ullah S/o Muhammad Altaf Hussain Ex-Dental Surgeon, Main Rashid Hussain Memorial Hospital, Pabbi, Nowshera.

Dated: 13/04/2015
 NIC No: 17301-4058483-7
 DOB - 01-06-1977

AA11/2015



Dispatched
Khyber Pakhtunkhwa
Health Department

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

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42

NO: SOH(E-V)6-116/2015/Dr.Farmanullah
Dated Peshawar the 8th October 2015

To

Dr.Farmanullah
Ex-Dental Surgeon Mian Rasheed Hussain
Hospital Pabbi Nowshera.

SUBJECT: DEPARTMENTAL APPEAL/REPRESENTATION.

I am directed to refer to your Departmental appeal dated 13.4.2015 on the subject noted above and to state that your appeal has been examined under the relevant rules/law and it was observed that you failed to appeal to the proper appellate authority in the prescribed time line under Section-22 of the Khyber Pakhtunkhwa Civil Servant Act, 1973.

The Health Department, therefore, expresses its inability to accede to your appeal.

(MUHAMMAD ARSHID)
SECTION OFFICER(E-V)

Endst No. & Date Even.

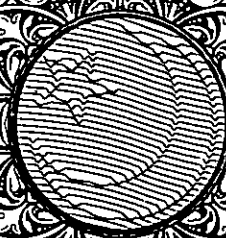
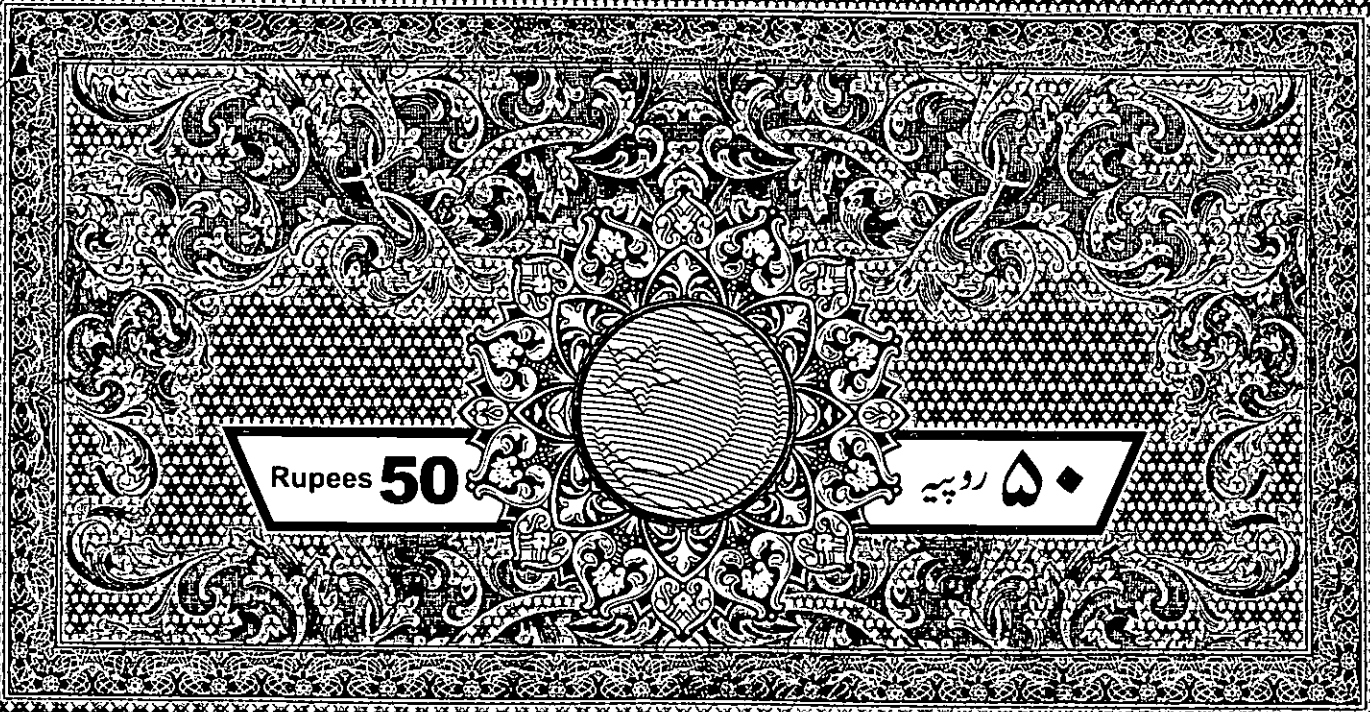
Copy to the PS to Secretary Health Department.

SECTION OFFICER(E-V)

Handed over on 12/11/15

for by

Medical Superintendent
Mian Rasheed Hussain Shaheed
Memorial Hospital Pabbi



Rupees 50

۵۰ روپیہ

محمد ابرار صاحب پر ۵۰ روپیہ کی رقم

۱۶۹۰۱-۴۰۵۸۴۸۳-۷

فہم مہی فرخان اللہ ولد محمد لطاف حسین قوی شناختی کارڈ نمبر ۱۶۹۰۱-۴۰۵۸۴۸۳-۷

سندھ صحتی خان باندہ ڈاک خانہ جو علی مہ قصرت لفرنی سندھ بک کا بیوں۔ بیوں بیوں

وقت بجائی بیوشن جو اس مہم اقدار کے کرم پروا بیوں۔ اس وقت ایک

عہدہ لیبوان فرخان اللہ بنام سندھ ڈیپارٹمنٹ جو علی مہ لیب اللہ صاحب

سروس میں بیوشن عہدہ کو فوائد لیا اور داخل کرنا چاہتا بیوں۔

صحتی عدلی ایس ایس ناظم و جو علی مہ عہدہ صحتی ایس ایس لیب اللہ صاحب سے

کا عہد بیوں۔ اس کے اپنی جانب سے عہدہ محمد عارف و لا محمد ابرار قوی شناختی کارڈ نمبر

۱۴۲۰۳-۴۶۰۹۸۸۱-۳ سندھ صحتی خان باندہ ڈاک خانہ جو علی مہ قصرت لفرنی سندھ

بک کو اختیار حاصل فقرا کے لیکن اختیار دینا بیوں۔ وہ صحتی جانب سے صحتی خان

کی ایس ایس بیوں ہے۔ کسی وقت ایس ایس بیوں کو فقرا کے عہدہ کے

فقیرت گوان میں ہے۔ قابل اذکار رقم داخل ہے۔ قابل وصول رقم

وصول ہے خود سہارن علیہ روئے۔ لیکن بیوں خانہ بیوں کی صورت میں برخواست

ہر ایک سرکاری عہدہ ترار۔ مہول و جو اب ہے۔ راجی نام ہے۔ دستداری

کے۔ قوی ایس ایس ہے۔ صحتی ایس ایس آدا ہے۔ عہدہ بیوں عہدہ

بیوں ایس ایس ہے۔ صحتی ایس ایس ہے۔ صحتی ایس ایس ہے۔ صحتی ایس ایس ہے۔

وغیرہ رجوع ہے۔ دعویٰ خانہ بیوں کی صورت میں لیب اللہ صاحب سے

اس میں لیب اللہ صاحب سے ہے۔ دعویٰ کی صورت میں لیب اللہ صاحب سے

5 ذى الحجة سنة 1436 هـ
بسم الله الرحمن الرحيم
الحمد لله رب العالمين
والصلاة والسلام على
سيدنا محمد وآله الطيبين
الطاهرين
والعقب الطيبين الطاهرين
أجمعين
والسلام على
سيدنا محمد وآله الطيبين
الطاهرين
والعقب الطيبين الطاهرين
أجمعين
والسلام على
سيدنا محمد وآله الطيبين
الطاهرين
والعقب الطيبين الطاهرين
أجمعين

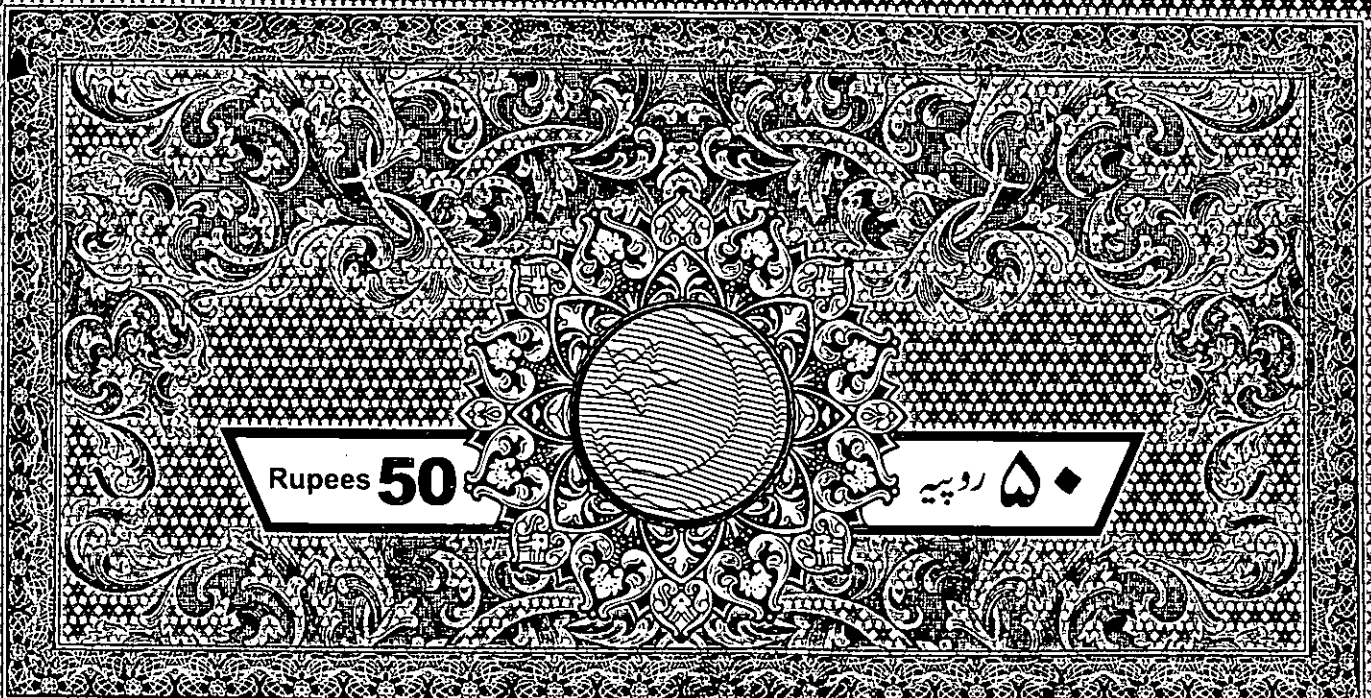
بسم الله الرحمن الرحيم


M. A. M. A. M.

16 APR 2015
THERASURY KATAR

SHU WAJIB ISM ALI
SHAHID YANDI BAKRI KAWAN

2320
18/4/15



Rupees 50

۵۰ روپیہ

امراء و طاہرہ کے در خواست کے جواب در خواست کے دائرہ میں کسی بھی طرح سے
 نگہانی عذر داری نظر نانی وغیرہ رجوع ہے اس میں بعد از اس طرہ کے
 بیان صحتی دے۔ راضی نام ہے۔ دستہ دارہ ہے۔ خود سہارہ و حکمہ و طرہ
 عرض ہے جب نعتہ و پیر و نعتہ آفر جو وقتہ هذا اس میں خدا سے من قول
 عیث فرمایا کہ حاصل ہے وہ خیرا راضی مذکور کو کقولہ من قول
 خیرا راضی مذکور کا حکم کردہ بابت قیول و مذکور ہوگا
 اس کے خیرا نام خاص سند قدیم ہے تاں بوقت فروردہ نام ان

18/4/05

محمد عارف احمد
 7/4/05

فرمان اللہ اخیار و دفعہ

خواہ انعام اللہ ولا علیہ
 سند عیثی خان بابت قیول و مذکور
 14203-0854373-9

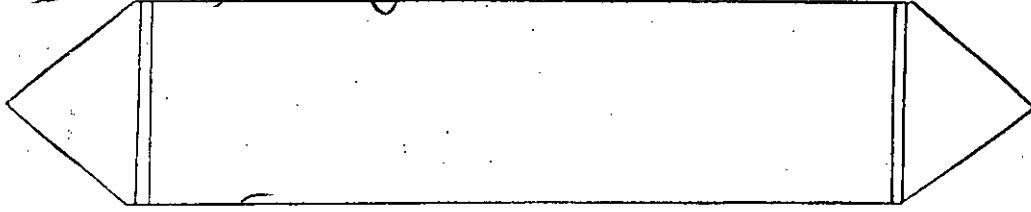
خواہ محمد ناز ولا شاہ نورانی
 سند عیثی خان بابت قیول و مذکور
 14203-6222803-1

GERMAN SHAH
 ADVOCATE
 HIGH COURT PUNJAB
 DISTRICT COURTS KARACHI
 No. 1008 Dated 18/4/05

Depts

بعد الترسوس ٹریبونل کے لیے درخواست

۶۵



2017ء منجانب

ڈاکٹر فرمان اللہ بنام حکومت

موزخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ آن مقام لیٹرز کیلئے محمد احسن خان کنویں صاحب مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی 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 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا ادکالت نامہ لکھد یا کہ سندر ہے۔

20

المترقوم

واہ العب

کے لئے منظور ہے۔

بمقام

Accepted

[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.28/2016

Dr. Farmanullah.....**Appellant**

Versus

1. Govt of Khyber Pakhtunkhwa through Chief Secretary.
2. Govt of Khyber Pakhtunkhwa through Secretary Health... **Respondents**

PRELIMINARY OBJECTIONS.

1. That the appellant has neither a cause of action nor locus standi.
2. That the appeal is not maintainable in its present form.
3. That the appellant has not come to the court with clean hands.
4. That the appeal is bad due to non-joinder of necessary party.
5. That the appeal is time barred.

FACTS.

1. Pertains to record. Hence no comments.
2. Correct to the extent that the appellant was granted 730-days Extra Ordinary Leave without pay.
3. Correct to the extent that the application of the appellant was rejected which is being the competency of the competent authority to allow or reject the application?
4. Incorrect. The appellant was absent from duty without prior approval of the competent authority dated 5.1.2015 to 23.2.2015.
5. As explained in Para-3 above.
6. Incorrect. The appellant were issue direct show cause notice as the appellant was willfully absent from duty and after proper approval from competent authority the removal from service notification was issued
7. Correct to the extent that the appellant submitted Departmental appeal which was placed before the competent authority which was rejected.
8. Incorrect. The Departmental appeal of the appellant was decided on merit as per rules and law.
9. No comments.

GROUND S.

- A) Incorrect. The appellant was proceeded under the Govt of Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011.

- B) Incorrect. The approval of the impugned Notification was obtained from Chief Secretary Khyber Pakhtunkhwa and after completion of all codal formalities the penalty of removal from service was imposed upon the appellant.
- C) Incorrect. The appeal of the appellant was placed before the Chief Secretary Khyber Pakhtunkhwa being competent authority which was rejected as per rules and law.
- D) Incorrect. The appellant was absent from duty dated 5.1.2014 to 23.2.2015 without prior approval of the competent authority and as per the Govt of Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011.
- E) Denied as drafted. The impugned order is made in accordance with law.
- F) As explained above.
- G) Incorrect. The impugned Notification has been issued to the appellant as per available record of the appellant.
- H) Incorrect. As explained above.
- I) Incorrect. The absence of the appellant was floated in the Press under Rule-9 of the Govt of Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011 and after expiry of stipulated period disciplinary proceedings was initiated against the appellant.
- J) Incorrect.
- K) No comments.

It is therefore, prayed that the appeal of the appellant may be dismissed with cost.


Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Appell No  **PESHAWAR**

In Re: 23/2016

Dr. Farman Ullah **Appellant**

V E R S U S

Govt. of Khyber Pakhtunkhwa & others..... **Respondents**

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

The Appellant submits as follow:

1. The respondents failed to comply with the procedure prescribed in Efficiency & Discipline Rules 2011.
2. The appellant is entitled under the law for extension in leave. Besides, the extraordinary circumstances of the appellant was a mitigating factor in considering extension for appellant's leave extension application.
3. The very wordings of the appeal rejection order dated 08.10.2015 show that the appeal was never placed before the competent authority i.e. Chief Secretary Khyber Pakhtunkhwa.

PESHAWAR

In Re:

Dr. Farman UllahAppellant

V E R S U S

Govt. of Khyber Pakhtunkhwa & others Respondents

MEMORANDUM ON BEHALF OF THE APPELLANT

Respectfully Submitted,

The Appellant submits as follows:

1. The respondents failed to comply with the procedure prescribed in Efficiency & Discipline Rules 2011.

2. The appellant is entitled under the law for extension in leave. Besides the extraordinary circumstances of the appellant was a mitigating factor in considering extension for appellant's leave extension application.

3. The very workings of the appeal rejection order dated 08.10.2015 show that the appeal was not placed before the competent authority i.e. C

Secretary Khyber Pakhtunkhwa.

it is, therefore, humbly prayed that keeping in view the averments of the appeal and rejoinder, the instant appeal may very graciously be allowed.

Appellant
Through



Muhammad Ashgar Khan Kundi
Advocate, Peshawar

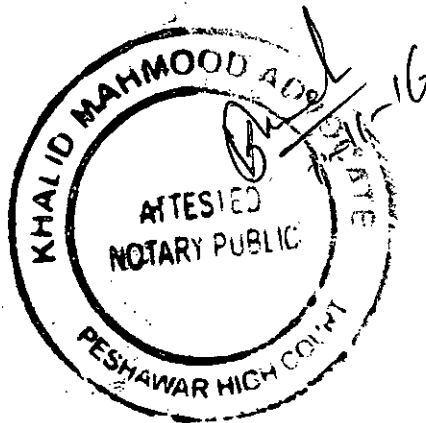
Dated __/10/2016

AFFIDAVIT

I, **Muhammad Ashgar Khan Kundi** as per instructions of my client, do hereby solemnly affirm and declare on oath that the contents of the rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT



it is, therefore, humbly prayed that keeping in
view the overments of the appeal and rejoinder,
the instant appeal may very graciously be allowed.

Appellant

Through

Muhammad Asghar Khan Kundi
Advocate Peshawar

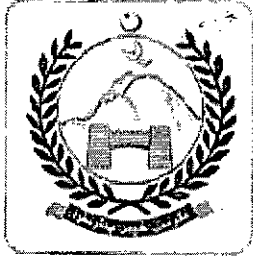
Dated 10/10/2016

AFFIDAVIT

I, Muhammad Asghar Khan Kundi as per instructions of
my client, do hereby solemnly affirm and declare on oath
that the contents of the rejoinder are true and correct to
the best of my knowledge and belief and nothing has
been concealed from this Hon'ble Court.

DEPONENT





KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 2151 /ST Dated: 3/10/2017

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To,

The Secretary Health,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - **JUDGMENT IN APPEAL NO. 28/2016, DR. FARMAN ULLAH.**

I am directed to forward herewith a certified copy of judgment dated 18/09/2017 passed by this tribunal on the above subject for strict compliance.

Encl: as above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR