


FORM OF ORDER SHEET

Court of _____

Appeal No.

2489/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/11/2023	<p>The appeal of Mr. Tilawat Shah resubmitted today by Mr. Zia-ur-Rehman Tajik Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshai is given to the counsel for the appellant.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Tilawat Shah received today i.e on 27.11.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Annexures of the appeal are unattested.
- 4- Memorandum of appeal is not signed by the appellant.
- 5- The law under which appeal is filed is wrong.
- 6- Annexures of the appeal are not in sequence.
- ⑦ One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 3723 /S.T.


Dt. 28/11 /2023.


REGISTRAR
/ SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Zia-ur-Rehman Tajik Adv.
High Court, Peshawar.

all objection solved (removed).

and submitted to this ^{Adv} on 29th Nov 2023

Adv. Jabir Khan


Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

A - No. 2491/2023

TILAWAT SHAH

..... Petitioner

VS

IG police and others

..... Respondents

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Appellant

Through


Zia-ur-Rehman Tajik

LL.B, LL.M, Diploma in Sharia law
Advocate Supreme Court of Pakistan

&


JABIR KHAN

BS LLB (HONS)

Advocate, Peshawar

&
SALMAN BINI IHSAN
Advocate High Court

①

Before the Khyber Pakhtunkhawa Service Tribunal Peshawar

Appeal No 2489/2023

Tilawat Shah s/o Munaf Khan, R/o Village Urmar Miana, Tehsil and district Peshawar, Ex constable No 650 FRP Headquarters Peshawar

..... Appellant

VS

1. Inspector General Police Pakistan Khyber Pakhtunkhawa Peshawar
2. Commandant Frontier Reserve Police Khyber Pakhtunkhawa Peshawar
3. Deputy Commandant Frontier Reserve Police Khyber Pakhtunkhawa Peshawar
4. Accountant Frontier Reserve Police Khyber Pakhtunkhawa Peshawar

.....Respondent

Appeal U/S 4 of Khyber pakhtunkhawa ~~Services Tribunal~~ ^{ACT} against the order of Respondent NO 1 and 2 dated 31.10.2023, 05.10.2023 whereby Removal from service order of Appellant dated 16.6.2022 *was upheld.*

Prayer:

On acceptance of instant service Appeal the impugned original order dated 16.06.2021, appellate order dated 5.10.2023 and ~~Revisonal~~ ^{Revisonal} order 31.10.2023 May kindly be Set aside and May be Reinstated in Service with all back Benefits

Respectfully shweth:

1. That the appellant was appointed on 26.10.2004 as a constable in Frontier Reserve Police Khyber Pakhtunkhawa Peshawar, has performed his duties to the entire satisfaction of the superior officers without any complaint from any quarter

(copy of appointment order is attached as annexure A)

2. That the appalant was falsely implicated in a murder case in FIR NO 550 dated 13.07.2020 but later on acquitted by the trial court on conclusion of

trial through judgment dated 11.09.2023. its pertinent to mentioned here that an acquitted appellant was released from jail

(Copy of FIR and JUDGEMENT is attached annexure B and C)

3. That during the confinement of the appellant in jail , the appellant was removed from service on 16.06.2021 by the respondent NO 3 in violation of principle of Natural Justice and Provision of Khyber Pakhtunkhawa government service ~~act~~ (E and D) rule 2011

(Copy of removal order dated 16-06.2021 is attached as annexure D)

4. That the appellant has challenged his removal order through departmental appeal dated 25.09.2023 and the said appeal was dismissed on 05.10.2023 and was handed over to the appellant on Saturday 28.10.2023 and again the said appellate order , appellant filed revision petition before respondent NO 1 but the same revision petition was also dismissed

(copy of appeal , order 05.10.2023 , revision petition and order dated 31.10.2023 are attached as annexure E,F,G and H)

Now the appellant being aggrieved from his removal order approach this honorable tribunal for redressal of his grievances inter alia on the following grounds

GROUND

- A. That the appellant has not been treated in accordance with law and was condemned unheard.
- B. That the dismissal from service is major penalty which can't be imposed without proper inquiry and opportunity of hearing.
- C. That appellant was acquitted from criminal charges and before Acquittal was detained and confined in central jail and his absence from duty was neither intentional nor deliberate but was due to extreme compelling circumstances which was beyond his control.
- D. That in the case of **AZGHAR MAHMOOD** ex head constable it was held Punjab service tribunal Lahore
"involvement in criminal case dismissal from service without waiting for the decision of trial court . sole basis for the charge was knocked out by acquittal of

appellant. No material could be collected and no evidence could be examined independently to prove the charges of murder. If the departmental authority had held the appellant guilty was result of regular inquiry having been conducted by them. Then the appellant couldn't say that he has been exonerated by criminal court. Departmental authority was not competent to discharge/ remove him from services. Since the regular inquiry was not conducted which was necessary before awarding Major penalty. Dismissal order was set aside by reinstating the appellant

PLJ 2005 TRC (SERVICE) 222

- E. That in service matter penalty usually imposed in light of charge against the civil servant. Major or Minor penalty is imposed in the light of nature and gravity of charge. Absence from duty is not an act of gross Misconduct and Major penalty of removal or dismissal couldn't be passed against a civil servant

2008 SCMR 214 PARA NO 7,8

- F. That proceeding was conducted against the civil servant in violation of the principle and procedure laid down by Khyber pukhtonkhawa government servant rule 2011(E&D) and was also deprived of his lawful right to cross examine the witness because the criminal charges haven't been ^{proved} against the appellant in trial court and was acquitted

2002 SCMR 433

- G. That in case of imposing the major penalty from service regular inquiry is to be conducted and opportunity of personal hearing and defense was to be provided to the civil servant proceeded against as per principle of natural justice

2008 SCMR 1369 PARA 6,7

- H. That the impugned removal order is without regular inquiry, illegal, violative of rules of propriety, fair play, and also against the principle of natural justice and not supported by any provision of law and norms of justice

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1. That any other ground will added in the time of arguments with the permission of this honorable tribunal.

It's therefore Respectfully prayed that the appeal of the appellant may kindly be accepted as per prayer mentioned in the heading of the appeal

 Appellant

Zia-ur-Rehman Tajik
L.L.B, L.L.M, Diploma in Sharia law
Advocate Supreme Court of Pakistan

&



JABIR KHAN
BS LLB (HONS)

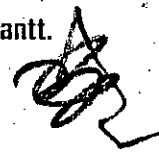
Advocate, Peshawar

Office:- Flat No. 1, 4rth Floor, Cantt Mall Plaza

Fakhr-e-Alam Road, Peshawar Cantt.

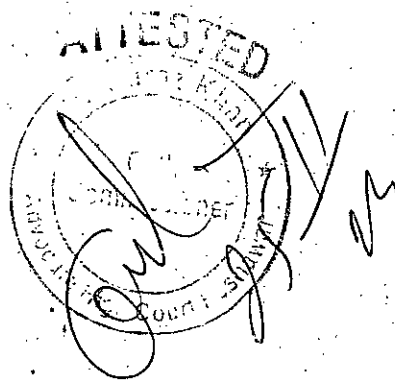
Cell No. 0307-8063871

SALMAN Bini Ihsan
Advocate High Court



AFFIDAVIT:

I Tilawat Shah s/o Munaf Khan ,R/o Village Urmar Miana, Tehsil and district Peshawar , Ex constable No 650 FRP Headquarters Peshawar, do hereby affirm and declare on oath that the contents of the instant Appeal are true and correct to the best of my knowledge and belief.



Deponent



CNIC

17301-1632545-5

CELL NO

0343-5983238

TILAWAT SHAH

..... Petitioner

VS

IG police and others

..... Respondents

Application for condonation of delay

Respectfully sheweth:

1. That the applicant has filed accompanied appeal and the ground of the main appeal may kindly be considered as part and parcel of the present application
2. That the applicant was in jail at the time of passing the ex-party removal order and after acquittal has challenged through proper departmental appeal within time i.e. 30 days but the said appeal was dismissed through a non-speaking order
3. That the appellant was released from jail after acquittal in September 2023 and he challenged his removal order in departmental appeal on 25.09.2023 and was dismissed on 5.10.2023 and communicate to appellant on 28.10.2023, hence the present appeal is within time from the date of communication of the order to the appellant and the principle laid down by the august supreme court of Pakistan in the case of chairman ADBP and others
PLD 2010 SC 695 PARA 12
4. That the applicant also filed revision petition against the appellate order but the revision petition was also dismissed
5. That departmental appeal of the appellant was not dismissed on limitation but on the merit. Hence the service appeal may also not be dismissed on limitation and is to be decided on merit

1995 SCMR 950 PARA 4

6. That cases are to be decided on merit rather than on technicalities including limitation

PLJ 2004 SC 435

(6)

7. That when the appellant has a prima facie on merit than the appeal may not be dismissed on limitation

PLJ 1997 TRC (SERVICE) 139 PARA 22

8. That the appellant after getting the acquittal in the criminal case pursued his case before departmental authority and delay in such circumstances is to be condone because he has a strong case on merit

1984 PLC (CS) 718

9. That the applicant has a prima facie case on merit and is sanguine of its success and the delay if any is to be condone in the interest of justice

10. That any other ground will added in the time of arguments with the permission of this honorable tribunal

Its therefore respectfully prayed that on acceptance of the instant application the delay if any in the accompanied may kindly be condoned in the interest of justice and the appeal may be decided on merit

Through

Appellant



Zia-ur-Rehman Tajik

L.L.B, L.L.M, Diploma in Sharia law
Advocate Supreme Court of Pakistan

&



JABIR KHAN

BS LLB (HONS)
Advocate, Peshawar



Salman Bini IHSAN
Advocate High Court

AFFIDAVIT:

I Tilawat Shah s/o Munaf Khan, R/o Village Urmar Miana, Tehsil and district Peshawar, Ex constable No 650 FRP Headquarters Peshawar, do hereby affirm and declare on oath that the contents of the instant Appeal are true and correct to the best of my knowledge and belief.



Deponent 

CNIC-17301-1632545-5

Cell- 0313-5983238

Annex

7

Annex (A) -

7

ENLISTMENT ORDER

Recruit / Constable Tilawat Khan s/o Munaf Khan

R/O Urmer Miana PS Urmer Distt: Peshawar

is hereby enlisted as recruit Constable in BPS (5) w.c.f. _____
and allotted Constabulary 2454 (FRP).

Height 5-10 $\frac{3}{4}$ Chest 33 $\frac{1}{2}$ x35 $\frac{1}{2}$

Education F.A. D/o Birth 18.4.82

Age on enrolment 22 years 6 months and 5 days

His service is purely on temporary basis and liable for termination at any time
without any notice.

OB No. 3066

Dated 26.10 /2009


SUPERINTENDENT OF POLICE,
HQRS. PESHAWAR

Annex (7) Better Copy

Enlistment order

Recruit / Constable Tilawat Khan s/o Munaf Khan

R/o Umer Miana PS Urmer Distt Peshawar

is hereby enlisted as recruit constable in BPS-5 w.e.f _____

And allotted constabulary 2454 FRP

Height 5'-10" ½ Chest 33" ½ x 35" ½

Education FA D/o Birth 18.04.82

Age of enrolment 22 years 6 months and 8 days

His service is purely on temporary basis and liable for termination at any time without any notice.

OB No. 3066

Superintendent of police

Dated 26-10-2004

HQRs, Peshawar

Annexur B

(8)

تاریخ: 15.12.11

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع رپورٹ کے تحت دستاویزی پولیس رپورٹ شدہ ڈیڑھ لاکھ 152 چورس فٹ مکان کی اجراء

(1)

ملع	550
تاریخ: پشاور	رپورٹ
13/12/11	محلہ: 550
وقت: 09:30 بجے	محلہ: 550
302-324-148-149	محلہ: 550
اہلیات جبرہ اور میاں	محلہ: 550
مدعیہ کما رپورٹ پر مقدمہ قائم کیا جاتا ہے	محلہ: 550

ابتدائی اطلاع نیچے درج کرو۔ بسلو سبیل رپورٹ

Attached

متقیہ خانہ نمبر 2 سے لٹس جانے وقتوں میں نبی محل دار
 منزل بھر بیکار کا سال پیر خود ابراہم ولد نبی محل بھر 5/12/11 سال سائنس اور میاں ملک حرم بال بہ لکھنؤ اہلیان
 دیبہ خانہ لاکر دیبہ مقدم نے یوں رپورٹ کرتے ہیں مع خاوند ام نبی محل پیر خود ابراہم دفتر خود مکان
 نزد چور 4) قیامت خان 5) تلاوت 6) شاہد علیمان 7) عثمان پسران صناف خان سائنس اور میاں ملک
 بہ اسلہ انتہین آکر ہم پر بارادہ قتل خانہ تک کر کے چنگ خانہ تک سے خاوند ام نبی محل اور پسر ام اور
 کر موقع پر جان بحق ہوئے اور ہم ہجرتانہ طور پر نکلے تو واقعہ ہذا میرے اور دفتر ام مسماۃ زرتاجہ کے علاوہ
 وہاں پر موجود سائن صاحبہ دیدے سے وجہ بنا جا رہا ہے اسناد سے چھ مہینے خاوند ام اور پسر ام کی قتل اور
 ہم پر بارادہ قتل خانہ تک کرنے کا برخلاف ملزمان بالا اور ملزمان میں سے دفتر ام مسماۃ زرتاجہ
 وہ جہتہ خود سائن دیبہ امش نے رپورٹ بالا کی تائید کی ہے۔ دوران عمر ہر لٹس آرن حسنا
 ولد صناف بھر 5/12/11 سال سائن اور میاں صنی کلیم اللہ ولد صیانت خان قوم بھر کی بھر 16/17 سال ساکن
 اور میاں ملک حرم بال حال باندھان میرہ نے بہ امداد اہلیان دیبہ خانہ لاکر کلیم اللہ بھر رپورٹ کرنا ہے کہ
 جس سے چھ مہینے حسنا خانہ مقتول اور دیگر چھ مہینے کان یہ اپنے اراہیات میں تمام میں معروف ہے کہ وہ
 دوران 1) نبی محل ولد منزل 2) نبی امین 3) ابراہم پسران نبی محل سائنس اور میاں ملک حرم بال صلیبہ اسلہ انتہین
 آکر ہم پر بارادہ قتل خانہ تک کر کے چنگ خانہ تک سے چھ مہینے حسنا خانہ تک کر موقع پر جان بحق ہوا اور ہم
 طور پر نکلے میں حسنا کی قتل اور ہم پر بارادہ قتل خانہ تک کرنے کا برخلاف ملزمان بالا کی تائید کی ہے۔ دوران
 عمر ہر لٹس آرن حسنا صاحبہ سائن رپورٹ اور جہاں بالا بھر کر بڑھ کر سنا ہے جا کر دست تسلیم کر کے
 رپورٹ خیر الخویفی اور دستہ انتہی سے جنگ میں دوران 4) نبی محل سائنس اور میاں ملک حرم بال صلیبہ اسلہ انتہین
 تیلہ کر کے اہلیان بوسٹ ملہ نمبر 2 ہر صناف عہیل 15/12/11 اور حسنا کے کا فذات میں سنا کر کے کا فذات میں
 حاکم زہر حسنا انتہین سیدہ 20/12/11 ہجرتانہ سے جنسی رپورٹ کر اس دوران میں فریقین کی رپورٹ سے
 ملزمان میں ہر رپورٹ ملزمان بالا کا پانی جا کر ہر ہجرتانہ بالا جا کر کیا جا کر اہلیان بالا کو بسلو سبیل رپورٹ اطلاع
 دی جانی ہے تو ملزمان ہر ہجرتانہ لٹس آرن حسنا خانہ لاکر کلیم اللہ بھر رپورٹ کرنا ہے کہ وہ

Annexur C

(9)

IN THE COURT OF BAKHT ALAM, ADDITIONAL SESSIONS JUDGE-XIII, PESHAWAR.

Sessions Case No. 132/SC of 2021
Date of Institution: 23.10.2021
Date of Decision: 11.09.2023

The State ...Vs... (1) Fida Gul
(2) Tilawat
(3) Hayat
(4) Nazar Muhammad sons of Manaf Khan
all R/O Urmur Miana, Peshawar.
(Accused facing trial)
(5) Shah Suleman
(6) Usman sons of Manaf Khan R/O Urmur Miana.
(Absconding accused) (The accused mentioned at serial
No.1 to 6 charged by complainant namely Mst: Farha
Taja for the murder of deceased namely Nabi Gul and Ibrar
and also for attempting her as well as her daughter lives)

The State ...Vs... (7) Nabi Amin S/O Nabi Gul R/O Urmur Minana
(Absconding accused) (The accused mentioned at serial No.
7 charged by complainant namely Kaleem Ullah for the
murder of deceased namely Hasanat and also for attempting
his as well as his uncles lives)

BAKHT ALAM
Additional District & Sessions
Judge XIII, Peshawar

The State represented by:- Learned Deputy Public Prosecutor

Counsel for complainant:- Syed Abdul Fayaz Khan advocate
Mst: Farha Taja

Counsel for accused facing trial:- Mr. Saeed Khan Advocate for accused.

CASE FIR No. 550 DATED 13.07.2020 U/Ss:
302/324/148/149 PPC POLICE STATION URMAR,
PESHAWAR.

JUDGMENT
11.09.2023

1. It is pertinent to mention here that, this case is of cross
version case wherein accused facing trial namely Fida Gul,
Tilawat, Hayat, Nazar Muhammad alongwith absconding

ATTESTED

23 NOV 2023

(Examiner)

Session Court Peshawar

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co-accused namely Shah Suleman and Usman as well as Hasanat (deceased), being charged for the murder of deceased Nabi Gul & Ibrar as well as for attempting at the lives of complainant Mst: Farha Taja as well as her daughter. Whereas absconding accused namely Nabi Amin including deceased namely Nabi Gul and Ibrar were charged for the murder of deceased Hasanat as well as for attempting at the lives of complainant namely Kaleem Ullah and his uncles, in case FIR No.550 dated 13.07.2020 under sections 302/324/148/149 PPC registered at Police Station Urmar, Peshawar.

2. Thumbnail sketch of the prosecution case as per contents of FIR are that Mst: Farah Taja widow of Nabi Gul reported the matter to the effect that she alongwith her husband Nabi Gul, son Ibrar and daughter Mst: Zartaja had gone to their fields situated at Maira Urmar Maina, in the meanwhile, accused Hasanat, Fida Gul, Nazar Muhammad, Hayat Khan, Tilawat, Shah Suleman and Usman armed with deadly weapons, started firing at them as a result of which her husband Nabi Gul and son namely Ibrar were hit and died on the spot whereas she alongwith her daughter Mst: Zartaja luckily escaped unhurt. Similarly, one Kaleem Ullah reported the matter that he alongwith their uncles were busy in fields, where accused Nabi Gul, Nabi Amin and Ibrar

MAJID ALAMI
Assistant District & Sessions
Judge, Peshawar

ATTESTED

23 JULY 2023

(Examiner)

Court Peshawar

while duly armed with deadly weapons started firing at them as a result of such firing one Hasanat got hit and died on the spot while they remained unhurt during such incident. Motive behind the occurrence is property dispute between the parties. Hence, the instant case FIR.

3. After registration of case and completion of investigation, the prosecution submitted challan against accused, the worthy Sessions Judge Peshawar entrusted case file to this court for trial.

4. Since the challan u/s 512 Cr.PC submitted for the accused namely Nabi Amin who was charged by the complainant Kaleem Ullah for the commission of offence, statement of SW was recorded in this respect. In light of the statement of SW, proceedings u/s 512 Cr.P.C were initiated against the accused Nabi Amin and prosecution is allowed to produce evidence in his absentia. Statements of Abid Ahmad ASI, Aurabgzeb S/O Sherabaz Khan, Kaleem Ullah S/O Hayat Khan, Dr. Noor Ul Baqi recorded as PW-1 to PW-4 while statement of Imran ASI also recorded as PW-5. Meanwhile learned Dy.PP for the State closed the prosecution evidence. From perusal of record and statements of PWs, a prima facie case exist against accused Nabi Amin, therefore, he is declared as proclaimed offender. Perpetual warrant of his

B

BAHAT ALAM
Additional District & Sessions
Judge (III), Peshawar

ATTESTED

23/11/2021
[Signature]
Additional District & Sessions
Judge (III), Peshawar

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arrest be issued under intimation to the DPP Peshawar to enter his name in the relevant register of Pos.

5. As the accused facing trial namely Fida Gul, was in custody, therefore, he was summoned through *Zamima Bay*, while accused Tilawat, Hayat, Nazar Muhammad was absconding who later on arrested in the instant case, they were also summoned through *zamima bay*. While accused Shah Suleman and Usman was absconding, therefore, SW statement was recorded. On production of accused facing trial before the Court who were charged by the complainant Mst. Farha Taja for the commission of offence, copies of relevant record were supplied to them per mandate of Section 265-C Cr.PC. On 21.02.2023, accused facing trial were charge sheeted who pleaded not guilty and opted to face trial. The perusal of SW statement and charged sheet shows that name of deceased accused namely Hasanat has wrongly been mentioned in SW statement as well as formal charge, therefore, the same be considered as deleted. The prosecution was allowed to produce its evidence for the accused facing trial as well as absconding co-accused charged by the complainant Mst. Farha Taja. The prosecution in order to prove its case produced the following witnesses.

B

BAHIT ALAM
Additional District & Sessions
Judge III, Peshawar

ATTESTED

23 NOV 2023

(Examiner)
Session Court Peshawar

- (i) *PW-1 Abid Ahmad ASI, who deposed that during the days of occurrence, he was posted as ASI at PS Urmur Peshawar. On 13/7/2020 at about 07:45 hours, Mst. Fakhar Taja widow of Nabi Gul resident of Urmur Miana, Mohallah Mobal, Peshawar brought the dead bodies of her husband Nabi Gul and her son Ibrar and reported the matter to him which he incorporated the in the FIR Ex.PA. After read over & explained to her who after admitting its contents as correct and thumb impressed the same as token of its correctness. The report was also endorsed by her daughter Zartaja wife of Taiz Muhammad as seconder. He also prepared the injury sheets and inquest documents of the deceased's Nabi Gul & Ibrar which are exhibited as Ex: PW-1/1 to Ex.PW-1/4 respectively. During incorporation of the above mentioned report, the second party i. e Kaleem Ullah son of Hayat Khan brought the dead body of his uncle Hasnat and reported the matter to him which he also incorporated in the form of FIR, already exhibited Ex.PA. The report was read over and explained to him who after admitting its contents as correct signed the same as the token of its correctness. He prepared the injury sheet and inquest report of the deceased Hasnat Ex.PW-1/5 & Ex.PW-1/6. He dispatched the dead bodies of the deceased Nabi Gul, Ibrar and Hasnat to KMC for postmortem under the escort of Jameel No. 1565 and Saeed No. 44. The above mentioned documents are correct and correctly bear his signature. After chalking of FIR, he handed over the copy of FIR for investigation to the IO Shakar Ghiyas SI.*
- (ii) *PW-2 Shah Zeb Constable No.2862, who deposed he is marginal witness to recovery memo Ex.PW-2/1 vide which the IO took into possession the garments of the deceased Nabi Gul sent by the doctor through constable Jameel, sealed into parcel no. 4 by affixing the monogram in the*

ATTESTED

23/07/2023

(Examiner)
Sessions Court Peshawar

name of FR. While one monogram was kept inside the parcel. He is marginal witness to recovery memo Ex.PW-2/2 vide which the IO took into possession the garments of the deceased Ibrar sent by the doctor through constable Jameel, sealed into parcel no. 5 by affixing the monogram in the name of FR. While one monogram was kept inside the parcel. He is also witness of the pointation memo which is Ex.PW-2/3. The accused Nazar Muhammad led the police party to the place of occurrence and correctly pointed out the spot of occurrence. He is also witness of the pointation memo which is Ex.PW-2/3. The accused Fida Muhammad led the police party to the place of occurrence and correctly pointed out the spot of occurrence. The above mentioned documents are correct and correctly bear his signatures.

(iii) PW-3 Appeal Jun SI, deposed that on 7/02/2021, he has written application to the Patwari Halqa for the details of landed property of accused Nabi Ameen son of Nabi Gul resident of Urmar Payan, Peshawar. The copy of which is Ex.PW-3/1. The same is correct and correctly bears his signature.

(iv) PW-4 Imran Khan ASI, deposed that during the days of occurrence, he was posted as ASI at Police Station Urmar Peshawar. In his presence, the IO during spot inspection vide FIR no. 550 dated 13/7/2020 under Section 302-324/148/149 PPC at PS Urmar Peshawar, the IO took into his possession from the place of occurrence and from the place of deceased Nabi Gul from Point A recovered blood stained through cotton sealed the same into parcel no. 1 by affixing 3/3 monogram in the name of FR vide memo Ex.PW-4/1. Similarly, from point B, the IO took into possession the blood through cotton from the place of deceased Ibrar and sealed the same into parcel no. 3 by affixing 3/3 monogram in the name of FR vide memo


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Ex.PW-4/2: Similarly, on the same date, time the IO took into possession during spot inspection from point C ten empties of 7.62 bore which were lying in scatter position, sealed the same into parcel no. 3, (Ex.P-1) by affixing 3/3 monogram in the name of FR, vide memo Ex.PW-4/3 his statement was also recorded by the IO. The memos are correct and correctly bears his signature and that of PW Sajid.


- (v) PW-5 Mst: Zartuja W/O Faiz Muhammad, deposed that the deceased Nabi Gul was her father while deceased Ibrar was her brother. On the day 13/07/2020 at 07:45 hours she alongwith her mother and her father deceased Nabi Gul and her brother Ibrar were present in their fields, in the meanwhile accused Hasnat, Fida Gul, Nazar Muhammad, Hayat Khan, Shah Suleman, Telawat and Usman all sons of Mumaf, resident of Urmar Miana came to the place of occurrence with fire arm weapon and started firing at them, as a result of which her father Nabi Gul and her brother Ibrar were hits and died on the spot while she alongwith her mother now dead luckily escaped unhurt. Beside her the occurrence was witnessed by her mother and other present on the spot. Motive for the occurrence was dispute over the property. Her mother now dead recorded her report in the police station which was read over to her and after admitting the same to be correct and thumb impressed the same. She have also endorsed being eye witness of the occurrence and thumb impressed her report. The IO has also prepared the site plan at her instance as well as her mother instance. She charged the accused for the commission of offence. The FIR has already been exhibited Ex.PA whereas their report in the body of FIR is available in all first eight line as Ex.PW-5/PA which correctly bears the thumb impression of her as well as her mother.

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- (vi) PW-6 Sabir Ali SI, deposed that during the days of occurrence, he was posted as SHO at Police Station Urmar Peshawar. On 16/8/2020, he arrested the accused Fida Gul and issued his card of arrest Ex.PW-6/1. Similarly, his arrival to the PS was also written in shape of DD dated 16/08/2020, the extract of which is Ex.PW-6/2. After completion of investigation, the case file was handed over to him. He submitted supplementary challan against the accused, the challan is Ex.PW-6/3.
- (vii) PW-7 constable Jumeel No.1565, deposed that during the days of occurrence, he was posted as constable at Police Station Urmar Peshawar. He escorted the dead bodies of deceased Ibrar son of Nabi Gul & Nabi Gul son of Muzamil to the KMC, Peshawar. To this effect his statement was also recorded under section 161 Cr.P.C by the IO.
- (viii) PW-8 Naeem Khan SHO, deposed that during the days of occurrence, he was posted as SHO at Police Station Urmar Peshawar. On 23/09/2021, he arrested accused Nazar Muhammad son of Munaf Khan and issued his card of arrest Ex.PW-8/1. In this respect, he also made entry in DD no. 34 dated 23/09/2021, copy of which is Ex.PW-8/2. After completion of investigation by the IO (Aman Ullah SI) the file was handed over to him for submission of challan of accused nazar Muhammad which he accordingly submitted the same. The challan form is Ex.PW-8/3. The above mentioned documents are correct and correctly bears his signatures.
- (ix) PW-9 Tehseen Ullah SHO, deposed that during the days of occurrence, he was posted too us SHO at Police Station Urmar Peshawar. On 6/2/2023, he arrested accused Telawat & Hayat both sons of Munaf and issued their cards of arrest Ex.PW-9/1 & Ex.PW-9/2. In this respect, he also made entry in DD no. 22 dated 06/02/2023, copy of


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which is Ex.PW-9/3. After completion of investigation by the IO, the filed was handed over to him for submission of challan of accused Telawat & Hayat which he accordingly submitted the same. The challan form is Ex.PW-9/4. The above mentioned documents are correct and correctly bears his signatures.

(x) **PW-10 Aman Ullah SI**, deposed that during the days of occurrence, he was posted as SI at Police Station Urmar Peshawar. He vide his application Ex.PW-10/1, produced the accused Nazar Muhammad for obtaining his physical custody. The application was accepted and one day custody was granted. During this period, he interrogated the accused, who confessed his guilt and he led the police party to the place of occurrence. In this respect, he prepared the pointation memo which is already Ex.PW-2/3. He vide his application Ex.PW-10/2, produced the accused for recording his confessional statement, however, the accused refused his guilt and sent to judicial lock up. During his investigation, he recorded the statements of all the PWs including accused. After completion of investigation, he submitted the challan against the accused. The above mentioned documents are correct and correctly bears his signatures.

(xi) **PW-11 Himat Ullah Inspector**, deposed that during the days of occurrence, he was posted as inspector/OII at Police Station Urmar Peshawar. He vide his application Ex.PW-11/1, produced the accused Telawat & Hayat for obtaining their physical custody. The application was accepted and one day custody was granted. During this period, he interrogated the accused, who confessed their guilt and they led the police party to the place of occurrence. In this respect, he prepared the pointation memo which is already Ex.PW-11/2. He vide his application Ex.PW-11/3, produced the accused for


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recording their confessional statement, however, the accused refused their guilt and sent to judicial lock up. During his investigation, he recorded the statements of all the PWs including accused. After completion of investigation, he submitted the challan against the accused. The above mentioned documents are correct and correctly bears his signatures.

(xii) PW-12 Dr. Noor Ul Buqi, deposed that during those days he is posted at Khyber Medical College Peshawar Forensic Medicine Department Peshawar. He examined the dead body of the deceased namely Ibrar son of Nabi Gul on 13/7/2020 at about 1115 AM brought by Jameel Constable No. 1565 and Identified by Yahya son of Sher Wali & Wahid son of Malang Rs/O Urmur, Peshawar.

External Appearance:

A young man dead body with heavy built wearing dark blue shilwar Qamees blood stained with fire arm defects. Rigor mortis and postmortem lividity started developing.

Injuries:

1. A fire arm entry right face size 1X1 CM, 3 cm midline and 2 CM below eye.
2. A Fire arm entry wound on right side of mandible, 1X1 CM, 2 CM from midline and 2 CM below jaw.
3. A fire arm entry wound right outer chest 1x1 CM, 22 cm from midline and 8 cm below axilla.
4. A fire arm exit right outer chest 6x3 cm, 10 cm below axilla. 30 cm from midline.
5. A fire arm entry wound left front abdomen 1x1 cm, 4 cm from midline, 6 cm above pubis.
6. A fire arm exit wound back buttock, 2 x3 cm, 7 cm from midline. 1 cm above posterior superior iliac spin.
7. A fire arm exit wound left side chin 2x1 cm, 5 cm midline and 4 cm below mendable.

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8. A fire arm exit wound 1x2 cm in size just behind left ear.
9. A fire arm entry wound on left shoulder 3x1 cm, 24 cm above elbow, 4 cm below top of shoulder.
10. A fire arm exit wound 5x10 cm left front of shoulder, 21 cm above elbow, 10 cm from root of neck.
11. A fire arm entry wound a back of Arm 4x1 cm, 9 cm above elbow, 17 cm below axilla.
12. A fire arm exit inner Arm right size 10x8 cm below axilla.
13. A fire arm entry wound right front thigh 1x1 cm, 8 cm above knee, 33 cm below groin.
14. A fire arm exit wound inner thigh 3x 4 cm in size, 2 cm above knee joint.

CRANIUM AND SPINAL CORD

Scalp, Skull, membranes and brain wereinjured.

THORAX:-

Walls, Ribbs, cartilages and right lung were.....injured.

ABDOMIN.

Walls, mouth, pharynx and large intestine wereInjured.

OPINION

In his opinion, the deceased died due to injures to brain, vital structure of neck and large gut due to fire arm.

Probable time between injury and death immediate and between death and PM 3 to 6 hours.

The PM report Ex.PW-12/1, consists of six sheets. The inquest report and injury sheet also having his endorsement.


Similarly, on the same date i.e on 13/7/2020 at about 1220 PM, he also examined the deed body of deceased Nabi Gul son of Muzamil brought by Jameel Constable No. 1565 and Identified by Fatz Muhammad son of Ali Khan & Shereen Khan son of Ameer Khan Rs/O Urmar, Peshawar.

External Appearance:

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An elderly male white bearded dead body wearing white shilwar Qamees and white jacket blood stained with fire arm defects. Rigor mortis and postmortem lividity just started.

INJURIES:-

1. A fire arm entry right outer of arm size 1x1 CM, 8 cm above elbow and 21 cm below shoulder.
2. A Fire arm exit wound right inner arm size 6x2 cm, 8 cm above elbow, 8 cm below axilla with shattered hummers.
3. A fire arm entry wound left front chest size 1x1 cm, 7 cm from midline and 6 cm below elbow.
4. A fire arm entry wound left side of skull 1x1 cm with blackening in area of 3x3 cm, 4 cm from ear front, 3 cm from eye outer angle.
5. A fire arm exit right back of skull 3x4 cm. in size with shattered skull bone, 7 cm behind left ear, 2 cm from mid line.
6. A fire arm lacerated wound right outer chest 3x2 cm,

CRANIUM AND SPINAL CORD

Scalp, Skull, membranes and brain wereinjured.

THORAX:-

Walls, Ribs, cartilages and both lungs, heart and major vessels of thorax wereinjured.

ABDOMN:-

StomachEmpty.

OPINION

In his opinion, the deceased died due to injures to brain, heart and both lungs due to fire arm.

Probable time between injury and death immediate and between death and PM 3 to 6 hours.

The PM report Ex.PW-12/2 consists of six sheets. The inquest report and injury sheet also having his endorsement.

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(xiii) PW-13 Sabir Ali SHO, deposed that during the days of occurrence, he was posted as SHO at PS Urmar Peshawar. When the investigation was completed, the challan of the instant case was handed over to him for onward submission. The investigation has been conducted by Shakar Ghayas Khan SI (now dead). He remained with him for sufficient length of time, therefore, he is well conversant with his signature as well as his hand writing. After registration of case the investigation was entrusted to Shakar Ghayas Khan SI. He visited the spot and prepared the site plan Ex.PB. The above mentioned documents are correct and correctly bear his signature. After chalking of FIR, he handed over the copy of FIR for investigation to the IO Shakar Ghayas SI. Upon the pointation of Mst. Farakh Taju. During spot inspection, he recovered and took into possession blood through cotton from the point of deceased Nabi Gul vide recovery memo already exhibited as Ex.PW-4/1. Similarly, he also recovered and took into possession blood through cotton from the point of deceased Ibrar, the recovery memo is Ex.PW-4/2. Similarly, he also prepared recovery memo already exhibited as Ex.PW-4/3 regarding the recovery of ten empties of 7.62 bore and sealed the same into parcel no. 3 Ex.P-1. Shakar Ghayas Khan SI also prepared recovery memo already exhibited as Ex.PW-2/1 regarding the blood stained garments of deceased Nabi Gul and sealed the same into parcel no. 4 Ex.P-2. He also prepared recovery memo Ex.PW-2/2 regarding blood stained garments of deceased Ibrar and sealed the same into parcel no. 5 Ex.P-3 by affixing 3/3 sealed monogram in the abbreviation of FR on all the parcels. Shakar Ghayas Khan SI also prepared the list of legal heirs of deceased Nabi Gul which is Ex.PW-13/1. Shakar Ghayas Khan also prepared the recovery memo regarding the recovery of chuff "Bossa" recovery memo

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is Ex.PW-13/2. Similarly, after obtaining BBA from the court of competent jurisdiction. Shakar Ghayas Khan SI issued card of arrest of accused Shah Suleman and Telawat Khan, the card of arrest is Ex.PW-13/3. As the accused Telwat and Shah Suleman obtained BBA from the court of competent jurisdiction after which they remained absent to this effect inspector Riaz Ali shah vide his application Ex.PW-13/4, applied to the court for issuance of warrants under section 204 Cr.P.C which were issued accordingly. After which an application Ex.PW-13/5 was made for issuance of proclamation notice under section 87 Cr.P.C the same were issued accordingly. Shakar Ghayas Khan SI vide his application Ex.PW-13/6 and Ex.PW-13/7 applied to the court for issuance under section 204 Cr.P.C and proclamation notices under section 87 Cr.P.C against the accused Shah Suleman which were issued accordingly. Shakar Ghayas Khan SI also made an application Ex.PW-13/8. The report is available on file is Ex.PW-13/9, consisting of 11 sheets. As the accused were avoiding their lawful arrest therefore, Shakar Ghayas Khan SI his application Ex.PW-13/10 and Ex.PW-13/11 applied to the court for issuance of warrants under section 204 Cr.P.C and proclamation notices under section 87 Cr.P.C which were issued against all the accused namely Fida Gul, Nazar Muhammad, Hayat Khan, Usman and Nabi Yameen which were issued accordingly. Shakar Ghayas Khan SI vide his application Ex.PW-13/12 & Ex.PW-13/13, sent parcels to FSL Peshawar. The reports whereof received as Ex.PZ & Ex.PZ/1 respectively. The above referred documents prepared by Shakar Ghayas Khan SI are in his hand writing and correctly bear signatures of Shakar Ghayas Khan SI.

(xiv) PW-14 Israr Khan Inspector, deposed that during the days of occurrence, he was posted as SI/OH at Police station

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Urmur, Peshawar. He conducted the partial investigation of the instant case, after obtaining ad interim relief in shape of BBA from ASJ, Peshawar, the accused Shah Salman remained absent, therefore, he vide his application Ex.PW-13/6, applied to the court for issuance of warrant under section 204 Cr.P.C. He vide his application Ex.PW-13/7, applied to the court for issuance of proclamation notices under section 87 Cr.P.C which were issued accordingly. During the course of investigation, he was transferred from PS Urmur, therefore case file was handed over to some other investigation officer for onward proceedings. The above referred documents are correct and correctly bear his signatures.

(xv) PW-15 Ayuz Khan ASI, deposed that during the days of occurrence, he was posted as ASI at Police station Urmur, Peshawar. He is marginal witness to recovery memo Ex.PW-15/1 vide which near the spot from the field of deceased Nabi Gul, the IO recovered and put in the flour sack some hay which was taken from the heap of hay, by affixing 3 seal monogram in the name of FR and one seal monogram kept inside the parcel. IO recorded his statement under section 161 Cr.P.C. The recovery memo is correct and correctly bears his signature as well as the signature of co-marginal witness.

6. After recording and close of the prosecution evidence, on 21.06.2023, accused were examined u/s 342 Cr.PC. They abjured the allegations. They did not wish to be examined on oath U/S 340 (2) Cr.PC, nor opted to produce evidence in their defence.

7. I have heard arguments of learned Deputy Public Prosecutor appearing on behalf of State, learned counsel for

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complainant, learned counsel for accused facing trial and have perused the record with their valuable assistance.

8. Learned counsel for complainant while opening his arguments contended that in the incident two persons were deprived of their lives. It was stated that report has promptly been lodged excluding all possibilities of consultation and deliberation. The learned counsel added that accused facing trial has directly been charged in the FIR for effective firing at the deceased and occurrence being daylight one leaves no possibility of mistaken identity. It was argued that ocular testimony is supported by medical evidence and recovery of blood stained earth as well as crime empties from the scene of occurrence. The learned counsel further argued that complainant party furnished consistent ocular account and discrepancies appearing in their testimonies are minor in nature, therefore, ignorable and do not vitiate the charge of murder, as sufficient time has since been elapsed. He further argued that prosecution has successfully proved the presence of complainant, eye witness, accused and deceased at the scene of occurrence at the relevant time. Referring to the Post Mortem Examination Reports, learned counsel for complainant argued that numerous firearm wounds found on the body of the deceased speak loud about the intention of accused and their knowledge of the act done, therefore, they

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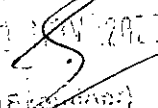
(Examiner)
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deserves no leniency. He further made submission that the ocular testimonies are reliable and confidence inspiring, as defense could not introduce any dent therein. Learned counsel for complainant stressed on awarding normal penalty of death to the accused facing trial.

9. Conversely, learned defence counsel while referring to the evidence on the record argued that accused facing trial are innocent and have falsely been implicated in the instant case. They contended that the case of prosecution is full of doubts and material shortcomings and the ocular account furnished by the PWs is neither trustworthy nor confidence inspiring. It was further added that being inimical and interested witnesses, such ocular account furnished by the PWs lacking corroboration is not solely sufficient to award punishment on capital charges. He further submitted that prosecution was bound to have proved its case by leading strong and convincing evidence, but has miserably failed to produce quality evidence connecting accused with the alleged crime; learned defence counsel argued that accused facing trial were nominated after due consultation and deliberation. Learned counsel also added that there is conflict in ocular and medical evidence. While summing up their arguments, learned defence counsel requested for the acquittal of accused facing trial.


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10. In the present case, from the side of complainant namely Mst: Farahataja two persons Nabi Gul and Ibrar were done to death through firearm injuries of accused facing trial as well as absconding co-accused, their names mentioned at serial No.1 to 6 of the heading of the judgment while from the other side i.e complainant Kaleem Ullah one person namely Nabi Amin alongwith deceased namely Nabi Gul and Ibara were charged for the murder of deceased Hasanat. The accused Nabi Amin was declared proclaimed offender due to his absconsion and perpetual warrant of arrested was already issued against him in this judgment mentioned above. The prosecution case mainly hinges on following pieces of evidence:

11. Direct evidence (ocular account) furnished by eye witness namely Mst: Zartaja (PW-5) daughter and sister of deceased.
12. Medical evidence furnished by PW-12 (doctor Noor Ul Baqi).
13. Recovery of empties from the spot, blood stained earth and articles.
14. Motive.
15. First I take the above referred various pieces of prosecution evidence in order to determine its cumulative effect where after defense version will be discussed.

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16. In the case in hand, eye account was furnished by Mst: Zartaja (PW-5) she claimed to have witnessed the occurrence while present on the spot at the alleged time of incident. The said PW is also daughter and sister of deceased. Unnatural conduct of PW on the spot as their father and brother was lying injured, she nor her mother did touch them while shifting to Police Station and hospital. Inquest report and PM report does not bear names of complainant and PW Mst: Zartaja as identifier. The eye witness appeared before the court and recorded her statement as PW-5 in support of prosecution case and she divulged the same facts as alleged in the report of complainant with some improvements. In her cross examination she stated that her house and house of her father are adjacent to each other while the spot is situated at a distance of ten minutes on walking distance from her house but she in her statement have not mentioned the purpose of their presence on the spot. Volunteer stated that they were collecting Bosa in their fields in a big sake (broom) and they have not collected the bosa yet the occurrence took place and at the time of occurrence she alongwith complainant were present with the deceased at a distance of two paces. She further stated that firing was burst and in indiscriminate which were countless. She further

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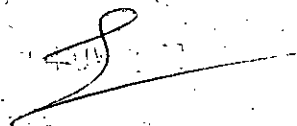
(Examination)
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stated that she alongwith complainant has not shown the tools/utensils etc using for collecting bosa at the time of report nor during the course of investigation. She further stated that she had not given any proof/documents about the motive part of the case nor they produce any person to the IO during the investigation as witness nor give any name and address of the other persons present on the spot during the relevant time. She further admitted it correct that she has not remember the exact time of shifting the dead bodies of deceased to the Police Station. She further admitted that the dead bodies were not shifted through vehicle rather the same were shifted on foot by themselves in the carpai. She further admitted it correct that on the same day for the murder of the deceased Hasanat (who is accused in the instant case) his father namely Nabj Gul, his brother Nabi Amin and Ibrar were also charged. Volunteer stated that said Hanasat was hit due to firing of his own brother. However, the perusal of the FIR shows that such facts were not mentioned by the complainant or eye witness of the occurrence in the report that the deceased Hanasat was hit by the firing of his own brother nor they mentioned in the FIR regarding their presence on the spot for collecting bosa. Similarly, Abid Ahmad ASI who is scriber of FIR appeared before the court and recorded his statement as PW-1 this witness in his cross

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examination admitted it correct that first he prepared the inquest documents of the Nabi Gul and Ibrar in hurry dispatched the dead bodies for autopsy after that they scribed the FIR. He further admitted it correct that after 15 minutes of sending the dead bodies to KMC for autopsy the FIR has been scribed. This witness further admitted it correct that the complainant had not specified the purpose of their presence in the fields that is why he has not mentioned the such facts in the FIR.

17. According to site plan the deceased Nabi Gul was shown on point No. 3 while deceased Ibrar was shown on the point No.4 whereas the complainant and eye witness were shown at point No.1 and 2, the point No.1 to 4 where the complainant party shown their presence in the FIR at their fields, whereas the site plan shown their presence at the place/field belongs to accused/deceased Hasanat. While the presence of accused party were shown at point No. 5 to 11 belongs to the field of Nabi Gul. This fact negates the version of complainant as well as eye witness i.e PW-5 according to them the occurrence was took place in their fields when they were busy in colleting bosa. Similarly in the site plane the place where the deceased Ibrar received injury was shown at point No.4 while the place of deceased Ibrar was lying shown in the site plan at point B which was

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Additional District & Sessions Judge
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at the distance of 105 paces from point No.1 and distance from point No.1 and 4 shown 6 paces which means the distance between point No.4 to point B as 105 paces, from the place where Ibrar received injury was showing at point No.4 while his dead body was show lying at point No.B and in the mid of them the places of accused were shown. It is not appealable to a prudent mind that a person received fire arm injury at point No.4 from where no blood of injured Ibrar was recovered and he after covering distance of 105 paces while crossing the accused party felt down without oozing/trail of blood. The complainant as well as PW Mst: Zar Taja are shown with the deceased Nabi Gul and Ibrar in the line of fire, however, they escaped unhurt from the volley of bullets allegedly indiscriminate firing by the accused facing trial who were allegedly armed with firearms respectively. All these facts suggest that the occurrence has not taken place in the mode and manner as alleged by the prosecution. Furthermore, the alleged occurrence took place at 07:45 hours, whereas report has been lodged at 09:30 with the delay of one hours and 45 minutes but the complainant has failed to explain of said delay in reporting the matter. The delay in reporting the matter is always seems with serious doubts and it presumed that the delay in reporting the matter was consumed in the deliberation, consultation

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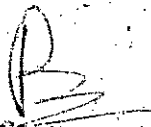
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and in procuring the attendance of complainant as well as the eye witnesses. The PW Mst. Zartaja is failed to satisfy the judicial conscious about her presence at the time of occurrence with the deceased. She failed to disclose the reason as to why she alongwith complainant accompanied the deceased to the place of occurrence. The chance witnesses have first to establish their presence at the spot, however, the eye witness namely Mst. Zartaja has failed to prove her presence at the time of occurrence. The direct evidence from primary source pays vital role in determining the fate of criminal trial and if the direct evidence from primary source is not confidence inspiring, the corroborative piece of evidence may not be used to remedy the inherent defect in the direct evidence. No doubt, the Site Plan is not substantive piece of evidence however, it is an important documents which furnishes the trial court first hand information regarding the crime scene to enable the Trial Court to evaluate the evidence on record in true perspective. Furthermore, no recovery of crime weapon has been effected from the personal possession of the accused or upon their pointation. General role of firing has been attributed to all the accused without specification.

18. As per PM report the deceased were received multiple fire arm wounds on their person and accused facing trial are

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attributed general role of firing. The deceased was examined at 11:15 & 12:20 hours and the autopsies were conducted by the Doctor Noor Ul Baqi who described the death of deceased to be immediate and the time between death and post mortem were given to be 03 to 06 hours, however, the medical evidence per se does not disclose the identity of assailants and it is only corroborative in nature.

19. Taking all the facts and circumstances into consideration I found that the prosecution case is replete with grave doubts and suspicion and the benefit thereof must go to the accused.

20. In the light of above evaluation of evidence, I can see no hesitation to hold that the prosecution has remained unable to bring home guilt of the accused facing trial successfully. There exists number of reasonable doubts in the prosecution case whereas; accused are entitled to every benefit of single doubt arising out of the prosecution case.

21. For what has been discussed above, while extending benefit of doubt in their favour, accused on trial are hereby, acquitted of the charges levelled against them. Accused are in custody, they be set at liberty if not required in any other case.

22. So far as the case to the extent of co-accused Shah Suleman and Usman is concerned a prima facie case is exits against

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Judge, Peshawar

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23 MAY 2021

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This Office Order relates to the disposal of Departmental Enquiry against

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Constable Tilawat Shah No. 650 of FRP/HQrs: Peshawar, being involved in case FIR No. 550 w/S 302/34/148/149 PPC dt., 13-07-2020 and also absented himself from duty with effect from 17.01.2021 till- date without any leave/permission of the Competent Authority.

Annex-D

In this regard formal departmental proceedings were initiated against him and DSP, FRP/HQrs: was nominated as Enquiry Officer. After proper enquiry, the EO submitted his findings, wherein he added that the defaulter constable in reply of charge sheet stated that on the occasion of FIR, he was on duty at the office of Advocate General Peshawar high court. The EO further added the said constable after confirmation of his BBA remain absent and is considered wanted by the honorable court and is not arrested yet. The EO recommended him for ex-parte action. Upon the findings of Enquiry Officer he was issued Final Show Cause Notice through Pakistan Post Mali registry to which he received, but he failed to submit any reply in response to the Final Show Cause Notice. He was called for personal hearing, but he did not bother to attend this office.

From perusal of his service record, the defaulter constable also awarded major punishment of dismissal from service in 2009 on the grounds of his long absence for the period of 220 days without taking leave of the competent authority.

Keeping in view the above and other available material on record it has come crystal clear that the delinquent Official is a habitual absentee and does not take interest in official duty. During his past service he remained absent from official duty and the recommendation of Enquiry Officer, as well as his prolong absence from duty. Constable Tilawat Shah No. 650 of FRP/HQrs is hereby awarded major punishment of "Removal from Service" under Police Rules 1975 amended 2014. However his absence period is treated as leave without pay.

Order announced.

Handwritten notes: (FRP) 528 16/6/21

Deputy Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

No. 207-11 /PA/FRP/HQrs: dated Peshawar, the 15/06/2021.

Copy of the above is forwarded for information & n/action to the:-

1. Commandant, FRP Khyber Pakhtunkhwa.
2. Accountant /FRP/HQrs: Peshawar.
3. SRC/OASI/FRP HQrs: Peshawar.

Handwritten signature: AAesAed

بجائے جتایا کمانڈنٹ صاحب FRP ضییر جتو خواہ پشاور

35

Annex (F)

36

Annex-F

کنوان۔ درخواست بمراد بجالی سروس

جناب عالی ا
گزارش ہمیکہ سائل 2001ء کا پوری شدہ کنسٹیبل ہے اپنی ڈپوٹی نہایت خوش اسلوبی اور ایمانداری سے انجام دے رہا تھا کہ بد شغلی سے سائل کے خلاف جائیداد تبادلت پر ایسا ہی بنیاد اور من گھڑت FIR درج ہوئی جب کا دور دور تھا سائل سے کوئی واسطہ نہیں اور وقت وقوعہ کے دوران سائل اپنی جائے دینیائی ڈپوٹی پر موجود تھا جس کا ثبوت سائل کے پاس موجود ہے۔

چونکہ سائل کے خلاف بوجہ بے بنیاد FIR محلیانہ اتلوانٹری شروع ہوئی اور سائل کو حلقہ پڑا سے بحوالہ OB نمبری 528 حوض 16/6/21 کو درخواست کر دیا گیا۔ سائل کے خلاف درج بالا FIR مقدمہ زیر عدالت سیشن کورٹ جاری تھا جبکہ عدالت ہمت عالم ADJST-XIII پشاور سائل مکمل طور پر باعزت بری ہو چکا ہے۔ عدالت آرڈر مافی ہمراہ درخواست لگا ہے۔

چونکہ سائل کے خلاف ایسا من گھڑت اور بے بنیاد FIR درج ہو چکی تھی اور چونکہ سائل باعزت طور پر بری ہو چکا ہے۔ سائل اپنی انتہائی غریب خاندان سے تعلقات رکھتا ہے نوکری کے علاوہ دیگر کوئی حساس شہ نہیں اور جس کیس کا وہ جس سے سائل کو نوکری سے برخاست کر دیا گیا تھا اس میں سائل نے گناہ ہونے کی بنیاد پر بری ذمہ ہو گیا ہے۔

لہذا آپ موصوفیان سے بذریعہ درخواست استدعا ہے کہ سائل کی لاجاری مقلسی اور بے گناہی کو مدنظر رکھتے ہوئے جملہ مہربانیاں کیسے دو بارہ اپنی نوکری پر بحال کرنے کا حکم صادر فرما کر مشکور فرمائیں۔ سائل اور اس کا خاندان دعا گو رہتے ہیں
عین توازن ہوگی

العارض

(Signature)

ایکتابچہ الحکم سابقہ کنسٹیبل تلاوت خان نمبر 650 FRP H&V: پشاور

Mob: 2313-5983238

SI Legal FRP

(Signature)

Attested
(Signature)

(Signature) FRP

ORDER

This order will dispose of the departmental appeal preferred by ex-constable Tilawat Khan No. 650 of FRP HQrs. against the order of Deputy Commandant FRP, Khyber Pakhtunkhwa, Peshawar issued vide OB No. 528, dated 16.06.2021, wherein he was awarded major punishment of removal from service. Brief facts of the case are that the applicant was found involved in criminal case vide FIR No. 550, dated 13.07.2020 U/S 302/34/148/149 PPC, Police Station Umar, District Peshawar and also absented himself from lawful duty with effect from 17.01.2021 till the date of his removal from service i.e. 16.06.2021 for total period of 04 months, 28 days without any leave or prior permission of the competent authority.

In this regard, proper departmental proceedings were initiated against him and DSP FRP HQrs. was nominated as Enquiry Officer to conduct enquiry into the matter. After completion of enquiry, the Enquiry Officer submitted his finding report, wherein he stated that in reply of Charge Sheet the delinquent constable has narrated that at the time of occurrence, he was on duty at the office of Advocate General Peshawar High Court Peshawar. The Enquiry Officer further added that he obtained BBA, but later on he failed to appear before the court concerned and remained absconder. Hence, he was declared as proclaimed offender in the said criminal case and finally the Enquiry Officer recommended him for ex-parte action.

Upon the finding of Enquiry Officer, he was issued Final Show Cause Notice through Pakistan Post/Mail registry to which he received but he failed to submit any reply. Besides, he was called for personal hearing in orderly room but he also failed to avail this opportunity.

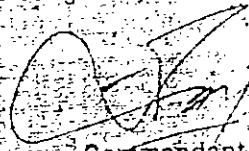
Keeping in view the above narrated facts and other material available on record, he was awarded major punishment of removed service vide OB No. 528, dated 16.06.2021.

Feeling aggrieved against the impugned order of Deputy Commandant FRP, Khyber Pakhtunkhwa, Peshawar, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 04.10.2023.

During the course of personal hearing, the applicant failed to present any justification regarding to his innocence. Thus the applicant has been found to be an irresponsible person in utter disregard the discipline of the force. Therefore any leniency or complacency would further embolden the accused officer and impinge upon adversely on the overall discipline and conduct of the force. There doesn't seem any infirmity in the order passed by the competent authority, therefore no ground exist to interfere in same.

Based on the findings narrated above, Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being badly time barred and meritless.

Order Announced



Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar

No. ~~922/S-28~~ SI. Legal, dated Peshawar the 04.10.2023.

Copy of above is forwarded for information and necessary act on to the:

1. OASI/SRC/Incharge, Fauji Missal FRP HQrs, Peshawar. His Service record alongwith D-file sent herewith.
2. Ex-constable Tilawat Khan No. 650 FRP HQrs; S/o Munaf Khan R/o Village Umar Miana, Police Station Umar, District Peshawar.

A Hes Heel



ORDER

This order will dispose of the departmental appeal preferred by ex- constable Tilawat Khan No. 650 of FRP HQrs; against the order of Deputy Commandant FRP, Khyber Pakhtunkhwa, Peshawar issued vide OB No. 528, dated 16.06.2021. wherein he was awarded major punishment of removal from service Brief facts of the case are that the applicant was found involved in criminal case vide FIR No. 550, dated 13.07.2020, U/S 302/34/148/149 PPC, Police Station Urmar, District Peshawar and also absented himself from lawful duty with effect from 17.01.2021 till the date of his removal from service i. e 15.06.2021 for total period of 04 months 28 days without any leave or prior permission of the competent authority.

In this regard, proper departmental proceedings were initiated against him and DSP FRP HQrs, was nominated as Enquiry Officer to conduct enquiry into the matter. After completion of enquiry, the Enquiry Officer submitted his finding report, wherein he stated that in reply of Charge Sheet the delinquent. constable has narrated that at the time of occurrence, he was on duty at the office of Advocate General Peshawar High Court Peshawar. The Enquiry Officer further added that he obtained BBA, but later on he failed to appear before the court concerned and remained absconder. Hence, he was declared as proclaimed offender in the said criminal case and finally the Enquiry Officer recommended him for ex-parte action.

Upon the finding of Enquiry Officer, he was issued Final Show Cause Notice through Pakistan Post Mall registry to which he received but he failed to submit any reply. Besides, he was called for personal hearing, in orderly room but he also failed to avail this opportunity.

Keeping in view the above narrated facts and other material available on record, he was awarded major punishment of removed service vide OB No. 528 dated 16.06.2021

Feeling aggrieved against the impugned order of Deputy Commandant FRP Khyber Pakhtunkhwa, Peshawar, the applicant preferred the instant appeal The applicant was summoned and heard in person in Orderly Room held on 04.10.2023.

During the course of personal hearing, the applicant failed to present any justification regarding to his innocence. Thus the applicant has been found to be an irresponsible person in utter disregard the discipline of the force. Therefore any leniency or complacency would further embolden the accused officer and impinge upon adversely on the overall discipline and conduct of the force. There doesn't seem any infirmity in the order passed by the competent authority, therefore no ground exist to interfere in same.

Based on the findings narrated above, I, Commandant FRP Khyber Pakhtunkhwa, Peshawar being the competent authority, has found no substance, in the appeal, therefore, the same is rejected and filed being badly time barred and meritless.

Order announced

Sd/

Commandant

Frontier Reserve Police

Khyber Pakhtunkhwa Peshawar

No. 9775-78/SI Legal, dated Peshawar the 05-10-2023

Copy of above is forwarded for information and necessary action to the

- 1. OASI/SRC/Incharge Fauji Missal FRP HQs, Peshawar. his service record along with D-file sent therewith
- 2. EX-constable Tilawat Khan NO. 650 FRP HQs S/o Munaf Khan R/o Village Urmar Miana Police Station Urmar District Peshawar

عنوان :- درخواست ہمراہ چالی برسوں

35

Annex - G جناب عالی !

گزشتہ چند سالوں سے 2004ء کا بھرتی شدہ کمیشن ہے اور اپنی
ٹیوٹی قوانین اور ایجنڈا داری سے ایجنڈا کے ریجنل لیڈر (وران ڈیوٹی پر مقرر
سے مسائل کے خلاف اپنا فراخمت اور بے پریار FIR درج کی گئی جس کی بنا پر
پھر مسائل کے خلاف حکیمانہ انکوائری شروع ہوئی اور مسائل کو نوکری سے فریضہ
کر دیا گیا۔

چونکہ فرا مسائل کو درجہ بالا FIR پھر سے عدالت متعلقہ ہے پھر
طور پر ہی رقم قرار دیا جس کا عمل کا پے ہمراہ درخواست لوائے۔
مسائل نے جناب کمانڈر منج صاحب کو چالی کیلئے ایسے دائر کی لیکن
برقستی سے مسائل کا ایسے خارج کر دیا گیا۔

چونکہ مسائل اپنا سہایت غریب گھرانے سے تعلق رکھتا ہے دیگر کوئی
حاشا نہیں گھری کوالٹی کی ساری رقم داری مسائل کے گمبھوں پر ہے اور
مسائل کے گناہ ہے اسلئے عدالت نے مسائل کو مقدمہ بنانا سے ہی کر دیا گیا
لیذا آپ ہامیان سے پد ریف درخواست استدعا ہے کہ مسائل کی
درجہ بالا کے گناہوں، فلسفے لاجاری اور عدالت کے فیصلے کو مدنظر رکھتے
ہوئے جملہ مراعات کیسے دیا جائے اور اپنا نوکری پر بحال کرنے کا حکم صادر
فرما کر مسئلہ فرمائیں۔ مسائل اور اسکا خاندان آپ ہامیان کیلئے
ماتر رہتے۔

عین نواز شاہوٹی

اللہ

آپکا تابع الحکم سابقہ کمیشن تلافی خان نمبر 650 FRP/HA پشاور

0313-5983238

Handwritten signature

Attached

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Annex

(H)



(38)

Annex H.

(38)

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.
Phone: 091-9210927

No. S/ 2656 /23, dated Peshawar the 31/10/2023

To : The Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

8856
2. 11. 23

Subject: - REVISION PETITION

Memo: The Competent Authority has examined and filed the revision petition submitted by Ex-FC Tilawat Khan No. 650 of FRP HQs: against the punishment of removal from service awarded by Dy: Commandant FRP Khyber Pakhtunkhwa vide OB No. 5 dated 16.06.2021 as being time-barred.

The applicant may please be informed accordingly.

SI Legal FRP

(AFSAR JAN)
Registrar,

For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

Dy. Comdt FRP

OFFICE OF THE COMMANDANT FRP ICP, PESHAWAR.
No. 10796-8081 Legal, dated 06/11/2023.

copy of the above is forwarded for information & further necessary action to the:-

- ① D'sp/OASI FRP HQs: Peshawar
- ② SRC/Incharge Fauji Missal FRP HQs:
- ③ Ex-FC Tilawat Khan No. 650 FRP HQs:

o/c Deputy Commandant FRP

Attached

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WAKALATNAMA

IN THE COURT OF Service Tribunal Peshawar

Tilawat Shah (Petitioner), (Plaintiff), (Appellant), (Complainant)

VERSUS

K9 Police (Respondent), (Defendant), (Accused)

Case FIR No

Dated: / /

Police Station

I/We,

TILAWAT SHAH

The above noted Pch hrs do hereby appoint and authorize ZIA-UR-REHMAN TAJIK **ADVOCATE**, Supreme Court of Pakistan to compromise, withdraw or refer to arbitration for me/us as my/our Counsel in the above noted matter, I/we also authorize the said Counsel to file Appeal, Revision, review, Application for Restoration, compromise, withdraw, refer the matter for arbitration and make any Miscellaneous Application in the matter or arising out of matter and to withdraw and receive in my/our behalf all sums and amount deposited in my/our account in the above noted matter.

ACCEPTED

[Signature]

Zia-ur-Rehman Tajik
L.L.B, L.L.M; Diploma in Sharia Law
Advocate Supreme Court of Pakistan
CNIC No. 15302-0893288-1
BC- 10-0308

[Signature]
CLIENT

17301-1632545-5

[Signature]
Jabir Khain
Advocate Peshawar

[Signature]
Salman Bini Ihsan
Advocate High Court