


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

**Appeal No. 2585/2023**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge.
1	2	3
1-	13/12/2023	<p>The appeal of Mr. Zakir Khan resubmitted today by him. It is fixed for preliminary hearing before touring Single Bench at Swat on _____</p> <p>By the order of Chairman  REGISTRAR</p>

Respected Sir,

It is submitted that the present appeal was received on 16.11.2023 after thoroughly scrutinizing the same so many deficiencies were found in it, which was returned to the learned counsel for the appellant for completion and resubmission within in 15 days. Today i.e. on 06.12.2023 the learned counsel for the appellant re-filed the same without removing the objections.

The appeal is now submitted to your honour under rule-7 (c) of Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.

Worthy Chairman

REGISTRAR

07/12/23

objections sustained. Be A  
objections sustained for resubmission  
within 15 days of objection



7

11/19/23

3832

12.12.23

جناب عالی!

- 1) بجیشن نمبر 1 کو دستخط کرنے قسم کر دیا۔
- 2) بجیشن نمبر 2 کو مکمل کر دیا۔ بطریقہ عمل غلطی و تحقیر کر دیا۔
- 3) بجیشن نمبر 3 سید 27 پر موجود ہے۔ یہ اپیل میں ڈیڑھی سے دیر نوٹ کر لیا گیا تھا۔ انہوں نے SMBR کو فارورڈ کیا تھا۔ لیکن ابھی تک حوالہ نہیں

Appellant 13-12-2023

The appeal of Mr. Zakir Khan son of Said Raziq Junior Clerk Office of the D.A. Dir Nowshera received today i.e on 15.11.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ① Memorandum of appeal be is not signed by the appellant.
- ② Copy of service restoration order mentioned in para-3 of the memo of appeal is not attached with the appeal be placed on it.
- ③ Copy of departmental appeal against the impugned dismissal order is not attached with the appeal be placed on it.

No. 3595 /S.T.

Dt. 16-11 /2023.



REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Sohail Ahmad Adv.  
High Court Swat.

اعترافات میں سے اعتراضی غبرا کے ضمن میں عرضی عدالت  
جس فقرہ میں جس منسلک کا جو الر دیا گیا ہے وہ دراصل  
کا منسلک ہے اور جس منسلک پر ایپلٹ لریا ہو چکا ہے  
وہ فائل پر موجود ہے۔ اور منسلک محررہ — ایم  
نہیں ہے۔ کیونکہ وہ منسلک عدالت عالیہ لیا عدالتی کورٹ  
دارالصفاء کے منسوخ کرتے ہوئے ایپلٹ کو لریا گیا  
گی ہے۔ اور حکمانے کی پہلی، دیگر کاغذات فائل لریا  
موجود ہے۔

جناب عالی

1-12-023

اپیل عنوان بالا کو اعتراضات کے ساتھ ورسٹل عدالت

موصوف فرمایا جاوے۔



5/12/2023

BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 45 of 2023

Zakir khan S/o Said Raziq posted at the office of deputy commissioner Dir lower as a junior clerk (BPS-11). .....Appellant

**VERSUS**

1. Government of Khyber pakhtunkhwa through the secretary, Board of revenue, Revenue & Estate department.
2. Commissioner Malakand at Saidu sharif swat
3. Deputy Commissioner, Dir Lower.

.....Respondents

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Appellant

Through Counsel

  
SOHAIL AHMAD

Advocate

Office No. 3-5, 3<sup>rd</sup> floor, sultan tower  
Makanbagh Mingora swat  
Cell:03459452146

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BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2023

Zakir khan S/o Said Raziq posted at the office of deputy commissioner Dir lower as a junior clerk (BPS-11). .....Appellant

VERSUS

1. Government of Khyber pakhtunkhwa through the secretary, Board of revenue, Revenue & Estate department.
2. Commissioner Malakand at Saidu sharif swat
3. Deputy Commissioner, Dir Lower.

.....Respondents

Appeal U/s 4 of service tribunal Act, 1974, against  
the impugned order dated 12-07-2021 vide which  
the respondent NO. 3 has issued dismissal order of  
Petitioner on account of a baseless criminal case.

Respectfully Sheweth:

Brief facts of the case which have given rise for filing the instant service appeal are as under;

- 1) That the appellant was appointed as a junior clerk BPS-11 vide order No.12473/7/Estt: dated 12/08/2016 in the office of deputy commissioner, Dir Lower, where he performed almost two years of his service with full devotion and commitment till 21/06/2018. (Appointment order dated 12/08/2016 is attached herewith as annexure "A")
- 2) That the appellant was falsely implicated in case FIR No.227 dated 16/09/2019 U/S 364/511 PPC, 53 CPA of P.S Chakdara; on conclusion of trial the learned trial court vide order dated 30/06/2021 convicted the appellant under multiple penal provisions of law.

- 2
- 3) That on the strength of conviction order of learned trial court dated 30/06/2021 the respondent No.3 has issued dismissal order dated 12/07/2021 of appellant illegally, it is to clarify that prior to the instant dismissal order the respondent No.3 has issued a suspension order of the appellant bearing endorsement No.14200-03/Estt: dated 22/06/2019 on the basis of another false FIR No.340 dated 17/06/2018 U/S 496-A/511 PPC read with section 50 of CPA, P.S Ouch which was finally culminated into the acquittal of appellant by learned additional session judge vide order dated 08/01/2019 and thereafter the service of the appellant was restored. (Copy of dismissal order dated 12/07/2021 is attached herewith as Annexure "B")
- 4) That the conviction order was challenged through criminal appeal No. 187-M/2021 and the learned high court mingora bench vide its order dated 11/01/2023 allowed the appeal and the appellant and was acquitted. (Copy of acquittal order dated 11/01/2023 is attached herewith as annexure "C")
- 5) That the appellant after his acquittal order on 27/01/2023 filed a departmental representation against his dismissal order, the respondents were bound under the law to decide the fate of departmental representation within a stipulated period of time but despite of reminder dated 04/09/2023 the responded No.3 remained mum by not deciding the appeal of the appellant, therefore the appellant filed a writ petition bearing No.1095-M/2023 which was disposed of vide order dated 17/10/2023 and the appellant was allowed to approach to the appropriate forum i.e KP Service tribunal, hence the instant appeal on the following amongst others grounds. (copy of departmental appeal dated 27/01/2023 is attached herewith as annexure "D", copy of reminder dated 04/09/2023 is attached herewith as annexure "E", copy of order dated 17/10/2023 in

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writ petition No.1095-M/2023 is attached herewith as annexure "F" )

**GROUND:-**

- a) That the orders of dismissal dated 12/07/2021 by respondent NO. 3 is illegal, against the law and facts and void ab-initio.
- b) That the dismissal order is not sustainable as the conviction order of the appellant has already been set-aside by High-court vide order dated 11/01/2023 in other words the dismissal order which is based on the allegation of a criminal case is already discarded by competent court of jurisdiction, hence in this view of the matter the appellant was penalized for the alleged misconduct which has never been committed by him, on this score alone the respondents were duty bound to set-aside the previous dismissal order of the appellant and to re-instate him in his service w.e.f 12/07/2021.
- c) That the appellant was appointed as junior clerk and since his appointment there is no adverse entry in his entire record to question the eligibility and fitness of the appellant.
- d) That, the impugned order in all circumstances is not maintainable being arbitrary, fanciful and based on presumptions and conjectures hence liable to be set-aside.
- e) That the inaction of respondents upon the departmental appeal of the appellant shows malafide on the part of respondents. So their orders are against the norms of Justice and liable to be recalled.
- f) That the appellant was condemned on mere suspicion and conjecture and the order of dismissal is only based on anticipation which was finally ruled out by the august High-court.

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It is therefore humbly prayed that on acceptance of this instant service appeal the impugned order dated 12-07-2021 of respondent No.3 may kindly be set-aside and previous length of service of the appellant may kindly be restored w.e.f the illegal dismissal order dated 12-07-2021 while the ibid order may kindly be declared unlawful, void ab-initio and resultantly the appellant be reinstated on the post of junior clerk (BPS-11) with all back benefits.

Any other remedy which is just appropriate may also be awarded though not specifically prayed for.

Appellant

Through



SOHAIL AHMAD

(Advocate)



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BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2023

Zakir khan S/o Said Raziq posted at the office of deputy commissioner Dir lower as a junior clerk (BPS-11). .....Appellant

VERSUS

1. Government of Khyber pakhtunkhwa through the secretary, Board of revenue, Revenue & Estate department.
2. Commissioner Malakand at Saidu sharif swat
3. Deputy Commissioner, Dir Lower.

.....Respondents

Certificate:-

It is certified that no such like service appeal is admitted by the appellant before this honorable court or pending or decided by this honorable court.

Appellant

Through



SOHAIL AHMAD

(Advocate)

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BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2023

Zakir khan S/o Said Raziq posted at the office of deputy commissioner Dir lower as a junior clerk (BPS-11). .....Appellant

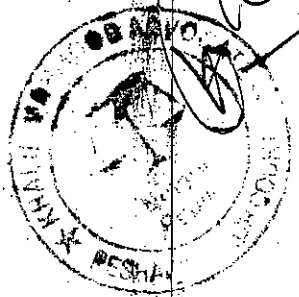
**VERSUS**

1. Government of Khyber pakhtunkhwa through the secretary, Board of revenue, Revenue & Estate department.
2. Commissioner Malakand at Saidu sharif swat
3. Deputy Commissioner, Dir Lower.

.....Respondents

**AFFIDAVIT**

I, Zakir khan S/o Said Raziq posted at the office of deputy commissioner Dir lower as a junior clerk (BPS-11), do hereby solemnly affirm and declare on oath that all the contents of this Service appeal are true and correct to the best of my knowledge and nothing has been kept Concealed before this Honorable Court



14-11-23

DEPONENT

ZAKIR KHAN

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BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2023

Zakir khan S/o Said Raziq posted at the office of deputy commissioner Dir lower as a junior clerk (BPS-11). .....Appellant

**VERSUS**

1. Government of Khyber pakhtunkhwa through the secretary, Board of revenue, Revenue & Estate department.
2. Commissioner Malakand at Saidu sharif swat
3. Deputy Commissioner, Dir Lower.

..... Respondents

**ADDRESSES OF PARTIES**

**PETITIONERS:**

Zakir khan S/o Said Raziq posted at the office of deputy commissioner Dir lower as a junior clerk (BPS-11), P.O and village Ouch east Muhalla Kuz Palaw, District Dir Lower.

CNIC No: 15302-2190807-5

Cell No: 0319 3129971

**RESPONDENTS:**

1. Government of Khyber pakhtunkhwa through the secretary, Board of revenue, Revenue & Estate department.
2. Commissioner Malakand at Saidu sharif swat
3. Deputy Commissioner, Dir Lower.

Appellant  
Through



SOHAIL AHMAD

Advocate



OFFICE OF THE  
DEPUTY COMMISSIONER,  
DIR LOWER.

No. 12423 / 17 / Estt:  
Dated Timergara the 12/18/2016.

**OFFICE ORDER:**

Consequent upon the recommendation of Departmental selection Committee, Mr. Zakir Khan S/O Said Razaq resident of Village Ouch Sharqee Tehsil Adenzai Dir Lower, is hereby appointed as Junior Clerk (BPS-11) ( 10510-740-32710) in the office of the Deputy Commissioner, Dir Lower on the following terms and condition with immediate effect on regular basis:-

1. He shall produce Health & Age certificate form Medical Superintendent, District Headquarters Hospital Timergara.
2. He Shall report for duty within 15 days of the issuance of this order.
3. His appointment is purely on temporary basis and subject to verification of his academic documents from the concerned University/Board and clearance of concerned Police Station.
4. He will draw pay and allowances, TA, etc as admissible to BPS-11 category of Government Servants, to which he belongs, under the rules.
5. He will be entitled to all facilities/benefits as admissible under the rules to the category of Government Servants in BPS-11.
6. He will be on probation for a period of one year, extendable to another year.
7. He will deduct GP Fund, B/Fund, Group Insurance etc as per Government Rules.

In case he accepts the above conditions, he should report for duty within fifteen days of the issuance of this office order.

No. 12474-76 / Estt:

Copy forwarded to:-

1. The District Accounts Officer, Dir Lower.
2. The Accountant, Local office.
3. Mr. Zakir Khan S/O Said Razaq resident of Village Ouch Sharqee Tehsil Adenzai Dir Lower.  
For information.

Deputy Commissioner,  
Dir Lower.

Deputy Commissioner,  
Dir Lower.

Deputy Commissioner,  
Dir Lower.



OFFICE OF THE  
DEPUTY COMMISSIONER  
DIR LOWER

No. 9851 /Estt:  
Dated Timergara the 12 /07/2021

Posting and Transfer 2

[dcdirlower@gmail.com](mailto:dcdirlower@gmail.com) deputy Commissioner Dir Lower, @dcdirlower 0945-9250001

**OFFICE ORDER:-**

Whereas, on the report of Superintendent of Police Investigation Dir Lower vide his memo: No. 2500/GB dated 20/06/2018s, Mr. Zakir Khan S/O Said Raziq resident of Ouch Tehsil Adenzai Dir Lower, serving in this office as Junior Clerk (BPS-11) was involved in case FIR No. 340 dated 17/6/2018, U/S 496-A/511 PPC Read with Section 50 of Child Protection Act, PS Ouch.

Whereas, in view of the above the said official was suspended vide this office order bearing endorsement No. 14200-03/Estt: dated 22/6/2018.

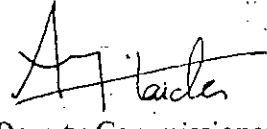
Whereas, in light of the decision of Additional & Session Judge Dir Lower at Chakdara dated 08/01/2019, the suspension order was withdrawn vide this office endorsement No. 12013/Estt; dated 30/1/2019.

Whereas, the District Police Office Dir Lower, sent a report vide his memo: No. 22095/GP dated 20/9/2019, stating therein that Zakir Khan S/O Said Raziq resident of Ouch Sharqi Koz Palawo Tehsil Adenzai Dir Lower (Serving in this office as Junior Clerk) is involved in case FIR No. 227 dated 16/9/2019, u/s 364/511/53 CPA.PPC PS Chakdara.

Whereas, the Additional Session & Judge/Judge Child Protection Court Chakdara, Dir Lower vide his decision/order dated 30/6/2021 (Para 30), has convicted the said official, u/s 364-A, read with section 511 PPC and has sentenced him to undergo rigorous imprisonment for 10-years and is also find Rs. 100000/= (One Lac) and incase of default the accused official shall further undergo rigorous simple imprisonment for a period of 06-months.

He is further been convicted under section 53 of Child protection welfare 2010 and has been sentenced to undergo imprisonment for 10-years.

Now, therefore, the undersigned as a competent authority under the Khyber Pakhtunkhwa, E&D Rules, 2011 (Para 4 &8) do hereby ordered the dismissal from service of Zakir Khan, Junior Clerk son of Said Raziq resident of village Ouch Sharqi Koz Palawo with effect from 01/07/2021.

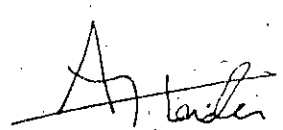
  
Deputy Commissioner,  
Dir Lower

No. 9852-55/Estt

Copy forwarded to:-

1. The District Accounts Officer, Dir Lower.
  2. The Assistant Commissioner, Lalqilla.
  3. The Accountant Local Office.
- } For information and necessary action sofar, they are concerned.

④ Mr. Zakir Khan, Junior Clerk son of Said Raziq resident of village Ouch Sharqi Koz Palawo Tehsil Adenzai Dir Lower.

  
Deputy Commissioner,  
Dir Lower

9/10  
Signature

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**MINGORA BENCH (DAR-UL-QAZA), SWAT**  
**(Judicial Department)**

1. Cr.A No. 187-M/2021  
(Zakir Khan v. Wahid-ur-Rehman & the State)

2. Cr.R No. 43-M/2021  
(Wahid-ur-Rehman v. Zakria & the State)

**Present:** M/S Hafiz Ashfaq Ahmad and Rahman Ali,  
Advocate for the appellant/convict.

Mr. Alam Khan Adenzai, Asstt: A.G for the  
State.

Mr. Attaullah, Advocate for the respondent/  
complainant.

Date of hearing: 11.01.2023

**JUDGMENT**

**Dr. Khurshid Iqbal, J.-**

1. Through this single judgment, we intend to decide the instant appeal Cr.A No. 187-M/2021 filed by the appellant/convict against his conviction and sentences awarded to him in a case FIR No.227 dated 16.09.2019 registered u/ss. 364-A/511, PPC read with section 53 of the Child Protection & Welfare Act, 2020 (C.P.A), by the learned trial Judge vide impugned judgment dated 30.06.2021 as well as a connected Cr.R No. 43-M/2021, filed by the respondent Wahid-ur-Rehman against the same judgment of the trial Court for the enhancement of sentences awarded to the appellant/convict.

~~Wahid-ur-Rehman~~

A

(40) (11)

2. Necessary facts of the case are that the complainant, Wahid-ur-Rehman (PW-2), reported the matter to the local police in Police Station Chakdara that on 16.09.2019, he, alongwith his father and other family members, was present in his house. At about 10:30 hours, on hearing noise outside his house, he came out and saw a man who was forcibly setting his minor daughter aged about 4/5 years on a motorcycle, while she was weeping. When he shouted, the man fled away from the spot and left the minor girl alongwith the motorcycle. The complainant and his father chased him and caught hold of him with the help of co-villagers. On checking his CNIC, he was identified Zakir Khan son of Said Raziq, a resident of Ouch Sharqi, Koz Palow (CNIC #. 15302-2190807-5), now appellant before us. The occurrence besides him, was statedly witnessed by Amir Zaman son of Abdul Mateen Khan and Hidayatullah son of Muhammad Nabi. He charged the appellant for abducting his minor daughter, namely, Mst. Khalor Bibi, for sexual abuse, on which, the aforesaid FIR (Ex:PA) was lodged.

3. On completion of investigation, challan was submitted against the appellant Zakria Khan before the learned trial Court, who was supplied copies

from the relevant record u/s. 265-C, Cr.PC. Charge was framed against him, to which he pleaded not guilty and claimed trial.

4. The prosecution examined as many as eleven (11) PWs and thereafter, statement of the appellant/convict was recorded u/s. 342, Cr.PC, wherein he denied all the allegations leveled against him by the prosecution and professed innocence. He also recorded his statement on oath u/s.340(2), Cr.P.C. However, he did not opt for producing evidence in defence.

5. After hearing arguments of the learned A.P.P, for the State, and learned counsel for the parties, the learned trial Judge vide the impugned judgment dated 30.06.2019, convicted the appellant Zakria Khan and sentenced him as under:

- i. U/s.364-A read with section 511, PPC, to undergo rigorous imprisonment for 10 years and also imposed a fine R.100,000/- (rupees one lac);
- ii. U/s. 53, C.P.A, to undergo ten years rigorous imprisonment and imposed fine of Rs.100,000/- (rupees one lac).

However, benefit of section 382-B, Cr.P.C., was extended to the appellant/convict.



(12)

(13)

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6. Being aggrieved, the appellant preferred the instant appeal Cr.A No.187-M/2019 for his acquittal in the case while the respondent/complainant filed a revision petition Cr.R No.43-M/2019 for enhancement of sentences awarded to the appellant.

7. We have heard arguments of learned counsels for the appellants/accused, learned counsel for the complainant as well as the learned Additional Advocate General, for the State and perused the record.

8. The crucial aspect of the case in hand is that the minor girl, namely, Mst. Khalor Bibi, aged about 4/5 years, the victim of the crime was not examined in the manner as required. She was produced for evidence at the trial on 18.02.2021. The trial Court recorded an observation that she was found not capable of giving evidence. Probably the learned trial Court found her too young to record her testimony. She was the star witness of the prosecution. In spite of the fact that on observation she was not found capable as a witness, we believe that the learned trial Court should have gone further before simply abandoning the crucial exercise as part of the trial. Subject to the conditions laid down in Articles 3 and 17 of the Qanun-e-Shahadat Order, 1984 (Q.S.O), there is no bar on the competency of a child to be a witness irrespective of

*Ummul*

his/her age. A close reading of the above referred provisions evinces that a witness, including most particularly, a child in the personal context must pass what is known as the "rationality test", which means the capacity and intelligence of a witness to understand the question put to him and the ability to rationally respond to question. In the case of Raja Khurram Ali Khan and 2 others vs Tayyaba Bibi and another, reported as PLD 2020 Supreme Court 146 [Supreme Court of Pakistan], our Supreme Court has observed that as compared to our judicial approach, Courts in other jurisdictions are more interactive with child witnesses during recording of their entire evidence. The Court has referred to a 1993 case, in which, the Canadian Supreme Court designed three pronged criteria of the capacity to observe (including interpretation), recollect and communicate. The relevant para of the judgment may be reproduced as under:

"46. In other common law jurisdiction, the Courts are more inter-active with the child witnesses during the recording of their entire evidence. Justice McLachlin, speaking for the Canadian Supreme Court in the case of, R. v. Marquard [1993] 4 S.C.R. 223, has explained with precision the competency of the child witness, by stipulating the following criteria for testing the same in terms:

...(1) the capacity to observe (including interpretation); (2) the capacity to recollect; and (3) the capacity to communicate.... The judge must satisfy

AT

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him or herself that the witness possesses these capacities. Is the witness capable of observing what was happening? Is he or she capable of remembering what he or she observes? Can he or she communicate what he or she remembers? The goal is not to ensure that the evidence is credible, but only to assure that it meets the minimum threshold of being receivable.....Generally speaking, the best gauge of capacity is the witness's performance at the time of trial.... [T]he test outlines the basic abilities that individuals need to possess if they are to testify. The threshold is not a high one. What is required is the basic ability to perceive, remember and communicate. [once] This established, deficiencies of perception, recollection of the events at issue may be dealt with as matters going to weight of the evidence."

9. Our Supreme Court urged the Courts to follow the above referred approach and strongly advised for compliance of the directions given in paras 49 and 50, which are reproduced as below:

*Handwritten signature*

"49. In other jurisdictions, we note that great care is taken to ensure that such child witnesses are able to depose their testimony at ease. By taking measures in the court room to lessen their stress and anxiety of court-room appearances in such a tender age. Such measures include child witness aid in testifying, screens in court rooms, closed courtrooms and counsellor aid before and after recording of evidence, which needs to be adopted and practiced in our jurisdiction in cases wherein a child victim is to appear as a witness. In this regard, we expect the respective governments to take appropriate legislative and administrative measures for ensuring the much needed protection and facilitation of child witnesses.

*Handwritten mark*

(X)

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50. As for the presiding trial Court judges, they should take appropriate steps during the court proceedings to ensure that the child witnesses depose their testimony with ease, and that too, in a stress-free environment. In cases where the child witness is unable to depose in the court room, and his evidence is 'necessary' to find the truth, and it has a ring of 'circumstantial trustworthiness', then courts, as practiced in other common law jurisdictions, may consider in appropriate cases, allowing out-of-court evidence, as an exception to the 'hearsay rule'. Wigmore, a notable American scholar on the law of evidence, in his book Wigmore on Evidence, Volume 5 (Chadbourn rev. 1974), identified two considerations, which may serve as an exception to the 'hearsay rule': 'a circumstantial probability of trustworthiness, and a necessity for the evidence.'

10. In the case in hand, the learned trial judge did not take a pain to ensure the victim speak to the Court. We believe and expect the trial Court judges to follow these guidelines in such like cases.

*Wigmore*

11. We may here add a perspective from the UK's Youth Justice and Criminal Evidence Act, 1999 (text of the law at <https://www.legislation.gov.uk/ukpga/1999/23/content>, last accessed on 12/03/2023).

The law provides that all persons irrespective of age are competent to give evidence. However, the witness must be able to understand the question put to him as a witness and he/she give answers to questions which can be understood. It means a witness must be able to understand the question and the answer given must be capable of being understood (Section 53).

*ad*

(116)

(17)

12. The law further provides that in criminal proceedings, a child under the age of 18 at the time of hearing is eligible for assistance on the ground of age [S. 16 (1) (a)]. The time of hearing means the stage in the trial when the court has to make a determination for the purpose of special measures direction under section 19(2).

13. Once the court has determined that a witness is eligible for assistance [*a child by virtue of section 16 (1) (a)*], it must then determine that any one or more special measures would be likely to improve the quality of evidence given by the witness.

14. The special measures the law provides are:

- Screening witness from accused
- Evidence by live link
- Evidence given in private
- Removal of wigs and gowns
- Video recorded evidence in chief, cross-examination or re-examination
- Examination of witness through intermediary Aids to communication (*sections 23-30*).

*Muhammad*

15. The purpose of the law is to help disadvantaged witnesses, such as, children under the age of 18, and those suffering with mental disorder or otherwise has significant impairment of intelligence and social functioning. The law lays down a host of

*MA*

(18)

special measures which a court may employ to improve the quality of such vulnerable witnesses. Often a child abuse case hinges on the evidence of just one witness, as the victim of a crime. The special measures per the law helps make such witness to give better evidence and more confidently in a milieu of juvenile justice. Perhaps, it may be more helpful to follow the observations of the above referred observations of the Supreme Court as another best practice example.

*Wahid*

16. Coming to the remaining ocular account, the same comprises of the deposition of Amir Zaman Khan (PW1) and Wahid-ur-Rehman, the complainant/ father of the victim (PW2), respectively. The deposition of PW2/complainant would reveal that on the day of occurrence (16.09.2019 at 10:30 am), while he was present in his house alongwith his father, he heard noise. When came out of his house, he saw that the appellant had forcibly made his daughter, the victim, sit on the motorcycle and she was shouting. When he asked him, the appellant left the motorcycle and tried to run away from the scene. His father and other residents also came out and took hold of him after having been chased. He alleged that the appellant was abducting the victim for sexual assault.

PW1 rather furnished a shorter deposition in his examination-in-chief, which shows that on the day of the occurrence, while he was going to purchase some grocery items from a shop in village Adam Dherai, he got attracted on the noise, saw that the appellant was abducting the victim on his motorcycle. The appellant was chased by him, the father and grandfather of the victim and other residents of the village and taken hold of him alongwith the motorcycle. The cross examination of PW2 divulges that when he came out, he saw that the motorcycle of the appellant was not in started condition and the victim was sitting on the motorcycle and at that time, no other person was there. The cross examination of PW1 shows that when he reached to the spot, he saw the victim sitting on the motorcycle and the appellant not sitting there but was trying to run away. The deposition further shows that when he reached the spot, he saw that the appellant was sitting on the motorcycle and was trying to run away. That the victim was sitting on the front part of the motorcycle. The appellant was not holding her and she was weeping. It is, thus, doubtful as in which mode and manner both the PWs witnessed the occurrence. The circumstances show that the appellant could easily run away even while successfully abducting the victim while sitting on the motorcycle. PW1, in one breath deposed that when he reached, the appellant was not

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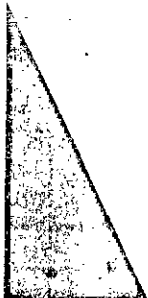
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(A)      (20)

sitting on the motorcycle and was trying to decamp. In the next breath, he stated that when he reached, the appellant was sitting on the motorcycle and was trying to decamp. Then, if the victim was sitting on the motorcycle and weeping and not in clutches of the appellant, she was surely to fall down if the appellant was trying to run away on the motorcycle.

17. The site plan of the occurrence depicts that the house of the complainant party to the west and a vacant house of one Muhammad Iqbal, to the east of the public thoroughfare, which turns towards west. The aforesaid public path of village Adam Dherai at points 3A, A1 and 4A in the south turns towards west. Towards the south of the public path, the open fields of the village are shown. The site plan does not depict the house of the PW1. It is doubtful as to whether he is a resident of the same locality and how he suddenly got attracted to the spot. The prosecution contended that there were so many other residents of the village who successfully overpowered the appellant and took him to the Police Station alongwith the motorcycle, but no other witnesses were examined as witnesses of the occurrence.

18. Regarding the allegation of abduction for the purpose of sexual assault, PW1 remained silent except the statement of PW2 (complainant), there is no





(X) (2)

other evidence of the prosecution. Moreover, the Investigating Officer (PW10) did not record the statement of the victim. He did not verify the site plan from the victim. The I.O did not confirm whether the victim was capable to record her statement. He did not record statements of the owners of the nearby fields depicted in the site plan.

19. We would now advert to the previous involvement of the appellant and a family suit his wife filed against him due to his implication in the present case and her application that she wants divorce from him because of his habit of abducting children. MHC Abbas Khan (PW6), after having recorded the report of the complainant in the shape of the FIR, inquired from the Police Station of Ouch about the Appellant. He was informed that another FIR No.340 dated 17.06.2018 u/ss. 364-A, PPC read with 53 CPA in that Police Station was registered against him, in which, he was stated to have been released on bail.

20. After having been examined u/s.342, Cr.P.C, the appellant availed opportunity of recording his statement on oath u/s.340(2) of the Cr.P.C. In his statement on oath, while denying the charge, he deposed that on the eventful day, he was in Chakdara Bazar in connection with preparing a photo of his own

that was required to be annexed with his application for employment in the rescue 1122. He stated that there was a CCTV camera in front of the shop. He further deposed that he was also purchasing *Kheer* (pudding) for his daughter from a milk shop, for which purpose he entered in the shop and when he came out, found his motorcycle missing. While he was standing there, the complainant came there and started an altercation with him, at a result of which, he was taken to the Police Station. He complained that the CCTV photage was not obtained by the I.O despite his repeated requests and rather he was brutally beaten as a result of which he became ill. In this respect he also produced copies of his medical treatment comprising of 25 pages. The statement further shows that when he came to know that his motorcycle was missing, he made a cellular call from his SIM No.0344-9773642 to his home but the CDR was not obtained despite his repeated requests. He admitted that legally he can have more than one SIMS of his mobile phone. He also deposed that he has been implicated in the case due to his political affiliations. While under cross examination, he stated that he holds a master degree in Physics,

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working as a clerk in the Deputy Commissioner office and that he is under the legal bar not to take part in politics. He admitted having made no report regarding missing his motorcycle. He stated that he does not know a village, Adam Dherai. He stated that he was acquitted in the previous criminal case u/s. 364-A, PPC. Regarding the family suit, he admitted that the same was filed against him, but later on, his wife withdrew it. He produced photocopy of the compromise deed dated 11.02.2020 Ex:PW/D1. The aforesaid document shows that his wife had withdrawn the family suit and denied from having made any application that the appellant was involved in abduction of children.

*W/withd*

21. On the strength of above reappraisal of evidence, we have reached to the conclusion that the prosecution has failed to bring home the charge against the appellant beyond any shadow of doubt. At the trial, the victim as not examined at all. While there could not be no gainsaying the fact the victim was observed as a witness, the Court did not make a demonstrable endeavour to establish it. The I.O did not a Medical Doctor about her exact age and her prudence and

*h*

rationality to stand as an efficient witness. Then, no independent witness was brought forward by the prosecution despite the fact that a mob chased the appellant. The efforts of the complainant party that the appellant's wife sought dissolution of marriage due to his alleged involvement in abduction of children, having disproved badly, suggest some mala fide. It is a settled law that even a single reasonable doubt is sufficient to record acquittal. In the case of Khalid Mehmood alias Khaloo vs The State, reported as 2022 SCMR 1148, wherein it was held as infra:

"It is a settled law that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution's case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

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Similarly, in the case of Najaf Ali Shah vs. The State (2021 SCMR 736), the august Supreme Court has observed that:

"It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner."

And the same principle was reiterated in the case, The State through P.G. Sindh and others versus Ahmed Omar Sheikh and others, reported as 2021 SCMR 873.

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"It is settled since centuries that benefit of doubt automatically goes in favour of an accused. Even if a single circumstance creates reasonable doubt in a prudent mind regarding guilt of an accused then the accused shall be entitled to such benefit not as a matter of grace and concession but as a matter of right and such benefit must be extended to the accused person(s) by the Courts without any reservation."

22. Resultantly, we allow the instant appeal Cr.A No.187-M/2019 by setting aside the impugned judgment dated 30.06.2021 of the learned Additional Sessions Judge/Izafi Zilla Qazi/Judge Child Protection


(26)

Court, Dir Lower at Chakdara and acquit the appellant of the charges leveled against him. He shall be released forthwith from the jail, if not required in any other case. Whereas, the connected Cr.R No. 43-M/2019, filed by the respondent/complainant Wahid-ur-Rehman for enhancement of convictions/sentences awarded to the appellant being became infructuous, stands dismissed.

23. These are the reasons of our short order of the even date.

Announced  
Dt: 11.01.2023

  
JUDGE

  
JUDGE

office WIR  
28/03/23

*Handwritten notes and signatures at the top of the page, including "Annex" and "Annex 1".*

To,

The Deputy Commissioner  
Dir (Lower)

Subject: Withdrawal of suspension/termination order.

R/Sir,

I Zakir Khan s/o Said Razaq most respectfully want to say that I was working in AC office Lal Qilla as Junior Clerk. But on 19/09/2021, SHO, Chakdara logged an imaginary FIR against me on personal behalf in the thana Chakdara under section 364A/11/5 Japa. After completing my case the session court Chakdara sentenced me to 10 years in prison.

The order of session court was against the law because there was no proof against me in the imaginary fake story. So, I challenged the order in the Peshawar High court, Swat Darul Qaza branch.

Swat high court accepted my appeal and equated me in the said FIR on 11/01/2023.

I passed 3.5 years in the jail innocently due to the fake FIR made by the SHO, Chakdara and crying of some foolish people who don't know about reality.

During this time, we remained neutral and waited for the court decision.

The order of the High court is attached on page 02.

Therefore, kindly withdraw my suspension/termination order and issue my all salaries, increments, seniority list etc. according to the law.

Also I request to you that kindly transfer me to the nearest place, tehsil office Khallur main office timergara.

Thanking You

*Handwritten signature and date: 27-01-23*

Your sincere: Zakir Khan s/o Said Razaq (Junior Clerk BPS 11)

*Handwritten notes and signatures in the bottom section, including "E.A.", "File us this case just for removal of the suspension orders if any", and a date "27/01/23".*

27/A

To,

The Deputy Commissioner  
Dir (Lower)

Subject: **Withdrawal of suspension/termination order**

R/Sir

1 Zakir Khan S/o Said Razaq most respectfully want to say that I was working in AC office Lal Qila as Junior Clerk, but on 19.09.2021, SHO Chakdara lodged an imaginary FIR against me on personal behalf in the thana Chakdara under section 365A/511/

After completing my case the session court Chakdara sentenced me to 10 years in prison

The order of session court was against the law because there was no proof against me in the imaginary fake story. So, I challenged the order in the Peshawar High court, Swat Darul Qaza branch

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During this time, we remained neutral and waited for the court decision.

The order of the High court is attached on page 02

Therefore, kindly withdraw my suspension/termination order and issue my all salaries, increments, seniority list etc according to the law.

Also request to you that kindly transfer me to the nearest place, tehsil office Khail or main office Timergara

Thanking You

Sd/-  
Your sincerely Zakir Khan s/o Said Razaq (Junior Clerk BPS 111)



OFFICE OF THE  
COMMISSIONER MALAKAND DIVISION  
SAIDU SHARIF SWAT

Dated 26/05/2023



No. 925-96/279/Estt

To

The Secretary, Board of Revenue,  
Revenue & Estate Department,  
Government of Khyber Pakhtunkhwa, Peshawar.

SUBJECT: WITHDRAWAL OF SUSPENSION/TERMINATION ORDER.

Dear Sir,

I am directed to refer to the above noted subject and to enclose herewith a copy of the Deputy Commissioner, Dir Lower letter No.7061/Estt: dated: 09/05/2023. alongwith its enclosures, the contents of which are self-explanatory.

2. I am further directed to request that this office may be advice whether the applicant may be re-Instated in service along with all benefits or otherwise, please.

21/5/23

(SHAKIR ULLAH)  
ASSISTANT TO COMMISSIONER (REV/GEN)  
MALAKAND DIVISION

ENDST. NO & DATE EVEN:

Copy forwarded for information to the Deputy Commissioner, Dir Lower with reference to above, please.

21/5/23

ASSISTANT TO COMMISSIONER (REV/GEN)  
MALAKAND DIVISION

(97) (25)  
Amir Khan E

The Deputy Commissioner

Dir lower

Subject: DEPARTMENTAL PRESENTATION IN THE SHAPE OF REMINDER

Your Excellency,

It is stated that, After full acquittal by the court and the day after my release from jail on 26th/01/2023


I submitted my application for reinstatement on Diary No: 291 Dated 27/01/2023 but I have not received my job yet. As per the law, I should have received a decision within three months.

But even after the passage of seven months I have not received any order.

Due to which there has been a lot of disappointment.

Therefore kindly issue an order as per law as soon as possible with all benefits

Thanks

 04/09/2023  
Applicant: Zakir Khan S/O said Razaq

Post Office and village such east mohallah koozpalo, Dir lower.

Mobile no: 0319-3129971

EA  
L

Deputy Commissioner  
4/9/2023

Diary No: 4684  
4/9/2023

hr

To

The Deputy Commissioner  
Dir lower

Subject **DEPARTMENTAL PRESENTATION IN THE SHAPE OF REMINDER**

Your Excellency

It is stated that, after full acquittal by the court and the day after my release from jail on 25<sup>th</sup>/01/2023,

I submitted my application for reinstatement on Diary No.291 Dated 27/01/2023, but I have not received my job yet. As per the law, I should have received a decision within three months.

But even after the passage of seven months I have not received any order.

Due to which there has been a lot of disappointment

Therefore kindly issue an order as per law as soon as possible with all benefits

Thanks

Sd/- 04/09/2023

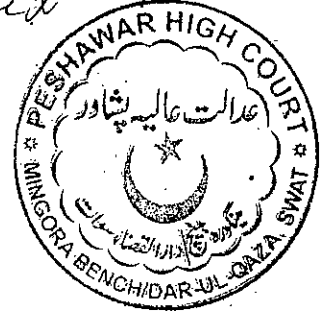
Applicant. Zakir Khan S/O Said Razzaq

Post office and village Ouch East Mohallah Koozpalo, Dir Lower

Mobile no: 0339-3129971

30 A. M. Uddin F

**PESHAWAR HIGH COURT, MINGORA BENCH**  
**(DAR-UL-QAZA), SWAT**



**FORM OF ORDER SHEET**

Court of .....

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

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	17.10.2023	<p><b><u>W.P 1095-M/2023</u></b></p> <p><b>Present:</b> Mr. Yousaf Ali, Advocate for petitioner.</p> <p style="text-align: center;">***</p> <p><b><u>MUHAMMAD NAEEM ANWAR, J.</u></b> After hearing the learned counsel for petitioner at some length, when he was confronted with the provision of Article 212 of Constitution of Islamic Republic of Pakistan, 1973 in juxtaposition with the aspect that petitioner was a Civil Servant, he was terminated from service on account of his indulgence in a criminal case wherefrom he has been acquitted by this Court, he submitted at the bar that he would not press the instant petition provided he be allowed to approach to the appropriate forum. Order accordingly.</p> <p style="text-align: center;"><b><u>Announced</u></b> 17.10.2023</p> <p style="text-align: right;">JUDGE</p> <p style="text-align: center;"><b>Certified to be true copy</b></p> <p style="text-align: center;">EXAMINER Peshawar High Court, Mingora/Dar-ul-Qaza, Swat Authorized Under Article 17 of Qanoon-e-Shahadat Order 1984</p> <p style="text-align: right;">JUDGE</p>
<p>Name of Applicant.....</p> <p>Date of Presentation of Applicant.....</p> <p>Date of Completion of Copies.....</p> <p>No of Copies.....</p> <p>Urgent Fee.....</p> <p>Fee Charged.....</p> <p>Date of Delivery of Copies.....</p>	<p>17/10/23</p> <p>20/10/23</p> <p>2</p> <p>8/-</p> <p>20/10/23</p>	<p style="text-align: right;">JUDGE</p> <p style="text-align: center;">EXAMINER</p> <p style="text-align: right;">JUDGE</p>

Mushtaq Ahmad/SSS\* (D B) HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR HON'BLE MR. JUSTICE SHAHID KHAN

Office 19/10

<p>BC BAR ASSOCIATION 21-35/18</p> <p>بار کونسل نمبر:</p> <p>TRIC NSW بار ایسوسی ایشن نمبر:</p> <p>0345-945-2146</p> <p>رابطہ نمبر:</p> <p>ای میل ایڈریس</p>	<p>31</p> <p>DISTRICT BAR ASSOCIATION DBA SWAT</p> <p>DISTRICT BAR ASSOCIATION H SWAT</p> <p>129038</p> <p>بریل نمبر:</p> <p>QR CODE</p> <p>ڈسٹرکٹ بار ایسوسی ایشن سوات</p>
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بعدالت جناب: سروس ٹریڈینگ خیر بخت خواجہ علقاص گل رو کیسپ کورٹ

<p>منجانب: اپیلرینٹ</p> <p>ذکر خان</p> <p>حکومت</p>	<p>دعویٰ اور خواست:</p> <p>علت نمبر:</p> <p>مورخہ:</p> <p>جرم:</p> <p>تھانہ:</p>
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### بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے برائے پیروی مقدمہ

آن مقام گل کورہ کیلئے انسپل احمد ریڈ وکسٹ کو مقرر کر کے اقرار کیا جاتا ہے، کہ صاحب موصوف کو مقدمہ کی کل کارروائی کو کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث کرنے، دعویٰ، جواب، دعویٰ، اقبال، دعویٰ اور درخواست برائے سرسبزی مقدمہ، منسوخی ڈگری یکطرفہ، اجراء و پیروی کرنے کا مختار ہوگا نیز دائر کرنے اپیل نگرانی، نظر ثانی و پیروی کرنے کا مختار ہوگا۔ اور مقدمہ مذکورہ کیلئے کل وقتی یا جزوی کارروائی کیلئے کسی دیگر وکیل یا مختار قانون کو اپنے ہمرازہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ اختیارات حاصل ہوں گے، اور اس کا ساختہ و پرداختہ منظور قبول ہوگا، بدوران مقدمہ جو خرچہ و ہرجانہ کسی بھی سبب سے حاصل ہوگا، وہ وکیل موصوف وصول کرنے کا حقدار ہوگا، کوئی تاریخ پیشی مقام مذکورہ بالا سے باہر ہو، تو وکیل صاحب پیروی مقدمہ کرنے کے پابند نہ ہوں گے، مقدمہ کسی عدالت میں بعدم پیروی خارج ہونے یا ڈگری یکطرفہ ہونے کے صورت میں وکیل صاحب ذمہ دار نہیں ہوں گے، لہذا وکالت نامہ لکھ دیا کہ سندر ہے

مقام گل کورہ کے لئے منظور ہے۔

مقام سید شرف گل کورہ

ایڈوکیٹ دستخط:

15/11/2023

المقوم:

ذکر خان و سید رازق