

21.12.2015

Counsel for the appellant present. Learned counsel for the appellant pressed into service reinstatement order issued by DEO (F) Karak dated 16.12.2015 and requested for withdrawal of appeal.

Dismissed as withdrawn. File be consigned to the record room.





  
Chairman

ANNOUNCED  
21.12.2015

Form- A  
FORM OF ORDER SHEET

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

Case No. 1219/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02.11.2015	<p>The appeal of Mr. Noor Jamal resubmitted today by Mr. Nasir Mehmood Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: center;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>12-11-15</u>.</p> <p style="text-align: center;"> CHAIRMAN</p>
	12.11.2015	<p>Junior to counsel for the appellant present. Submitted application for adjournment as senior counsel for the appellant is not in attendance. Adjourned to 1.12.2015 for preliminary hearing before S.B.</p> <p style="text-align: center;"> Chairman</p>
	01.12.2015	<p>Junior to counsel for the appellant present. Seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned to 21.12.2015 for preliminary hearing before S.B.</p> <p style="text-align: center;"> Chairman</p>

**OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE KARAK.**

**Re-Instatement Order**

1. Where as Mr Noor Jamal Ex Junior Clerk GGHS Takhati Nasrati (karak) was charged in FIR No 91 dated 04.03,2011 U/S 302/324/427/34 PPC police station Takhati Nasrati.
2. Where as Due to long absence he was suspended vide Executive District Officer E&S Education Karak Endst:No 4245-47 AE-III dated 20.6.2011 and was Removed from service vide order No\_ 6799-800 dated 15.10.2012\_ on the basis of judgment passed by Additional Session Judge Takhati Nasrati(Karak) dated 14.9.2012 under case File No 46/07 of 2012 .He was declared guilty and imposed penalty of death, compensation of 300000/- to the legal heirs of decease and others.
3. Where as he lodged in appeal against the judgment of the Additional Session Judge Takht-e-Nasrati in the Court of Peshawar High Court Bannu Bench under criminal appeal No159-B of 2012-
4. Where as the Peshawar High Court Peshawar Bannu Bench decided his case on 5.5.2015\_, and the Petitioner/Appellant was released on bail and the case was remanded to the learned Trial Court to proceed against the accused by framing denovo charge strictly in accordance with allegation leveled against both the accused in FIR.
5. Where as he lodged in appeal for re-instatement and instructions of Govt: of K.P, E&S Edu:Department Peshawar NoSOG/E&SE/2-3(B)/2015 dated 16.11.2015 and Govt:of K.P Law Parliamentary Affairs and Human Rights Department Peshawar, the case is decided as under:-
6. Now the termination order in respect of Mr Noor Jamal Ex J/C issued vide EDO E&S Edu:Karak Office Endst:No 6799-800 dated 15.10.2012\_ is hereby withdrawn and he is Re-instated w.e.f the date of release on bail vide Peshawar High Court Bannu Bench Dated 06.05.2015.
7. Now Mr.Noor Jamal J/Clerk is hereby suspended in the light of Govt:of Khyber Pkhtunkhawa Law. Parliamentary Affair and Human Right Department Peshawar No.SO(op-I)LD/5-2/2012/vol II dated 4 Nov:2015 w.e.f the date of re-instatement i.e 6.5.2015\_ for the same FIR against him till the decision of the case.
8. Now he is adjusted against vacant post of J/Clerk at GGHS Deli Mella (karak).

NOTE:- He will draw Suspension allowance as per Rules from the date of took over charge.

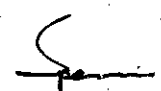
  
District Education Officer  
Female Karak.

3391-94  
Ednst:No \_\_\_\_\_/AE-III(F)

16  
Dated 16/12/2015

Copy to the:-


1. Director of Elementary and Secondary Education, Khyber Pakhtunkhawa Peshawar for Information.
2. District Account Officer Karak
3. Headmistress GGHS Delli Mella.
4. Mr Noor Jamal Ex J/C GGHS Takhati Nasrati.
5. DMO Karak

  
District Education Officer  
Female Karak

The appeal of Mr. Noor Jamal Ex Junior Clerk GGHS Takhti Nasrati received today i.e. on 30.10.2015 is returned to the counsel for the appellant with the direction to submit one copy/set of the appeal along with annexures i.e. complete in all respect with in 10 days.

No. 1697 /S.T,

Dt. 2-11 /2015

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Nasir Mehmood Adv. Pesh.

Sir,

Re-submitted after doing the need full.

Syed Abdul Hafeez Advocate

  
21/11/15

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

In Re; Service Appeal No-<sup>1249</sup>-----2015

Noor Jamal.....Appellant

**Versus**


Director of Elementary and Secondary Education, KPK, Peshawar and an  
other.....Respondents

**INDEX**

S.No	Description of Documents	Annexure	Pages
1.	Grounds of Appeal		1-2
2.	Order dt.15.10.2012	A	3
3.	Dept. Appeal dt.16.05.2015	B	4
4.	Letter dt.04.06.2015	C	5
5.	Application dt.08.07.2015	D	6
6.	Judgment dt.05.05.2015	E	7-11
7.	Letter dt.08.07.2015	F	12
8.	Wakalatnama		13

Through

*Noor*  
Appellant

  
Nasir Mehmood Advocate  
Supreme Court of Pakistan  
13-D Haroon Mansion Peshawar  
Mob no.0333-9176275

*28/10/15*

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

In Re; Service Appeal No-<sup>1219/</sup>-----/2015

A.W.F. Province  
Service Tribunal  
Diary No. 1310  
Dated 30-10-2015

Noor Jamal Ex-Junior Clerk GGHS Takhti Nasrati Karak..... Appellant

**Versus**

1. Director of Elementary and Secondary Education, KPK, Peshawar.
2. District Education officer, Female, Karak..... Respondents

Appeal u\sec. 4 of the Service Tribunal Act, 1974 against the office order dated 15-10-2012 passed by respondent no.2 whereby appellant was removed from service due to his conviction by ASJ in criminal case and thereafter when the conviction was set-aside by the honorable High Court and he came out of Jail, then he filed departmental appeal which was unresponded, hence the instant appeal.

Prayer in Appeal; To set-aside the office order dated 15-10-2012 and to reinstate the appellant in service with all back benefits.

Respectfully Sheweth;

1. That the appellant while serving as Junior Clerk GGHS Takhti Nasrati Karak was removed from service vide order dated 15.10.2012 on the ground of conviction of the appellant in criminal case by ASJ Takhti Nasrati. (Copy of the order is attached as annexure-A).

2. That the appellant remained for four years in Jail and when vide judgment dated 05.05.2015 passed by honorable High Court his conviction was set-aside and he was released on bail then he filed departmental appeal on 16.05.2015. (Copy of the departmental is attached as annexure-B).

3. That the departmental appeal of the appellant was forwarded to respondent no.2 who through letter dated 04.06.2015 requested for furnishing of photo copy of the judgment of the High Court. (Copy of the letter is attached as annexure-C).

4. That as judgment of the High Court was not prepared and when it was supplied to the appellant on 08.07.2015, it was made available to respondent no.2 on the same day. (Copy of the application along with judgment is attached as annexure-D&E).

Filed to  
Registrar  
30/10/15

re-submitted to day  
and filed;

Registrar 2/11/15

5. That appeal of the appellant along with all relevant documents was forwarded to respondent no.1 through letter dated 08.07.2015 (Copy of the letter is attached as annexure-F) which was unresponded hence the present appeal inter alia on the following grounds;

Grounds:

A. That the appellant has not been treated in accordance with law, and his rights secured and guaranteed under the law and Constitution has been violated.

B. That the appellant was removed from service only on the ground of his conviction in criminal case which has since been set-aside by the honorable High Court therefore, there was no reason for the respondents to have refused the reinstatement of the appellant hence the office order dated 15.10.2012 can not be allowed to remain in the field and thus liable to be set-aside.

C. That in the light of golden principles of law that every acquittal is an honorable acquittal so when the stigma of conviction was washed away from the appellant therefore there was no legal hurdle in the way of the appellant reinstatement thus is liable to set-aside on this score alone.

D. That the impugned office order dated 15-10-2015 passed by respondent no.2 in the light of new development is highly illegal; malafide, arbitrary, discriminatory, and whimsical untenable, without jurisdiction and without lawful authority and is thus liable to set-aside.

E. That the appellant seeks leave of this honorable tribunal to argue additional grounds at the time of final hearing of this appeal.

It is, therefore prayed that on acceptance of this appeal the impugned orders dated 15-10-2012 passed by respondent no.2 may be set-aside and the appellant may be reinstates in service with all back benefits.

Any other remedy deemed proper may also be allowed.

Affidavite

I do hereby solemnly affirm on oath that the contents of above appeal are true and correct.

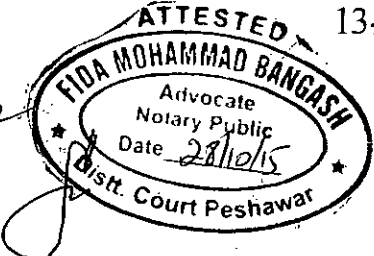
*Deponent*

Through

*roope*  
Appellant

Nasir Mehmood Advocate  
Supreme Court of Pakistan  
13-D Haroon Mansion Peshawar

*28/10/15*



3

Annexure "A" 10/13/12

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY AND SECONDARY EDUCATION KARAK.

REMOVAL FROM SERVICE.

Consequent upon the decision by the Additional Session Judge Karak at Takht-e-Nasrati dated 14.9.2012, Mr. Noor Jamal Junior Clerk GGHS Takht-e-Nasrati is hereby Removed from Service with effect from the date of the decision of Additional Session Judge Karak at Takht-e-Nasrati dated 14.9.2012 as he was involved U/S 302/324/427/34 PPC, Police Station Takht-e-Nasrati vide FIR No.31 dated 13.2.2011.

Necessary entry to this effect should be made in his S/Book.

EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION KARAK

No. 107-8200 /P/File/AE-1 dated Karak the 15/10 2012.

Copy to the:-  
1. Mistress GGHS Takht-e-Nasrati for necessary action.  
2. Joint Accounts Officer Karak.

*A. H. H. S. H. S.*  
*Q. I. S. A. S. S. S.*  
HEAD MISTRESS  
GGHS Takht-e-Nasrati

*[Signature]*  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY AND SECONDARY  
EDUCATION KARAK

ATTESTED  
- C. T. C.  
*[Signature]*



4

Annexure  
"B"

513  
Date 2.5/15  
Khal Shairin  
19/5

The District Education Officer,  
(Female) Karak.

PROPER CHANNEL

THROUGH:-

SUBJECT:-

ADJUSTMENT AGAINST THE POST OF J/CLERK.

Respected Sir,

With due respect it is stated for your kind honour that I Mr. Noor Jamal  
J/Clerk set free according to the judgment of Peshawar High Court Bannu  
branch dated 05.05.2015.

It is therefore, requested that I may please be adjusted against the post  
of J/Clerk on his own place at GGHS Takht-i-Nasrati (Karak).

I shall be thankful to you for this act of kindness.

Note:- Court decision copy attached.

Dated 16.05.2015.

Your's Obediently

Noor Jamal  
(NOOR JAMAL)  
J/Clerk.

Forwarded and recommended  
to the D.E.O (Female) Karak for  
further n/action, please.

ATTESTED

C.T.C  
[Signature]

[Signature]

HEAD MISTRESS  
Govt Girls High School  
Takht-i-Nasrati (Karak)

5

Annexure "C"

**OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE KARAK**

No 1856 /AE-III(F) Dated 4/6 /2015

To

The Headmistress

GGHS Takhati Nasrati(Karak)

Subject:- ADJUSTMENT AGAINST JUNNIOR CLERK

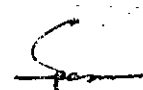
Memo:-

The application in R/O Mr Noor Jamal Ex J/C of GGHS Takhat Nasrati alongwith other relevant papers received through you for adjustment, was involed in criminal case 302 etc, is hereby returned with the following observations.

1. The Judgement copy dated 14.9.2012 passed by Additional Session Judge Takhati Nasrati and Judgement Copy of High Court Bannu Bench dated 05.05.2015 required in such case, may be provided to this office to proceed further in the matter.

2. Departmental action i.e suspension order, transfer order is also required in such case.

The required information may be submitted to this office at an early date to proceed further in the matter.

  
DISTRICT EDUCATION OFFICER  
FEMALE KARAK.

1.

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C-T-C  


Annexure "D"

To,

The District Education officer  
(Female) Karak

Through: proper channel.

Subject: Adjustment Against J/clerk.

R/Sir,

Reference your office letter NO 1856/AE-  
111(LF) dated 4-06-2015.

The judgement copy of The Bannu High  
Court received today 8/7/2015 & submitted  
to your office please.

Dated 8/7/2015

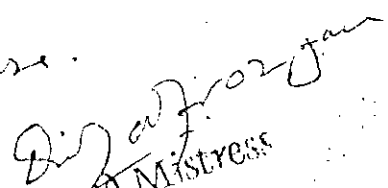
yours obediently  
noorj

Forwarded and recommended Noor Jamal  
to the D.E.O(F) Karak J/clerk  
for further reaction please.

ATTESTED

C/T

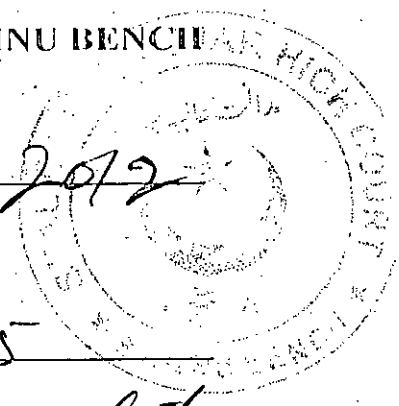


  
Head Mistress  
G.E.S  
TINASHPUR Karak

7

Annexure "E"

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, BANNU BENCH  
(Judicial Department)



~~CR.A~~ No. 158-B of 2012

JUDGMENT

Date of hearing 5-5-2015

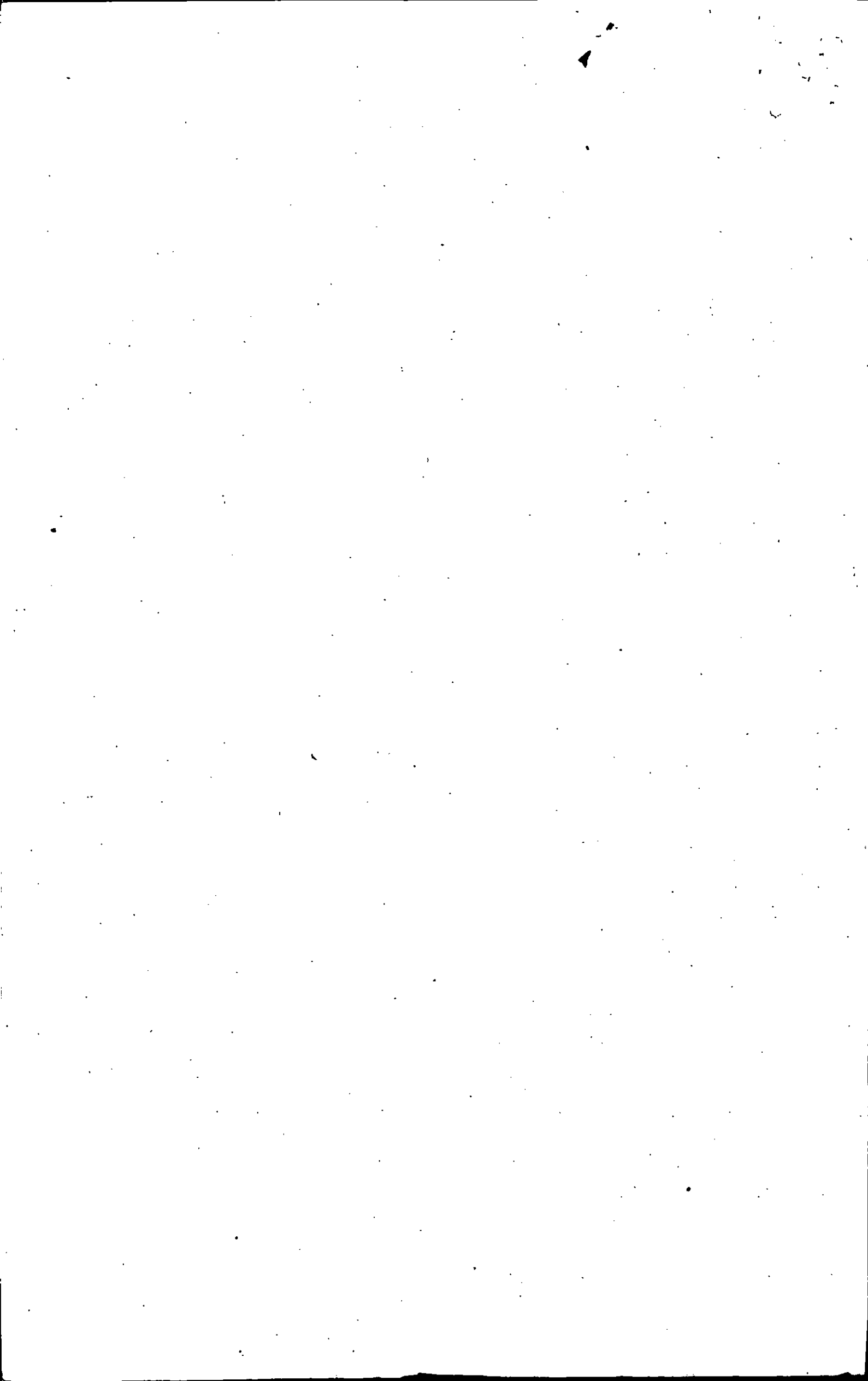
Petitioner(s)/Appellant(s) ~~Proo Jamalate~~  
~~by Mr. M. Rashid Khan Dirmachel Sew~~  
Respondent(s) ~~by Mr. Ahmad Farooq Moorwaha~~  
~~State by Mr. Fazur Rahman Saddiqi~~

IKRAMULLAH KHAN, J.- We intend to decide the instant criminal appeal No.159-B of 2012, as well as the murder reference No.7-B of 2012 being arising out of the same judgment of conviction rendered by the learned Additional Sessions Judge, Karak dated 14.9.2012 whereby the appellants were convicted under section 302(b) P.P.C. and sentenced to death with payment of compensation amount of Rs.3,00,000/- each under section 544-A Cr.P.C. They are also convicted under section 324 P.P.C and sentenced to rigorous imprisonment for a period of three years each with payment of fine of Rs.5000/- each. On conviction under section 337-D P.P.C, they were sentenced to pay arsh at the rate of 1/3<sup>rd</sup> of diyat amount each. On further conviction under section 427 P.P.C., both the appellants were sentenced

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JUDGE  
Peshawar High Court,  
Bannu Bench



to a fine of Rs.2000/- only in total and the benefit of section 382-B Cr.P.C was extended to them.

2. In essence, on 04.3.2011 at 1600 hours, complainant Mohammadi Awais in injured condition made a report at Civil Hospital, Takht-e-Nasrati to the effect that on the same day at Peshinvela, he along with Anan were going on their motorcycle to Takht-e-Nasrati bazaar for making purchases and when reached near kacha road near Shah Salim adda, they found Noor Jamal, Piao Jamal, Sultan duly armed with Kalashnikov. On seeing them, they started firing at them, as a result of which Adnan was hit due to firing of Noor Jamal, fell down from the motorcycle and died at the spot, while the complainant got injured due to the firing made by Piao Jamal and Sultan. Motive for the occurrence was stated to be previous enmity between the parties.

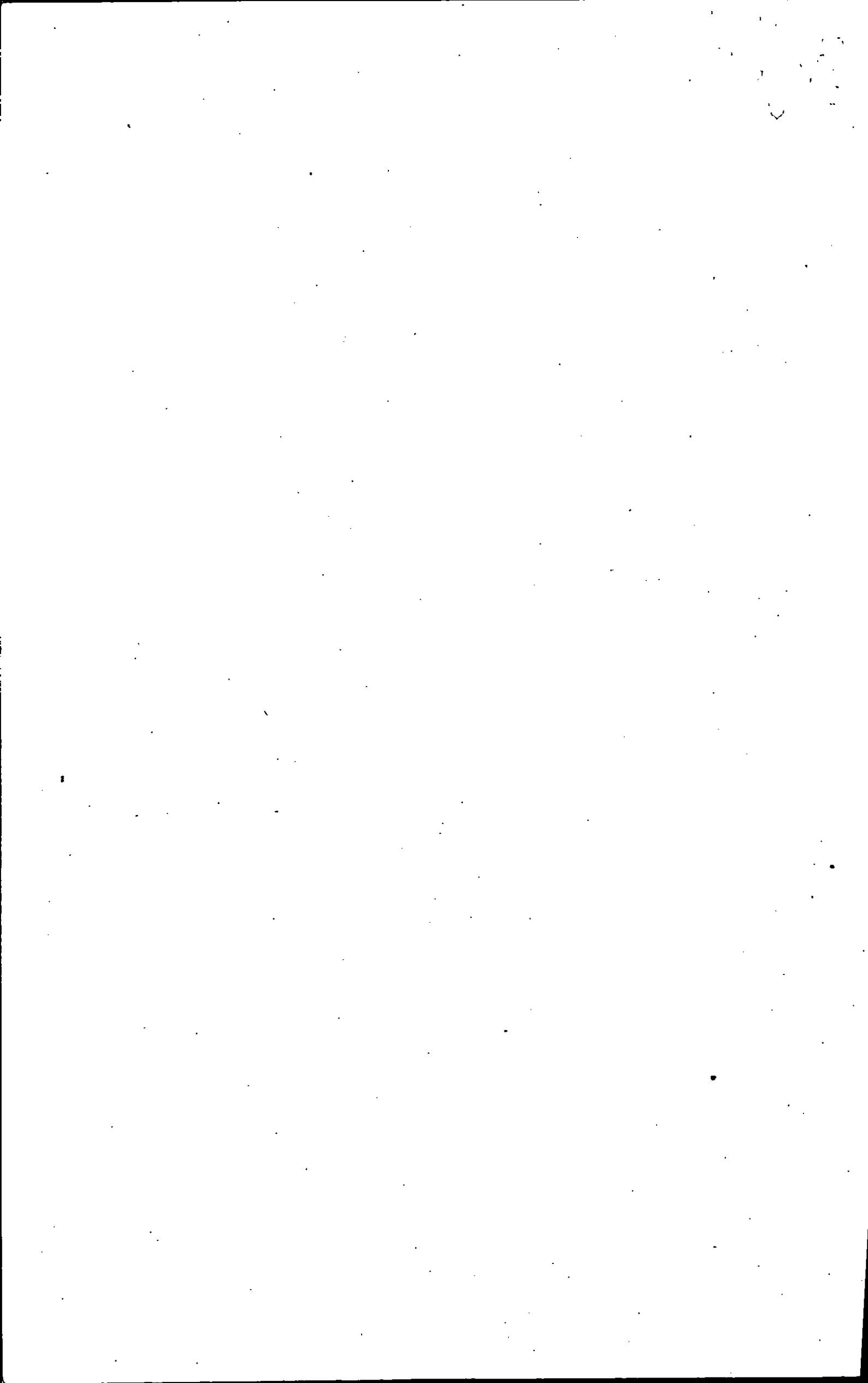
3. After completion of usual investigation and arrest of appellants, challan against them was submitted in the trial Court, where they were formally charged to which they did not plead guilty and claimed trial. The prosecution, in order to prove its case against the appellants, examined thirteen witnesses. The appellants were also examined under section 342 Cr.P.C, but they neither appeared as their own witnesses

ATTESTED on oath as required under section 340(2) Cr.P.C, nor produced any evidence in their defence. At the conclusion of

ATTESTED  
Peshawar High Court  
Hanno Bench

ATTESTED

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trial, appellants were found guilty and convicted and sentenced as mentioned hereinabove, hence this appeal, while the learned Additional Sessions Judge Karak has placed the murder reference before this Court in view of section 374 Cr.P.C for confirmation of the death sentence.

4. The learned counsel for appellants, at the very outset of his arguments, led us to the charge framed against both of the appellants by the learned trial Court on 29.7.2011.

5. The learned counsel for appellants as well as learned counsel for complainant party pointed out the illegality and irregularity committed by the learned trial Court in framing of charge.

6. The complainant has attributed specific role to both the appellants. Appellant Noor Jamal was charged for murder of Adnan while appellant Piao Jamal and absconding accused Sultan for causing injuries to complainant, but the learned trial Court has charged both of the appellants under section 302 and 324 PPC read with section 34 PPC. None of the appellants is charged under section 427 PPC. Both the appellants were convicted and sentenced under section 302 PPC which is a patent illegality and irregularity, not curable, as appellants were seriously prejudiced in conduct of trial.

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7. In case in hand, both appellants were charged for a distinct offence, but the learned trial Court in sheer violation of law in this regard, charged both the appellants under sections 302 and 324 P.P.C. read with section 34 PPC. Charge sheet in criminal administration of justice is a brief of whole of case of prosecution, which requires to show that which of the accused has been implicated by which of the evidence collected against him. Reliance is placed on the case of Master Sameer and others. Vs. Fazal Mehmood and another (2008 MLD 1709), while purpose of the charge is to place before the accused as precisely and concisely as possible the nature of the offence, for which he is charged. The purpose of framing charge is not to enable the accused to defend himself, but also the prosecution to lead evidence in conforming of the charge levelled against the accused. In consequence of misjoinder of charge where the trial is found to have been conducted in a way not authorized by law and by the rules of procedure relating to methods of a fundamental character, the decision in such a trial whether of conviction or acquittal is of little consequence and the entire proceedings must be set aside, irrespective of any question of prejudice to any one.

8. Therefore, for the reasons given hereinabove, this appeal is accepted and the impugned judgment is set aside.

ATTACHED

*[Handwritten signature]*

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JUDGE  
COURT OF APPEALS  
LAHORE

The case is remanded to the learned trial Court to proceed against the accused by framing denovo charge strictly in accordance with the allegations levelled against both the accused in the FIR.

9. As appellants have remained in judicial lock-up for more than 4 years, therefore, appellants Noor Jamal and Piao Jamal shall be released on bail provided they furnish bail bonds in the sum of Rs.5,00,000/- (Rupees five lac) each, with two sureties, each in the like amount to the satisfaction of trial Court.

10. The Murder Reference is answered in negative.

11. Above are the detailed reasons for our short order of even date.

Announced.  
Dt: 05.5.2015.  
Habib/\*

**Sd/- Ikramullah Khan, J**

**Sd/-Muhammad Younis Thaheem, J**

**ATTESTED**

C.T.C  
*[Signature]*

CERTIFIED TO BE TRUE COPY

*[Signature]*  
Exam Officer

People's Court Banna Bench  
Authenticated under Article 87 of  
The Qanun-e-Shahadat Order 1984

*[Handwritten signature]*

12

Annexure "F" 16

OFFICE OF THE DISTRICT EDUCATION OFFICER FEMALE KARAK

/AE-III(F)

Dated 6/7/2015

The Director of Elementary and Secondary Education  
Khyber Pakhtunkhwa, Peshawar.

APPLICATION FOR RE-INSTATEMENT/GUIDANCE

Subject:-

Ref no:-

Enclosed please find herewith self explanatory appeal alongwith  
other relevant documents in R/O Mr Noor Jamal ex Junior Clerk GGHS Takhati  
Nasrati.

Brief history of the case is given as under:-

1. He was suspended vide EDO E&SEdu:KK office order 4245-04/AE-III  
dated 02.06.2011.

2. Due to long absence from service and judgment of conviction rendered by the  
learned Additional Session Judge Karak dated 14.09.2012 removed from service  
order was issued vide this office order No 6799-8000 dated 15.10.2012.

3. Meanwhile Mr Noor Jamal Ex J/C was sentenced to death, regrious  
imprisonment, death compensation to the deceased family under criminal appeal  
No 159-B/2012 announced on 14.9.2012 by the additional Session Judge Karak.

4. Now under cr appeal No 159-B/2012 announced on 05.05.2015, the accused  
Mr. Noor Jamal is released on bail after suffering 04 years imprisonment and the case  
remanded back to District Session Judge Karak for re-consideration.

5. So, Mr Noor Jamal requests for re-instatement of his services. So the appeal is  
submitted herewith for your kind decision please.

DISTRICT EDUCATION OFFICER  
FEMALE KARAK

Dist: no

Copy to the Headmistress GGHS Takhati Nasrati for information.

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9/7/15

DISTRICT EDUCATION OFFICER  
FEMALE KARAK

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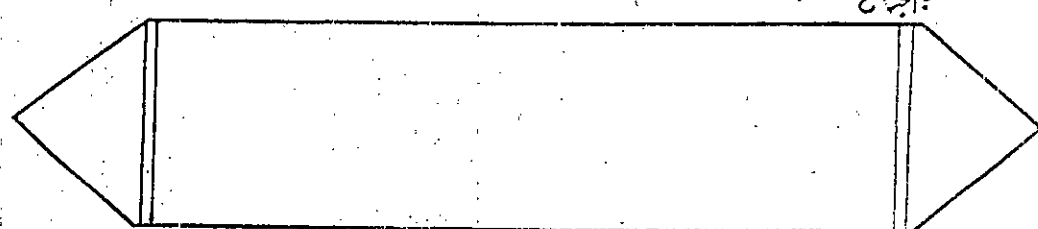
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Before the N.P.K Service Tribunal Peshawar

Service Appeal number: 1219/2015

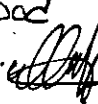
Noor Jamal versus Director Elementary  
Education and others

Application for Adjournment

Respectfully Sheweth:

- 1) That the above noted appeal is pending before this honorable tribunal which is fixed for today,
- 2) That Senior Counsel for appellant is engaged in a number of cases in High Court and is unable to attend this honorable tribunal

It is therefore humbly prayed that on acceptance of this application the above mentioned appeal may kindly be adjourned to some other date

Senior Counsel  
Nasir Mehmood  
through Hayatullah H.   
Advocate