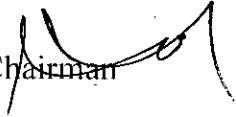


27.02.2018

Clerk of the counsel for appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Clerk of the counsel for appellant seeks adjournment as counsel for the appellant is not available today. To come up for arguments on 05.04.2018 before the D.B.


Member


Chairman

05.04.2018

Appellant in person and Mr. Zia Ullah, learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 29.05.2018 before D.B.



(Ahmad Hassan)


(Muhammad Hamid Mughal)

29.05.2018 Member Appellant alongwith counsel present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed in connected Service Appeal No. 1317/2015 "titled Sher Muhammad Versus Commissioner Peshawar Division, Peshawar and ^{Present in} two others, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.


ANNOUNCED
29.05.2018

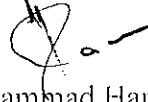

29.05.2018
(SUBHAN SHER)
CHAIRMAN


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

17.10.2017


Appellant in person present. Mr. Kabir Ullah Khattak, Additional Advocate General for the respondents present. Appellant seeks adjournment due to non availability of his counsel. Adjourn. To come up for arguments on 21.11.2017 before D.B.

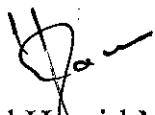

(Ahmad Hassan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

21.11.2017

Appellant in person present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Appellant seeks adjournment on the ground that learned counsel is not available today. To come up for arguments on 23.1.2018 before D.B.

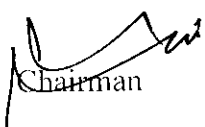

(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

23.01.2018

Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Addl: AG for the respondents present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 27.02.2018 before D.B.


Member


Chairman

10.11.2016

Clerk to counsel for the appellant and Mr. Usman Ghani, Sr.GP for respondents present. Rejoinder submitted. To come up for arguments on 22.03.2017.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

22.03.2017

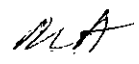
Clerk to counsel for the appellant and Addl. AG for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 16.06.2017 before D.B.


(AHMAD HASSAN)
MEMBER

16.06.2017

Agent to counsel for the appellant and Mr. Zahid Ur Rahman, Supdt alongwith Mr. Ziaullah, Deputy District Attorney for the respondents present. Agent to counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 17.10.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

09.05.2016

Clerk of counsel and Asstt. AG for the respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity extended subject to payment of cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 18.08.2016.

Chairman

03.08.2016

Appellant in person and Mr. Zahir ur Rehman,

18.08.2016

Supdt. alongwith Addl. AG for respondents present. Counsel for the appellant and Mr. Zahir ur Rehman, Supdt. alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 10.11.2016. Written reply alongwith cost of Rs. 1000/- paid,

receipt thereof obtained from the counsel for the appellant. The appeal is assigned to D.B for rejoinder and final hearing for 10.11.2016.

Member

Member

02.12.2015

Counsel for the appellant present. Appeal requisitioned on the application of the appellant for today. Preliminary arguments heard. Learned counsel for the appellant argued that the appellant was serving as Patwari in the office of Deputy Commissioner Charsadda when subjected to inquiry on the allegations of involvement in a criminal case registered vide FIR No. 324 dated 24.6.2009 under section 302/324 PPC at PS Prang Charsadda and dismissed from service vide impugned order dated 16.11.2009. That after acquittal appellant submitted application dated 5.5.2015 which was accepted vide order dated 17.8.2015 and appellant reinstated in service, however, back benefits were denied to the appellant where against he preferred departmental appeal on 10.9.2015 which was rejected on 18.9.2015 and hence the instant service appeal on 16.10.2015.

Appellant Deposited
Security & Process Fee

That the appellant was also entitled to back benefits as he was found innocent in the criminal case on the basis whereon he was dismissed from service. Places reliance on case law reported as 2006 SCMR 421 and 2007 SCMR 855.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 1.3.2016 before S.B.


Chairman

01.03.2016

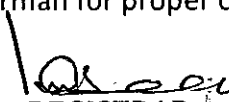
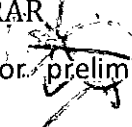

Appellant in person and Mr. Zahid-ur-Rehman, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 9.5.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1318/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25.11.2015	<p style="text-align: center;">The appeal of Mr. Imran Khan resubmitted today by Mr. Zar Taj Anwar Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	27-11-15	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>30-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	30.11.2015	<p style="text-align: center;">Agent of counsel for the appellant present. Seeks adjournment. Adjourned to 22.12.2015 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Imran Khan, Patwari Deputy Commissioner Office, Charsadda received to-day i.e. on 16.10.2015 is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

1. Five more copies of appeal alongwith annexures i.e. complete in all respect may also be submitted with the appeal.
2. In last line of para-7 of the memo: of appeal, order dated 17.8.2015 has been shown as annexure-E, which has not been placed on file.
3. Annexures of the appeal may be attested by the appellant or his counsel.

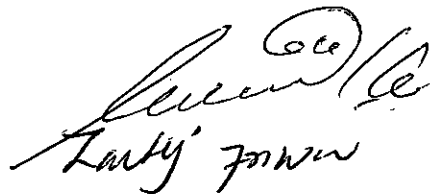
No. 1228 /ST,

Dated 21/10 /2015


REGISTRAR
KPK SERVICE TRIBUNAL,
PESHAWAR.

MR. Zartaj Anwar, Advocate,

- 1) Five copies attached with appeal
- 2) objection no 2) be removed
- 3) all the annexures given by the counsel


Zartaj Anwar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1318 /2015

Imran Khan PawariAppellant

VERSUS

Commissioner Peshawar Division,
Peshawar and others.....Respondents

INDEX

S.No.	Description of documents.	Annexure	Dated
1.	Memo of appeal with affidavit.		1-6
2.	Copy of FIR	A	7
3.	Copy of judgment of ASJ-I dated 20.04.2015	B	8-20
4.	Copy of the order, dated 16-11-2009 16-11-2009.	C	21
5.	Copy of departmental appeal	D	22-26
6.	Copy of the impugned order dated 18-09-15 18-09-15	E	27-35
7.	Wakalatnama		36


Appellant

Through

ZARTAJ ANWAR

Advocate High Court

Dated:

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1318 /2015

K.W.P. Province
Service Tribunal 1269
Case No. 1269
Date 16/10/15

Imran Khan Pawari,

Deputy Commissioner Office, Charsadda.....Appellant

VERSUS

1. Commissioner Peshawar Division, Peshawar.
2. Assistant to Commissioner, Peshawar Division, Peshawar.
3. Deputy Commissioner, Peshawar Division, District Charsadda

.....Respondents

**SERVICE APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER DATED
18.09.2015, WHEREBY THE
DEPARTMENTAL APPEAL OF THE
APPELLANT HAS BEEN PARTIALLY
ACCEPTED AND HE HAS BEEN
REINSTATED INTO SERVICE BUT THE
ALLEGED PERIOD OF ABSENCE/
INTERVENING PERIOD HAS BEEN
TREATED AS WITHOUT PAY HENCE
DENIED BACK BENEFITS TO THE
APPELLANT.**

16/10/15

re-submitted to-day
and filed.

21/10/15

Prayer

On acceptance of this appeal the impugned order dated 18.09.2015, to the extent of treating the absence/ intervening period i.e. 30.06.2009 to 17.08.2015 as without pay may please be set-aside and the appellant may be allowed all arrears of pay and back benefits of services.

Respectfully Sheweth:-

- 1) That the appellant was initially appointed in the respondent department 13.02.2004, ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance.
- 2) That while serving in the said capacity, the appellant was falsely implicated in a criminal case under section 302-324/148-149, vide FIR No.324 dated 24.06.2009, Police Station Prang District Charsadda. The appellant duly informed his department about his false implication in criminal case. Since there were serious threats to life of the appellant from his enemies, therefore, he could not joint his duty. (Copy of FIR is attached as Annexure "A")
- 3) That initially the appellant applied for the bail before arrest, which was granted to him by the concerned Court, later on the trial was conducted and acquitted of charges leveled against him by the Hon'ble Additional Sessions Judge-I, Charsadda. (Copy of judgment of ASJ-I dated 20.04.2015 is attached as Annexure "B")

- 4) That after obtaining copies of the acquittal order the appellant duly reported for duty, however, he was informed that he has been proceeded departmentally in absentia and has been awarded the major penalty of termination from service vide order dated 28.09.2009. It is pertinent to mention here that the order of penalty was however, never communicated to the appellant. When the appellant was provided the copy of Penalty order dated ~~28.09.2009~~¹⁶⁻¹¹⁻⁰⁹. (Copy of the order dated ~~28.09.2009~~¹⁶⁻¹¹⁻⁰⁹ is attached as Annexure "C")
- 5) That against the order dated 28.09.2009, the appellant filed his departmental appeal dated 04.05.2015. (Copy of departmental appeal is attached as Annexure "D")
- 6) That while the departmental appeal of the appellant was pending, an order dated 17.08.2015 has been issued, whereby the departmental appeal of the appellant has been partially accepted and he has been reinstated into service, but the alleged period of absence from duty i.e. 30.06.2009 to 17.08.2015 has been treated as leave without pay thus denied the back benefits to him.
- 7) That in view of the order dated 17.08.2015, since the departmental appeal was partially accepted to the extent of reinstatement in service, but without back benefits of service, the appellant being aggrieved from such order submitted departmental appeal to the department vide dated 18.09.2015 to the extent of leave without pay and back benefits. (Copy of the impugned order dated 18.09.2015 is attached as Annexure "E")
- 8) That the appellant prays for the acceptance of the instant appeal, inter-alia, on the following grounds:-

4

GROUNDS

- A. That the appellant have not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That the case of the appellant is covered under FR-54, which provides that:

"F.R.54---Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty---

- (a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or**
- (b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed.**

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty unless the revising appellate authority so directs.

Since the appellant has been Honourable acquitted in criminal case, therefore, on his reinstatement he cannot be denied the back benefits of service to which he would have been entitled had been in service.

- 5
- C. That the superior Courts also in the view that "Grant of Service Back-Benefits" to an employee, who has been illegally kept away from employment in the rule of denial of such benefits to such a reinstated employee is an exception on the proof of such a person having remained gainfully employed during such a period.

2007 SCMR Page 855

2006 SCMR Page 421

- D. That it has also been held by the Superior Courts in a number of reported cases that all acquittals are honorable and there can be no acquittal that can be termed as dishonorable.
- E. That sine the absence of the appellant has not willful but was due to his false implication in criminal case, moreover the respondents were fully aware of the registration of criminal case against the appellant, therefore, under the law/ rules when the appellant is reinstated on his acquittal form criminal case he under no circumstances can be denied the back benefits for the period he remained out of service.
- F. That the appellant has never committed any act or omission which could be termed as misconduct, his absence from duty was not willful but it was due to his false implication in criminal case. Since the appellant have honorably acquitted in the criminal case, and subsequently reinstated, thereafter treating the absence as leave without pay is uncalled for and liable to be set-aside.

- G. That during the intervening period the appellant never remained in gainful employment, therefore, on his reinstatement he is entitled for the grant of all benefits also.
- H. That the appellant also seeks permission of this Hon'ble Tribunal to reply on additional grounds at the time of hearing of the appeal.

It is therefore, humbly prayed, on acceptance of this appeal the impugned order dated ~~18.07~~ 2015 to the extent of treating the absence/ intervening period i.e. 30.06.2009 to 17.08.2015 as without pay may please be set-aside and the appellant may be allowed **all arrears of pay and back benefits of service.**

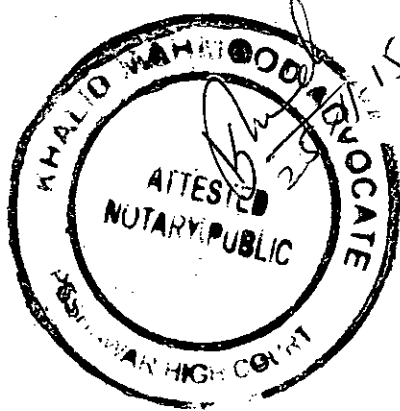
Dated:

[Signature]
Appellant

Through *[Signature]*
ZARTAJ ANWAR
Advocate High Court

AFFIDAVIT

I, Imran Khan Pawari, Deputy Commissioner Office, Charsadda do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.



[Signature]
Deponent

(4)

2

ابتدائی اطلاع کے پورٹ

(فائل) ابتدائی اطلاع نسبت بزم تامل دستاویز پورٹ شدہ زیر دفعہ 154 نمبر منسلک بیان

تاریخ 11

نمبر 324

تاریخ وقت پورٹ	24/6/67 وقت 13:30 بجے
بیمہ و سکونت اطلاع دہندہ دستخط	علی عسکر ولد بخش
تفصیلات جرم (مذکورہ) حال اگر ہو گیا ہے	149 - 135 - 302 - 302
جائے وقوعہ قاصد تھانہ سے درست	کوٹلی
بیمہ و سکونت بزم	کوٹلی
کارروائی / تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو۔	بمیر علی خان کے قتل کے متعلق
تھانہ سے روانگی کی تاریخ و وقت	پورٹ کیشیل پورٹ

ابتدائی اطلاع کے پورٹ شدہ ذیل کے حقائق پر مشتمل ہے۔

مذکورہ اطلاع کے مطابق 24/6/67 کو 13:30 بجے علی عسکر ولد بخش نے اپنے گھر پر بمباری کی۔ علی عسکر ولد بخش نے اپنے گھر پر بمباری کی۔ علی عسکر ولد بخش نے اپنے گھر پر بمباری کی۔

بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

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بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

بمباری کے نتیجے میں علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔ علی عسکر ولد بخش کے گھر پر بمباری ہوئی۔

11/6/67

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ANNEX B

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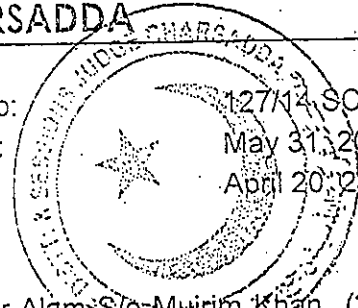
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In The Court Of
KHALID KHAN ADDITIONAL SESSIONS JUDGE-I,
CHARSADDA

Sessions Case No: 127/14 SC
Date of institution: May 31, 2014
Date of Decision: April 20, 2015



29/4/15

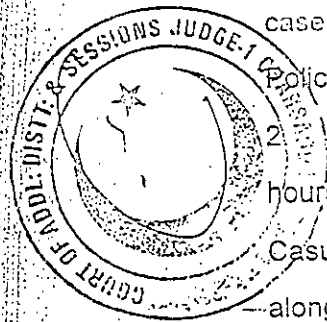
THE STATE ...VERSUS... 1) Sher Alam S/o Mujrim Khan (2) Imran S/o Mukhtiar (3) Sher Muhammad S/o Banaras Khan all residents of Nisatta; District Charsadda.

339/15

Charged vide FIR # 324
Dated 24.06.2009
U/S 302/324/148/149 PPC
Police Station, Prang

JUDGMENT:

1. Accused Sher Alam, Imran and Sher Muhammad faced trial in case FIR # 324, Dated 24.06.2009, U/s 302/324/148/149 PPC, Police Station, Prang.



2. Brief facts of the instant case are that on 24.06.2009 at 13.30 hours, Ali Askar S/o Bashir Ahmad reported to the local police at Casualty DHQ Hospital, Charsadda that on the eventful day, he along with his brother Fakhre Alam, deceased Muhammad Ishaq and Basheer had come to Charsadda in their Motorcar No.5358/LHR. That they were going back to their village, while Bashir de-boarded for purchasing "Choly". At 12:30 hours, from Charsadda side a Motorcar No.5100 speedily overtook vehicle of the complainant party, and from the said vehicle, Sher Muhammad, Imran, Sher Alam, Qasim and Javed duly armed with deadly weapons de-boarded and signaled vehicle of the complainant to stop. That, thereafter, the accused came near the vehicle of complainant and started firing upon the complainant party. As a

ATTESTED

Spec 4/5/2015
Deputy Agency Branch
Court of Dist. & Sessions Judge

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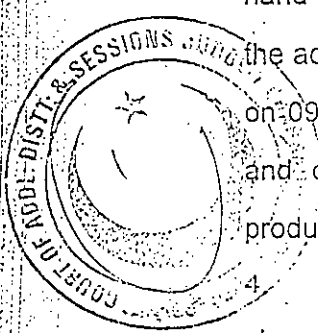
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21

50

result of firing of accused facing trial Sher Muhammad, Imran and Sher Alam; Muhammad Ishaq got hit and died on the spot, whereas, with the fire shots of Qasim and Javed; the complainant and his brother got hit and injured. Motive disclosed by the complainant is blood feud between the parties. Report of the complainant was reduced in the shape of Murasila, on the basis of which the instant F.I.R was registered.

3. Initially, challan u/s 512 Cr.PC was submitted against all the accused. Upon the arrest of accused Qasim and Javed, supplementary challan was submitted against them and after trial, they were acquitted, whereas, accused facing trial were declared proclaimed offenders. After the arrest of accused facing trial, supplementary challan was submitted against them and case in hand came up for trial. During trial, relevant copies were provided to the accused u/s 265-C(1) Cr.PC on 02.07.2014. Charge was framed on 09.07.2014, wherein, accused facing trial denied the allegations and opted to face trial. Prosecution was, therefore, allowed to produce its evidence.



4. Prosecution produced 12-PWs, in order to substantiate the charge. The gist of their deposition is given below:-

(PW.1) Masood Khan SI, arrested accused facing trial vide arrest card Ex. PW1/1. He produced the accused facing trial for obtaining their police custody vide his application Ex: PW1/2, which was refused and the accused were remanded to judicial lockup. He recorded statements of accused u/s 161 Cr.PC and after completion of investigation, handed over the case file to the SHO Amir Nawaz Khan who submitted challan against the accused. He claimed his signatures as correct on the documents prepared by him.

(PW.2) Wali Ullah S/o Musharaf Shah, identified the dead body of deceased Muhammad Ishaq before the police at the time of report and before the doctor at the time of PM examination.

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(PW.3) Dr. Abdur Rasheed Rashid MO, on 24.06.2009 at 01.30 PM, examined injured Ali Asghar S/o Bashir Ahmad r/o Amalyan Nisatta and found the following:-

The injured was fully conscious.

A single grazing, bleeding firearm wound about 1/4" long on left index finger tip. First aid given, no bony involvement.

Duration of the injury less than one hour.

Weapon used firearm and the nature of injury was simple.

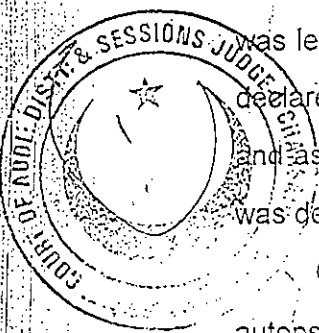
His report in this regard is Ex: PW.3/1.

On the same day at 01.32 PM, he also examined injured Fakhre Alam and found the following:-

Injured fully conscious.

A single bleeding firearm wound on mid lateral part of left arm, about 1/4" x 1/4" in diameter. First aid given. Advised X-Ray left arm both views. Admitted in male surgical ward. Duration of the injury

was less than one hour, caused by firearm. Nature of the injury was declare as simple after admission No.323/68 dated 24/25/06/2009 and as per that record there was no bony lesion, so nature of injury was declare as simple. The medico legal report is Ex: PW3/2.



On the same day i.e. 24.06.2009 at 01.45 PM, he conducted autopsy on the dead body of the deceased Mohammad Ishaq S/o Jan Ali and found the following:

Condition of the body:-

Pale yellow color, aged about 25/26 years clothed in sky blue shalwar, qamees and white banyan. Six fire arm cuts on qamees and one on banyan found.

Wounds:-

1. Firearm entry wound on left side of neck below left mandibular joint about 1/4x1/3" in diameter.
2. Corresponding exit firearm wound of No.1 anteriorly in the byparietal junction about 1/1" in diameter.

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- 3. Firearm entry wound on the right upper auxiliary line about 1/4x1/4" in diameter.
- 4. Corresponding exit firearm wounds of No.3 in mid left scapula about 1/2x1/2" in diameter.
- 5. Corresponding firearm exit wound of No.5 in right upper posterior shoulder about 1/2x1/2" in diameter.

Internal examination:-

Thorax:- Forth and fifth ribs fractured on right side and thorax wall injured. Plurae intact, larynx and trachea both injured. Right lung and left lung in both upper part injured, pericardium and heart injured and blood vessels is injured.

Abdomen:- Pharynx injured and rest of the organs of the abdomen were found intact. Stomach was intact and empty.

Cranium and spinal cord:-

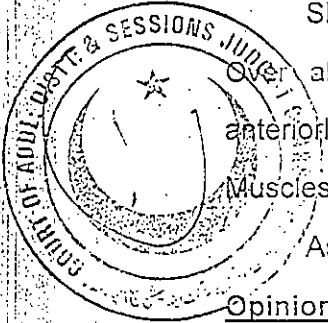
Skull fractured, third and fourth cervical vertebrae fractured. Over all brain and brain membranes injured and ruptured in anteriorly.

Muscles, Bones and joints:-

As mentioned above.

Opinion:-

In his opinion deceased Mohammad Ishaq died due to severe trauma to his vital organs, brain, heart, lungs with severe and extensive hemorrhage and anoxic shock, all leading to the sudden death of the deceased. Probable time that lapsed between injury and death instantaneous. And time between death and PM 01 to 1 hour and 15 minutes. The PM report is Ex: PW3/3 consisting of six sheets including the pictorial. The injury sheet of the deceased Mohammad Ishaq Ex: PW3/4 and inquest report Ex: PW3/5 also bear his endorsements. He claimed his signatures as correct on the documents prepared by him.



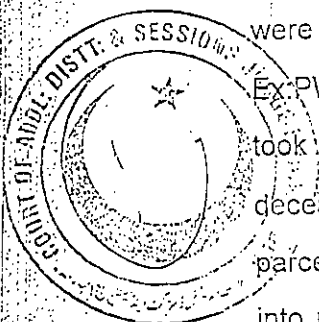
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(PW.4) Waris Khan No.16, is marginal witness to the recovery memo Ex: PW4/1 vide which the Investigation Officer took into possession a sealed phial having a spent bullet sent by the doctor and produced to the Investigation Officer in his presence.

(PW.5) Dr. Javed Iqbal Orthopedic Surgeon, stated that injured Fakhr-e-Alam was advised for operation to him, as he was referred to him and he/PW.5 made his operation on 26.06.2009 and a foreign body was recovered from his body during operation and was discharged on 29.06.2009. The discharge slip is Ex: PW5/1.

(PW.6) Said Ghalib Khan (Rtd.) SI, conducted investigation in the instant case. He prepared site plan Ex:PW6/1, at the instance and pointation of eyewitnesses Ali Askar and Bashir. During the spot inspection, he recovered and took into possession a motorcar bearing registration No.LHR-5358 in which the deceased and injured were present at the time of occurrence vide recovery memo Ex:PW6/2 in presence of marginal witnesses. He also recovered and took into possession blood through cotton from the place of deceased Ishaq and injured Fakhr-e-Alam, packed and sealed in parcel vide recovery memo Ex. PW6/3. He also recovered and took into possession spent bullet P-1 sent by the doctor in a phial vide memo Ex: PW6/4. Similarly, he also took into possession blood stained garments of the deceased Ishaq consisting of Qamees P-2, Shalwar P-3 sky colour, Banyan P-4 which were sealed in a parcel and also took into possession one shirt P-5 blood stained having corresponding cut mark belonging to injured Fakhr-e-Alam, brought by constable Maazullah No. 137 and sealed the same in a parcel and prepared recovery memo is Ex:PW6/5. He sent the blood stained garments of the deceased, injured and blood through cotton to the FSL vide his applications Ex: PW 6/6 and Ex: PW6/7, respectively, and the result thereon are Ex: PW6/8 and Ex: PW6/9, respectively. He also sent spent bullet to the FSL vide his application



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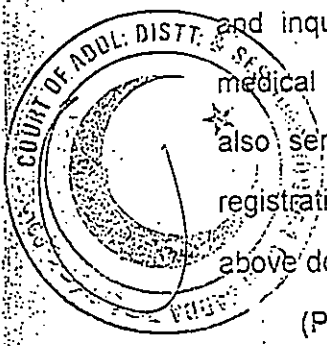
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Ex: PW6/10 and the result thereof is Ex: PW6/11. As the accused were avoiding their lawful arrest, therefore, vide his applications Ex: PW6/12 and Ex: PW.6/13, he applied for and obtained warrants u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC and handed over to the DFC concerned for doing the needful. He recorded statements of PWs u/s 161 Cr.PC and after completion of investigation, he handed over the case file to the SHO concerned for onward submission. He also annexed the motive FIR which is Ex: PW6/14. He claimed his signatures as correct on the documents prepared by him.

(PW.7) Sher Ali SI, reduced the report of complainant in the shape of Murasila Ex: PA/1. He prepared injury sheet of Ali Askar Ex: PW7/1 and injury sheet of Fakhr-e-Alam Ex: PW7/2. He also prepared the injury sheet of deceased Muhammad Ishaq Ex: PW7/3 and inquest report Ex: PW7/4 and sent them to the doctor for medical treatment and P.M. examination through FC Maazullah. He also sent the Murasila to the concerned Police Station for the registration of the case. He admitted his signatures as correct on the above documents.



(PW.8) Amir Nawaz Khan SHO, submitted supplementary challan against the accused facing trial.

(PW.9) Mohammad Irsaal DFC, executed warrants u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC against accused facing trial. The warrants, notices and reports of PW.9 are Ex: PW9/1 to Ex: PW9/20, respectively.

(PW.10) Maazullah No.137, escorted the dead body of deceased from causality DHQ Hospital Charsadda to mortuary and after PM examination, the doctor handed over to him blood stained clothes of the deceased and one phial having a spent bullet, which he produced to the Investigation Officer. His statement was recorded under section 161 Cr. PC.

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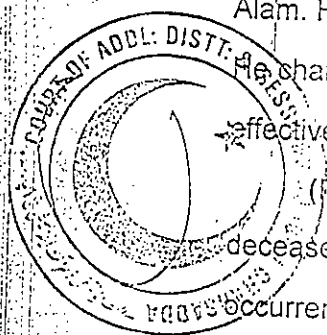
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(PW.11) complainant Ali Askar stated in support of his report Ex: PA/1. He further stated that the site plan was prepared at his instance and at the instance of PW Basheer. He is also marginal witness to recovery memo Ex:PW6/2 vide which the I.O recovered and took into possession car bearing No, LHR-5358 Toyota Corolla and from the seat of the motorcar some blood were taken through cotton. He is also marginal witness to the recovery memo Ex: PW6/3 vide which the IO took into possession some blood through cotton from the place of deceased and some blood from the place of injured Fakhre Alam. Similarly, he is marginal witness to the recovery memo Ex: PW6/5 through which the I.O took into possession the clothes of the deceased Ishaq; one white qamees blood stained having corresponding cut belong to injured Fakhre Alam. He claimed his signatures as correct on the above documents.

He charged the accused for the murder of Mohammad Ishaq and for effective firing upon his life and at the life of his brother Fakhre Alam.

(PW.12) Fakhre Alam S/o Bashir Ahmad stated that deceased Muhammad Ishaq was his first cousin. On the day of occurrence he alongwith his brother Ali Askar, deceased Muhammad Ishaq, Bashir Ahmad had come to Tehsil Bazaar in their motorcar bearing No. LHR-5358 which was driven by him. On the way return to their village when they reached near Taj Plaza, there his father Bashir Ahmad got down from the motorcar mentioned above for purchasing of Choley and other household articles. At this time a motorcar bearing No. 5100 came there with rashly and stopped in front of their car from which Sher Muhammad, Imran, Sher Alam, Qasim and Javed duly armed with deadly weapons got down and came near their car and all the accused started firing upon them with their respective weapons. As a result of the firing of accused facing trial, Muhammad Ishaq got hit and died, while he and his brother Ali Askar sustained injuries with the fire shots of Qasim



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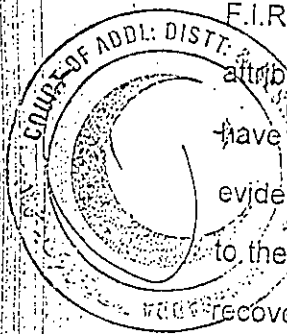
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and Javed. He claimed to be the witness of the occurrence and charged the accused facing trial for the murder of his cousin Ishaq and acquitted accused for his injury and for the injury of Ali Askar. Motive for the offence was previous blood feud. His statement was recorded by the police u/s 161 Cr. PC.

5. Thereafter, the prosecution closed its evidence and statements of the accused were recorded u/s 342 Cr.PC. Accused did not opt to produce evidence in their defense nor opted to be examined on oath u/s 340(2) Cr.PC, Hence, arguments of learned Assistant Public Prosecutor duly assisted by private counsel for the complainant and learned counsel for accused were heard and record was perused.

6. Learned state counsel assisted by private learned counsel for complainant has argued that accused directly charged in the prompt F.I.R for day light occurrence and role of injuries to the deceased attributed to the accused facing trial. That injured eye witnesses have deposed against the accused by giving confidence inspiring evidence and despite lengthy cross-examination nothing favourable to the accused has been brought on record. That though empty not recovered but a spent bullet recovered from the body of PW Fakhre Alam. That there is no question of false implication. That there are three entry wounds on the deceased for which three accused facing trial have been charged. That medical evidence supports prosecution case. That motive for the offence is there. That accused facing trial have remained absconders for long time, which also corroborates the prosecution case. That prosecution has established its case against accused facing trial beyond shadow of doubt and accused facing trial may be convicted and sentenced with maximum sentence provided by law.

7. On the other hand learned defence counsel has argued that the alleged eye witnesses are highly interested and so the same



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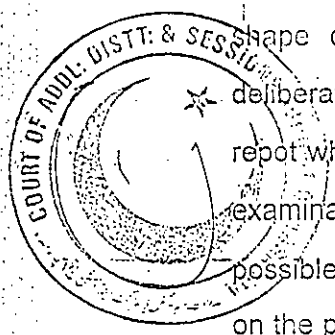
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requires to be carefully evaluated. That no independent witness has come forward even in support of the alleged recoveries or about the alleged presence of the accused on the alleged scene of occurrence. That alleged eyewitness/complainant was not believed against co-accused. That though one of the alleged eyewitnesses, namely, Fakhr-e-Alam produced and examined by the prosecution, but from his statement too the prosecution has not establish its case against the accused facing trial. That in all 5 persons were charged in the instant case. That medical evidence is contradicting the alleged eyewitnesses. That as per report the injured and deceased were brought by the passer byes to the hospital and in the said report presence of alleged eyewitness Bashir has not been mentioned which shows that the said Bashir was not present at all at the time of alleged occurrence. That the contents of the report in the shape of Murasila also shows that the same is the result of deliberation and consultation apart from the one hour delay in the report which has not been explained. That time of report and time of examination of the alleged injured is one and the same which is not possible and the same also speaks of deliberation and consultation on the part of complainant party. That no reason given for coming to Charsadda by complainant party. That description of weapons has not been given in the report. That the alleged eyewitnesses have allegedly received injuries but the same are minor injuries as per available record, while role of firing attributed to five persons from a very closed range and the alleged motorcar has neither received any bullet mark nor the same motorcar has been produced in the court. That there is no other evidence of the nature to connect the accused facing trial with the alleged offence. That prosecution has failed to prove its case against the accused facing trial beyond shadow of reasonable doubt and in the circumstances abscondence



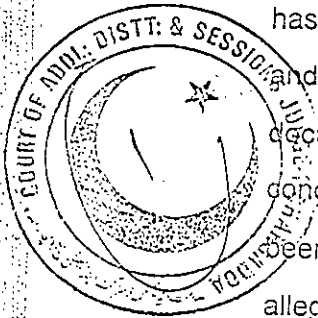
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alone is no evidence against the accused. That accused facing trial may be acquitted from the charges leveled against them. (66)

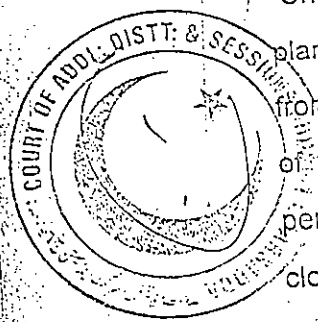
8. In the instant case ocular account is that of PW-11 and PW-12, who have allegedly received injuries in the alleged occurrence, but being closed relatives of the deceased, their statements are evaluated carefully.

In the instant case report was made in the shape of Murasila which is delayed by one hour and perusal of the said Murasila would reveal that in the start of the same the words and spaces are different than the words and spaces at the end before the signature of the complainant wherein the accused have been named for the alleged offence and on the other hand report is of 01.30 p.m. and as per the said report/Murasila at the end the author of the Murasila has stated about preparation of injury sheets of the injured and the deceased and after preparation of the said documents the injured and deceased were referred to the concerned doctor which suggests that some time have been consumed, but strangely the examination of the alleged injured was made at 01.30 P.M and 01.32 P.M by the doctor and the same also speaks of overwriting. The foregoing situation is suggesting of preliminary inquiry before the report in the instant case. In the FIR complainant has not shown the purpose of coming to Charsadda, whereas, PW-12 has stated in his cross examination that they had met one Azmat in connection with business of poultry but the said Azmat has not been produced in support of his stance by the prosecution and this stance of PW-12 is an improvement as the same is not supported or corroborated by any other piece of evidence in the FIR



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presence of the complainant party on the alleged spot is shown as one Bashir had to purchase "choley" but as per Murasila the injured and deceased were brought to the casualty of DHQ Hospital, Charsadda by the passers by and the said Bashir was not named in the Murasila for taking the deceased and injured to the hospital. Similarly, in the site plan point No.4 was given to the said Bashir, but no one shown in the site plan selling "Choley" and neither the said "Choley Farosh" examined in the instant case, whereas, in court statement PW.11 has stated of purchasing some articles and PW.12 has stated of purchasing "Choley" and other household articles instead of purchasing Choley as stated in the FIR. Furthermore, in the presence of sons, sending father for purchasing "Choley" is also not appealable to mind. According to site plan Ex: PW.6/1, deceased and PW.12 are shown in the front seat of the car, while PW.11 is shown in the rear seat of the same and as per PW.11 and PW.12, all the five persons made firing on the complainant party from very close distance, even then the role of causing injuries to the deceased is attributed to three accused facing trial, while role of causing injuries to PW.11 and PW.12 is attributed to acquitted co-accused two in number, which also in the circumstances is not possible to have been noticed as alleged and is not appealable to mind. Furthermore, five persons were making firing from such a close range then why PW.11 and PW.12 have received minor injuries and have not been done to death. Despite the alleged firing by five persons said motorcar has not received any bullet mark, whereas, the accused have been shown to have fired from left side as stated in the cross-examination of



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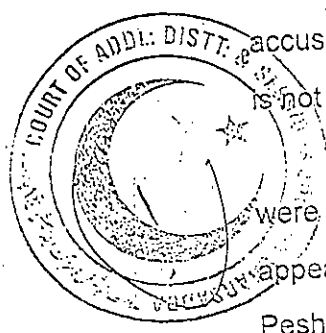
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PW.12 and shown in the site plan Ex: PW.6/1, but as per medical evidence the deceased has received an entry wound on the right upper axillary line about 1/4" x 1/4" in diameter which is also not possible to have been received from the firing as alleged by PW.11 and PW.12 as site plan Ex: PW.6/1 prepared allegedly at the pointation of PW.11 and PW.12. Despite the alleged firing from a very close range, weapons have not been described by PW.11 and PW.12, though PW.11 and PW.12 have allegedly received injuries in the alleged occurrence which are ~~of the nature~~ of the nature belying the story of prosecution and thus the testimonies of PW.11 and PW.12 are not trustworthy nor confidence inspiring as discussed above. There is no other evidence of the nature to connect



accused with the alleged offence and abscondance alone is not evidence against the accused in the circumstances.

Previously co-accused, namely, Qasim and Javed were tried and acquitted by the learned trial court and appeal against acquittal also dismissed by the Hon'ble Peshawar High Court, Peshawar vide order dated 29.01.2014, though previously only one alleged eye witness, namely, Ali Askar was examined while rest of the alleged eye witnesses were abandoned by the prosecution, but despite the examination of another alleged eye witness Fakhre Alam as PW.12, prosecution has failed to prove its case against accused facing trial beyond shadow of doubt as discussed above in detail. Therefore, by extending the benefit of doubt to the accused facing trial, the accused facing trial, namely, Sher Muhammad, Imran and Sher Alam are acquitted of the charges leveled against them. They are in custody, they

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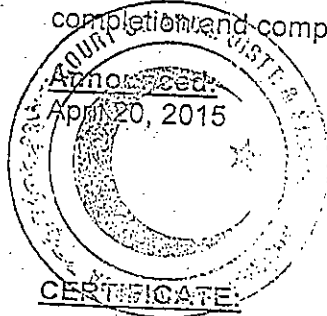
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be set free forthwith if not required in any other case in custody.

9. Case property be kept intact till the expiry of period for appeal/revision, where after, be dealt with in accordance with law.

File be consigned to the Record Room after its necessary completion and compilation.



KHALID KHAN
Additional Sessions Judge-I
Charsadda

It is hereby certified that this judgment consists of (13) pages.
I have read over each page, corrected and signed.

Additional Sessions Judge-I
Charsadda

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Court of District & Sessions Judge
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Certified to be True Copy
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Court of District & Sessions Judge
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Date of Application 29-4-15
Name of Applicant محمد علی خان
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Urgent Fee _____
Signature of Copier & Date *Sajid* 4/5/2015
Date of Preparation 4-5-2015
Date of Return 4-5-2015

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OFFICE ORDER

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Annexure 'C' 159

WHEREAS Muhammad Imran Patwari Revenue & Estate Department was involved in murder case reported vide FIR No.324 dated 24.6.2009 Police station Prang, Tehsil Charsadda.

AND WHEREAS, he was suspended from service on the above mentioned grounds vide order No.640-42/DOR/EA dated 30.6.2009.

AND WHEREAS, A notice was served on the accused asking him to report for official duty during one month vide Notice No.769/DOR/EA dated 01.10.2009, but with no response.

AND WHEREAS a second notice served on accused calling him to report for duty within 15 days vide Notice No.917/DOR/EA dated 01.11.2009, but still he remained absent with any intimation.

AND WHEREAS a notice (Chaspangi) served but with no positive response which clearly shows that he is absconder.

Now therefore, in exercise of powers delegated to me under relevant rules, services of Muhammad Imran Ex-Patwari, Revenue & Estate Department is hereby terminated from the date of actual absence i.e 01.10.2009.

SD-
District Officer,
Revenue & Estate Charsadda.

OFFICE OF THE DISTRICT OFFICER REVENUE & ESTATE CHARSADDA:

NO. 1118-25/DOR/EA

Dated Charsadda the 16/11/2009.

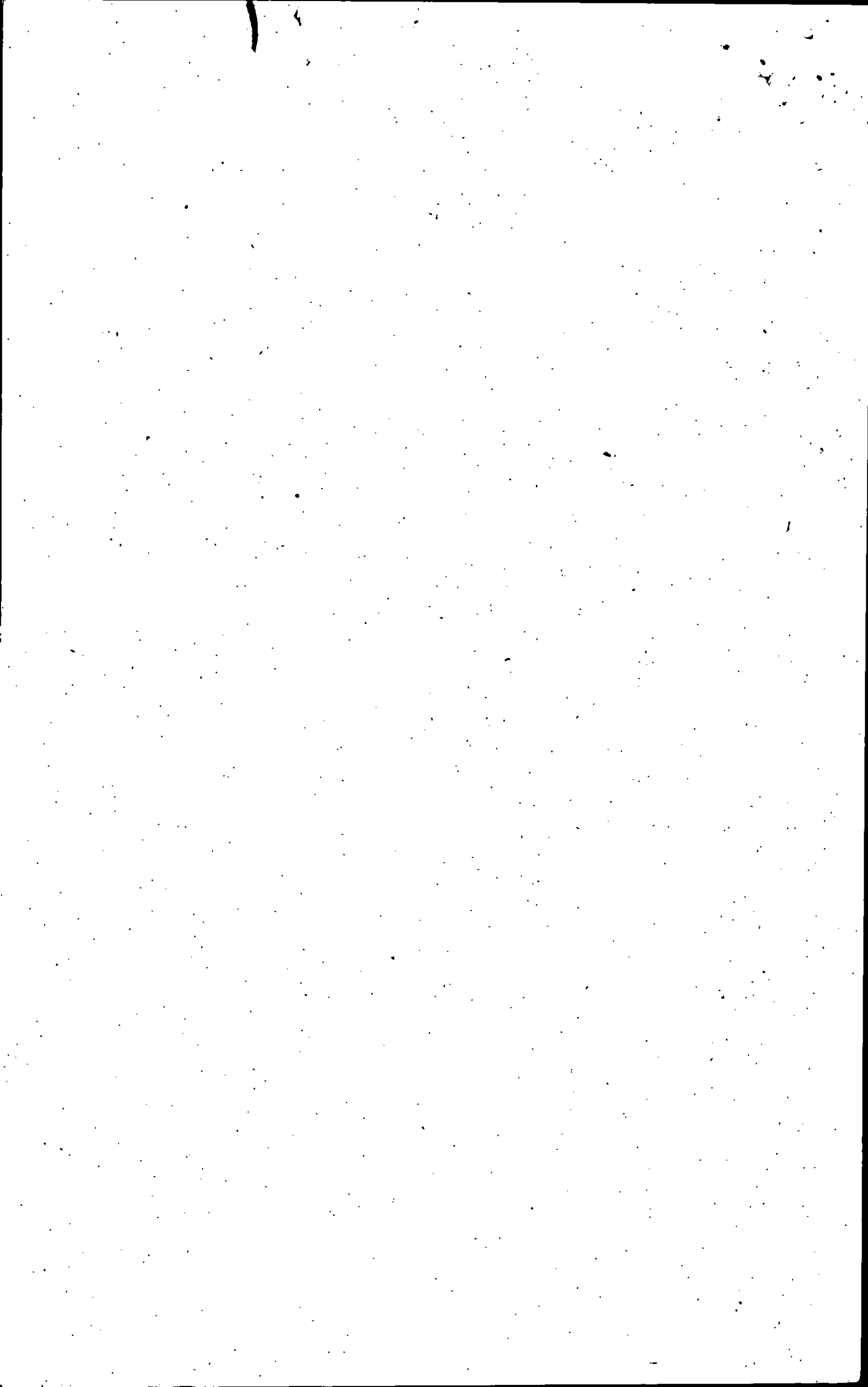
Copy forwarded to the :-

1. Secretary Board of Revenue, *Peshawar*
2. District coordination Officer, Charsadda
3. District Accounts Officer Charsadda.
4. District Kanungo Charsadda. ✓
5. Tehsildar Charsadda.
6. RBC DOR Office Charsadda.
7. Muhammad Imran s/o Mukhtiar Ahmad resident of Nisatta Tehsil & District Charsadda.

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Annexure "D"

بخدمت جناب عزت مآب ڈپٹی کمشنر صاحب چارسدہ۔

عنوان: درخواست برآمد بحال کرنے ملازمت بحیثیت پیواری بمعہ Back Benefit از مورخہ 01.10.2009 تا حال۔
جناب عالی۔

مورد بانہ گزارش ہے کہ سائل 13/02/2004 سے لیکر سال 24.06.2009 تک پیواری حلقہ پڑانگ یاسین زئی

ڈیوٹی سرانجام دے چکا ہے۔ یہ کہ سائل بروئے 24.06.2009 FIR No. 324 dated زیر دفعہ

302/324/148-149 تھانہ پڑانگ ایک جھوٹے مقدمہ میں ملوث کیا گیا تھا۔

۱۔ سائل کو عدالت ایڈیشنل سیشن جج صاحب-ا نے مورخہ 20.04.2015 مندرجہ بالا جرم سے بری الذمہ قرار دے کر بری کرنے کا حکم صادر فرمایا ہے۔ نقل فیصلہ عدالت لف ہذا ہے۔

۲۔ سائل کو جوہات بالا بروئے order No. 640-42/DOR/EA مورخہ 30.06.2009 جناب DOR صاحب چارسدہ نے suspend کیا تھا اور بعد میں مختلف نوٹس ہائے سے سائل کی تعمیل بذریعہ پیواری حلقہ کروا کر مورخہ

16.11.2009 بحوالہ Office Order No. 1118-25/DOR /EA، termination order جاری کیا ہے جو کہ

خلاف ضابطہ ہے۔ نہ پیواری حلقہ نے درست تعمیل کی ہے نہ کسی معتبر گواہان یا علاقے کے ناظم / ملک / کونسلر سے یا دیگر ذمہ دار افراد / قریبی ہمسایہ گان سے تعمیل نہیں کی ہے اور نہ ہی ان افراد میں سے تعمیل پر دستخط ملی ہے۔ نہ پیواری حلقہ نے حسب ضابطہ طور پر بذریعہ تحصیلدار چارسدہ رپورٹ جناب DOR صاحب کو ارسال کی ہے جو کہ غیر قانونی ہے۔ نہ سائل کے خلاف Show Cause نوٹس جاری ہو چکا ہے۔ نہ بذریعہ اخبار اشتہار سائل کو مطلع کیا گیا ہے۔

۳۔ سائل کو بے جا طور پر ذہنی اذیت، مالی نقصان اور بچوں کی تعلیمی نقصان عزت اور پرسکون زندگی کے ساتھ ساتھ اور بہت سے مسائل سے جیسا کہ جیل وغیرہ کی مصیبتیں برداشت کرنے کا سامنا ہو چکا ہے۔

۴۔ سائل بوجوہات بالا مالی لحاظ سے نہایت کمزور اور بے بس ہو چکا ہے۔

لہذا استدعا ہے کہ سائل کو بروئے فیصلہ عدالت مشمولہ مورخہ 20.04.2015 اپنی سابقہ پوسٹ (بحیثیت پیواری) بمعہ Back Benefit از مورخہ 28.09.2009 سے تاحال بحال کرنے کا حکم صادر فرما کر مشکور فرمادیں۔

فقولات FIR، فیصلہ عدالت و نوٹس ہائے suspension order و Termination Order لف ہذا ہے۔

عین نوازش ہوگی۔

آپکا فرمانبردار عمران خان ولد مختیار احمد خان (سابقہ پیواری حلقہ پڑانگ یاسین زئی)

مورخہ 04.05.2015



DK

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(13) (23)
OFFICE OF THE
DEPUTY COMMISSIONER
CHARSADDA

NO. DC (CHD) Estd 7(11) OFFICE ORDER: 9036-40 Dated: 17 / 8 / 2015.

OFFICE ORDER.

WHEREAS, Mr. Imran Khan, Ex-Patwari Revenue Department was charged in Case FIR No. 324 dated 24.06.2009 u/s 302/324/148-149 PS Prang.

AND WHEREAS, he was terminated from service on 16.11.2009.

AND WHEREAS, he surrendered himself to the Court of law on 01.04.2014.

AND WHEREAS, he was acquitted from the charges leveled against him by the Court of law vide order dated 20.04.2015.

AND WHEREAS, the Law Department vide letter No. SO (OP-1)/LD/5-1/2012 /Vol-III dated 02.07.2015 advised that the Ex official can be reinstated in service; however his absence period may be treated as leave without pay.

NOW, in exercise of the powers delegated to me under the rules, services of Mr. Imran Khan, Ex-Patwari are hereby reinstated from the date of his absence i.e 01.10.2009 (F.N). However, the period he remained absent, should be considered as extra ordinary leave without pay.

DEPUTY COMMISSIONER
CHARSADDA

Endst: Even No. & Date

Copy forwarded to:

1. District Accounts Officer, Charsadda.
2. District Kanungo, Charsadda
3. District Nazir/Accountant of this office.
4. Official concerned for information.

DEPUTY COMMISSIONER
CHARSADDA

Y/E



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To

**Presiding Officer/Commissioner
Peshawar Division, Peshawar.**

Subject:- DEPARTMENTAL APPEAL/REPRESENTATION.

Respectfully Sheweth:-

1. *That the applicant is Patwari in Revenue Department District Charsadda.*
2. *That the applicant was charged in case FIR No 324 dated 24/06/2009 u/s 302/324/148/149 P.P.C, Police Station Prang District Charsadda.*
3. *That the applicant was suspended from his services on 30/062009. (Copy attached).*
4. *That notices were served on the applicant and was terminated from his office on 16/11/2009. (Copy attached).*
5. *That the applicant surrendered himself before the court of law on 01/04/2014 and was honorably acquitted on 20/04/2015. (Copy attached).*
6. *That application for re-instatement of the applicant was made on 05/05/2015 to the DC Charsadda and after taking guidance from the*

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law department the applicant was re-instated on 17/08/2015. (Copies attached).

7. That when the applicant was re-instated, he has not been granted back benefits (salaries) and his absence was considered as extra ordinary leave without pay. (Copy attached).
8. That being aggrieved from the order dated 17/08/2015 of Deputy Commissioner Charsadda, approaches this Honourable forum on the following amongst other grounds:-

Grounds:-

- A. That the impugned order dated 17/08/2015 is illegal and void ab-initio being passed in utter violation of law, rules and policy on the subject.
- B. That when the applicant was re-instated the period, for which he was considered as absence is illegal and the order leave without pay is against the law.
- C. That when the applicant was honourable acquitted by the court of law then the salaries/back benefits be granted according to law.

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TAC

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It is, therefore, most humbly prayed that on acceptance of this Departmental appeal, the impugned order dated 17/08/2015 of Deputy Commissioner Charsadda may kindly be set-aside to the extent of leave without pay and the back benefit /salaries of the applicant may kindly be released from the date of suspension i.e. 30/06/2009 in the larger interest of justice.

Any other relief which is not specifically asked for may also be granted to the applicant.



Dated:- 10/09/2015

Imran Khan
Patwari
Deputy Commissioner Office
District Charsadda.





OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

No. D.A(Imran)/AR/2015 9712
Dated 18.09.2015.

To:

Imran Khan,
Patwari in the office of Deputy Commissioner,
Charsadda.

Subject: DEPARTMENTAL APPEAL/REPRESENTATION

I am directed to refer to your departmental appeal filed before Commissioner Peshawar Division Peshawar/Appellate Authority, praying for setting aside the impugned order 17.08.2015 issued by the Deputy Commissioner, Charsadda to the extent of treating the leave period with back benefits/salaries instead of without pay.

Your departmental appeal as well as available records on file was thoroughly examined which reveals that the appeal is not maintainable as per instruction/direction of the Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department conveyed to Secretary to Govt: of Khyber Pakhtunkhwa, Revenue & Estate Department in case of Dr. Muhammad Islam Versus Government of NWFP(KPK) vide letter No. SO(OP-I)/LD/5-1/2012-VOL-III/16953-54 dated 02.07.2015, hence the appeal in hand is filed.

[Signature]
Assistant to Commissioner (Rev/GA)
Peshawar Division, Peshawar

No. D.A(Imran)/AR/2015 9713-14

Copy forwarded to:

1. Deputy Commissioner, Charsadda for information.
2. PS to Commissioner Peshawar Division Peshawar.

[Signature]
Assistant to Commissioner (Rev/GA)
Peshawar Division, Peshawar

[Handwritten initials]

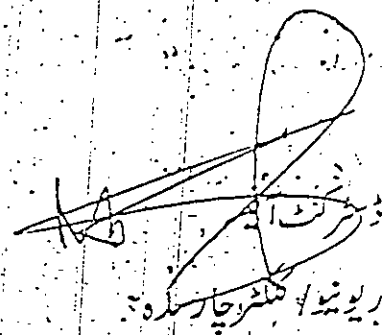
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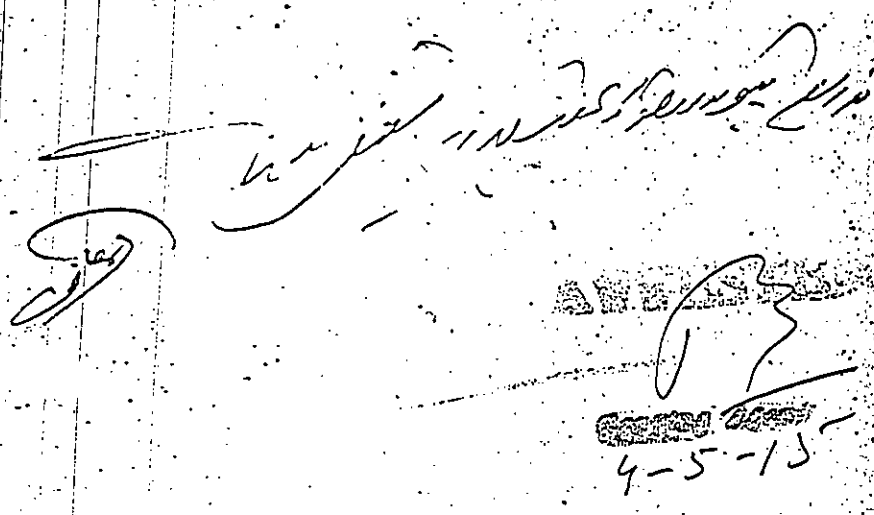
صدر لکھنؤ ایئر ٹرمینل ایئر لائنز ڈیپارٹمنٹ (5) ڈسٹرکٹ جج لکھنؤ

آپ کی محمد عمران ولد مختیار احمد سکندر نے تحصیل صلح چارمنڈہ پیواری گندم چارمنڈہ براہ راست قتل کیس نمٹا کر ملوث ہے جن کی FIR نمبر 324 مورخہ 24.3.2009 بجرم PPC 302/324/148/149 تھانہ پڑانگ میں چاک کی گئی ہے اور آپ کو ملزم قرار دینے گئے ہیں اسلئے آپ کو حکم نمبر 640-42/DOR/EA مورخہ 2009 ع 20 ملازمت سے معطل کیا گیا ہے جسکی میعاد مورخہ 30.9.2009 کو م پوری ہے۔

اسلئے آپ کو بذریعہ نوٹس ہذا ہدایت کی جاتی ہے کہ آپ ایک مہینے کے اندر اندر ڈیوٹی پر حاضر ہو جائیں بصورت آپ کے خلاف قانون کے مطابق کارروائی کی جائیگی۔


ریونیڈ کنسٹر چارمنڈہ

نمبر IDORIEA No. 769 مورخہ 11/10/2009


4-5-15

4/5/15

بنا علی

محکم آن جناب دی اوراد صہب العقیل لیس ہر آن
محمد عمران ہووہی اصحی کاوہی ہر ہر جو حرج لیس

املینا لیسہ مع معلوم ہر
وہ لوبہ و شہتی

معلوم ہر معلوم مقام ہر منتقل ہر
بہی جوئی علم ہر ہر

و لیس ارسال ہر ہر
لہذا ہر ہر ہر

معلوم ہر ہر

21/10
2009

معلوم ہر ہر
4-5-10

دوبارہ لوٹ برائے خاصی

(6)

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آپ سہمی محمد عمران ولد مختیار احمد مکنتہ ننتہ تحصیل و ضلع چارسدہ پیواری محکمہ ناں ضلع چارسدہ
No. 769 /DOR/EA مورخہ 2009 /1/10 ڈیوٹی پرایک مہینے کے اندر اندر
ہدایت کی گئی تھی مگر باوجود ہدایت کے آپ تاحال اپنے ڈیوٹی پر حاضر نہ ہو سکے۔

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اسلئے آپ کو دوبارہ موقع دیکر پندرہ دن کی مزید مہلت دی جاتی ہے کہ آپ اپنے ڈیوٹی پر حاضر ہو جائیں
آپ کے خلاف سخت تادیبی کارروائی کی جائیگی جو کہ ملازمت سے برخواستگی کی صورت تک جاسکتی ہے

or
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ریونیو ہلٹر چار سداہ

نمبری /DOR/EA 917 مورخہ 2009 /1/11

مختیار احمد

4-5-15

4/5/15

دوبار
نہایت
توجہ
بصورت

مہا عالی

بمستعمل ٹولیس ہر گے عارفی آج میں محمد عمران ولد محمد
 سندھ لکھتے رہا۔ محمد عمران کے بارے میں معلوم
 تو معلوم ہے کہ وہ مقدمہ میں الزام میں رہیں ہیں جو
 اور تا معلوم تمام تو حل ہوں۔ اور اس کے محمد عمران
 سے اس کے رہتا معلوم نہ ہو سکا۔ اور اس کے حکم
 رضامندی کے لئے ٹولیس بعد عدم تحسین سے تھا۔

وہ اس کے
 9/11/2004

4-5-11

آپ مسی محمد عمران ولد مختیار احمد سکنہ نتہ تحصیل ضلع چارسدہ پٹواری محکمہ مال ضلع چارسدہ کو دوبارہ بذریعہ نوٹس ہدایت کی گئی ہے کہ آپ اپنی ڈیوٹی پر حاضر ہو جائیں مگر 1 1/2 مہینے گزرنے کے بعد بھی آپ حاضر نہ ہو سکے جس سے یہ بات ظاہر ہوتا ہے کہ آپ قتل کیس میں مفرد قرار دیئے گئے ہیں

لہذا آپ کو آخری بار بذریعہ چسپا کی متنہ کیا جاتا ہے کہ آپ دو ہفتے کے اندر اندر ڈیوٹی کیلئے حاضر ہو جائیں بصورت دیگر آپ کے خلاف یکطرفہ کارروائی کر کے ملازمت سے برخاست کیا جائے گا۔

ڈسٹرکٹ آفیسر
ریونیو/کلکٹر چارسدہ

نمبر IDOR/JEA/928 No. 11/2009 مورخہ 11/11/2009

محمد عمران ولد مختیار احمد سکنہ نتہ
ڈسٹرکٹ آفیسر

ATTESTED

4-5-11

4/11

جسبندہ تعین تو کشتن حیدرآبادی بنام محمد عثمان پورہ کی جو مع کسبہ انجمن
مطربان پورہ کی جو قریب میں جو جو کشتی کھا۔ اور نہ کہیں کے اس کے بارے میں
معلومات فراہم ہیں۔ اللہ کے رحم تو کشتن حیدرآبادی کے جو کسبہ دروازہ
اور اس کے قریب آئے کشتی کے جو کسبہ حیدرآبادی کے کسبہ کے ہیں
جو کسبہ عرفیا ہے

14/11/09

15-5-09

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By Regd. Post.

(10)

(31)

OFFICE OF THE
DEPUTY COMMISSIONER
CHARSADDA

NO. DC (CHD) ESTT: 7 (14) DISCIPLINE/2628

DATED: 2 / 1 / 15 / 2015

The Commissioner,
Peshawar Division Peshawar.

Subject: RE-INSTATEMENT IN SERVICE.

I am to refer to the subject matter and to state as under:-

1. Mr. Sher Muhammad Ex S/Clerk and Mr. Muhammad Imran Ex Patwari of Revenue Department were charged in a criminal case vide FIR No. 324 dated 24.06.2009 Police Station Prang u/s 302/324/148/149 PPC.
2. Both the Ex officials were terminated by the District Officer, Revenue & Estate Charsadda, after fulfillment of necessary formalities, as annexure "A" and "B" respectively.
3. The Hon'ble Court of Additional Session's Judge-I Charsadda, after conducting trial, acquitted both the Ex officials from the charges leveled against them vide enclosed judgment dated 20.04.2015 as annexure "C".
4. Now, Both the Ex officials have submitted applications for Re-instatement in service along with back benefits on the ground that, they have been acquitted by the competent court of law.

In view of the above, it is requested, that advice from BOR may kindly be solicited regarding the Re-instatement of the Ex officials with back benefits or otherwise.


DEPUTY COMMISSIONER
CHARSADDA.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT


No. Estt:II/Commir:/Peshawar 17447-48
Peshawar dated the 30/07/2015

To

The Assistant to Commissioner (R)GA,
Peshawar Division, Peshawar.


SUBJECT: RE-INSTATEMENT IN SERVICE.

I am directed to refer to your letter No. D.appeal(Sher Muhd) etc/AR/2015/6987, dated 30.6.2015 and to enclose a copy of law Department letter No. SO(OP)-I/LD/5-1/2012-Vol-III/16953-54, dated 02.7.2015 for further necessary action at your end please.


Secretary-I

No. Estt:II/Commir:/Peshawar 17447-48

Copy forwarded to Deputy Commissioner, Charsadda for similar necessary action please.


Secretary-I





GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/5-1/2012-VOL-III
DATED: PESH: THE 2 JULY 2015

PS/SMBR
By No. 4199
Date 2/7/15
Govt of Khyber Pakhtun Khwa

16953-56

To The Secretary to Govt of Khyber Pakhtunkhwa,
Revenue & Estate Department

Subject: RE-EMPLOYMENT OF TERMINATED PATWARI

3/2/15
Convey to the
concerned
5/11/15
2/7/15

AS-ESOP

Dear Sir,
I am directed to refer to your Department's letter No. Estt:VII/Commr/MKD/15115 dated 26-06-2015 on the subject noted above and to state that the Honorable Supreme Court of Pakistan in the case of Dr. Muhammad Islam Versus Government of NWFP (KPK) through Secretary Food, Agriculture, Live Stock and Cooperative Department at 1998 SCMR Page 1993 has ruled as follows:-

✓
See - 1
3/7

"We are inclined to uphold the above view in as much as all acquittals even if there are based on benefit of doubt are honorable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgment are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of acquittals? All acquittals are certainly honorable. There can be no acquittals, which may be said to be dishonorable. The law has not drawn any distinction between these types of acquittals."

2/7/15

After setting aside the conviction by the Competent Court, there is nothing to stigmatize and penalize the employee as the compromise has washed away the blemish of the employee regarding his being as punished person. Therefore, the Ex-official can be re-instated in service even after acquittal on the basis of compromise with the heirs of the deceased. However, his absence period may be treated as leave without pay.

VII
6/7/15

Yours Faithfully,

Section Officer (Opinion-I)

Endst: of even No. & date.

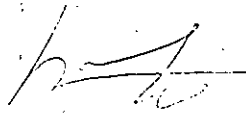
Copy forwarded for information to the PS to Secretary Law, Department.


(14)

(34)

ARRIVAL REPORT.

In compliance with the Deputy Commissioner, Charsadda Order No. DC(CHD)Estu:7(11)/Office.Order/4036-40 dated 17-08-2015. I Imran Khan Patwari hereby submit my arrival report for duty today on 17-08-2015 at F/N.


IMRAN KHAN,
PATWARI, DC OFFICE,
CHARSADDA.



(35)


(15)

OFFICE OF THE
DEPUTY COMMISSIONER
CHARSADDA

No. DC (CHD) Estt 7(1) OFFICE ORDER/ 4043 Dated: 17/08/2015

OFFICE ORDER

Consequent upon on the re-instatement in service vide No. 4032-35 dated 17.08.2015. Mr. Sher Muhammad S/Clerk is hereby posted against the vacant post of office Assistant for the purpose of pay and duty till availability of his original post of S/Clerk.


DEPUTY COMMISSIONER
CHARSADDA



POWER OF ATTORNEY

In the Court of PEPE Service Tribunal Rawalpindi

Imran Khan } For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Commission of Revenue Division 42 } Defendant
Others } Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

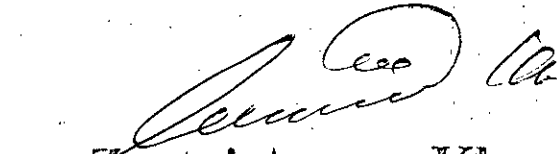
ZARTAJ ANWAR KHAN ADVOCATE my true and lawful attorney, for me in my same and on my behalf to appear at Raw to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Companies or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year h/t
Executant/Executants _____
Accepted subject to the terms regarding fee _____


Zartaj Anwar Khan
Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3-4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0331-9399185

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

In the matter of appeal No. _____/2015

Imran Khan (Appellant)

VERSUS

Commissioner Peshawar Division, Peshawar and others.
(Respondents)

Put up for today 22.12.15
Application for early hearing in the titled appeal

Respectfully submitted:

1. That the titled appeal is pending adjudication before this Honorable Tribunal in which 22.12.2015, is the dated fixed for preliminary hearing.
2. That on the previously the case was fixed for preliminary hearing on 30.11.2015, however the counsel was unaware of the date of hearing as no notice was served on the appellant or his counsel.
3. That it has come to the knowledge of the appellant that the date fixed for hearing i.e, 22.12.2015 may fall in winter vacations, in such situation the appeal may further be adjourn without any hearing. Hence the appeal deserves to be fixed and heard at the earliest.
4. That the date fixed for hearing in the titled appeal is too far hence deserves to be expedited.
5. That there is no legal impediment in early hearing of the titled appeal.

It is therefore, humbly requested that on acceptance of this application the dated fixed for hearing in the titled appeal i.e 22.12.2015, may kindly be expedited.

Applicant
Through

ZARTAJ ANWAR
Advocate, Peshawar.

Dated:02.12.2015

کتابخانه خیریتون فواد مسرورین شریعتیہ اسکول

محرم الحرام ۱۴۱۸ھ

۱۸/۸/۱۶

در افواج السنہ مبارکہ و دیگر کتب خیریتون فواد مسرورین شریعتیہ اسکول

فہرست کتب و مسائل حسب ذیل عرض کرنا

۱۔ مسائل کا پیدل فرمودہ میں خیریتون فواد مسرورین شریعتیہ اسکول
جمعہ کا کتب

۲۔ خیریتون فواد مسرورین شریعتیہ اسکول ۱۸/۸/۱۶
میں کتب جمع کرنا کی ایک نئی کتاب جمع کرنا

المستوفی

۱۸/۸/۱۶

رسائل (پندرہ روزہ) افواج السنہ مبارکہ

محمد مسرور

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 1318/2015.

Imran Khan, Patwari,

Deputy Commissioner Office, Charsadda

Appellant

Versus

1. The Commissioner, Peshawar Division Peshawar.
2. The Assistant to Commissioner, Peshawar Division. Peshawar.
3. The Deputy Commissioner, Charsadda

.....
Respondents.

INDEX

S No.	Description of documents	Annexure	Pages
1.	Affidavit	--	1
2.	Para-wise comments	--	2-3

Versus

1. The Commissioner, Peshawar Division Peshawar.

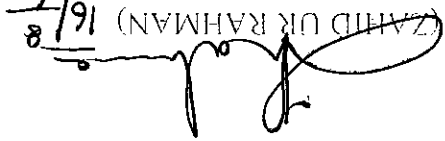
2. The Assistant to Commissioner, Peshawar Division, Peshawar.

3. The Deputy Commissioner, Charasadda

Respondents.

AFFIDAVIT

I, Zahid ur Rahman, Superintendent, Deputy Commissioner Office Charasadda do hereby solemnly affirm and declare on oath that the contents of the instant appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.


(ZAHID UR RAHMAN) 16/16
Superintendent,
DC Office Charasadda

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 1318/2015.

Imran Khan, Patwari,

Deputy Commissioner Office, Charsadda.....

Appellant

Versus

1. The Commissioner, Peshawar Division Peshawar.
2. The Assistant to Commissioner, Peshawar Division, Peshawar.
3. The Deputy Commissioner, Charsadda

..... Respondents.

Joint para-wise comments by Respondents No.1, 2 & 3 are as under.

Respectfully sheweth,

Preliminary Objections:

1. That the appellant has got no cause of action.
2. That the instant appeal as barred by Law and limitation.
3. That the appellant has not come to the Tribunal with clean hands.
4. That this Honourable Tribunal has got no jurisdiction to entertain the instant appeal.

ON FACTS.

Para No. 1 Pertains to record.

Para No. 2 Pertains to record.

Para No. 3 No comments.

Para No. 4 Pertains to record.

Para No. 5 Pertains to record.

Para No. 6 Correct.

Para No. 7 Correct. The official was acquitted by the Session Court Order announced on 20.4.2015 and was reinstated into service by this office on 17.08.2015 in the light of Law Department letter No. SO(Op-1)/LD/5-1/2012-Vol-III dated 02.07.2015 quoted the remarks of case titled "Dr. Muhammad Islam Vs Govt. of NWFP (KP)" after setting aside the conviction by the competent Court, there is nothing to stigmatize and penalize the employee as the compromise has washed away the blemish of the employee regarding his being as punished person. Therefore the ex official can be reinstated in service even after acquittal on the basis of compromise with the heirs of the deceased, *however his absence period may be treated as leave without pay.*

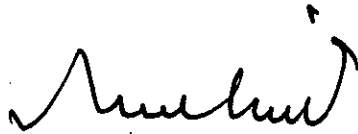
Para No. 8 The appellant has got no cause of action to file the instant appeal.

GROUND

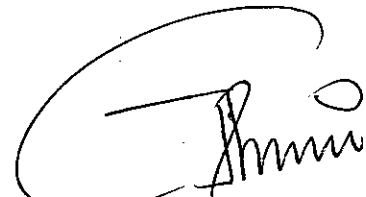
- A. Incorrect. The appellant has rightly been treated in accordance with the law.
- B. The Respondents have made the decision in accordance with the Law Department letter as explained in Para No. 7 above.
- C. Incorrect. The appellant has not been kept away from duty, but he was willfully absent from duty.
- D. Correct.
- E. Incorrect. As explained in Para No. 7 above.
- F. Incorrect. As explained in Para No. 7.
- G. No Comments.
- H. The Respondents also seek permission to raise additional grounds at the time of arguments.

PRAYER:

It is humbly prayed that the appellant has been reinstated in service on the decision of the Honourable District & Session Court Charsadda, wherein he has been acquitted, while his period of absconding has been treated as leave without pay in accordance with the Law Department letter No. SO(Op-1)/LD/5-1/2012-Vol-III dated 02.07.2015.



Assistant to Commissioner,
Peshawar Division, Peshawar.
(Respondent No. 2)



Deputy Commissioner
Charsadda
(Respondent No. 3)



Commissioner
Peshawar Division Peshawar
(Respondent No. 1)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Appeal No. 1318/2015.

Imran Khan, Patwari,

Deputy Commissioner Office, Charsadda.....

Appellant

Versus

1. **The Commissioner, Peshawar Division Peshawar.**
2. **The Assistant to Commissioner, Peshawar Division, Peshawar**
3. **The Deputy Commissioner, Charsadda**

Respondents.

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BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No. 1318/2015.

Imran Khan: Patwari.

Deputy Commissioner Office, Charsadda.....

Appellant.

Versus

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.....
Respondents.

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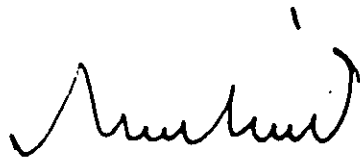

(ZAHID UR RAHMAN) 16/8
Superintendent.
DC Office Charsadda 1/16

GROUNDS

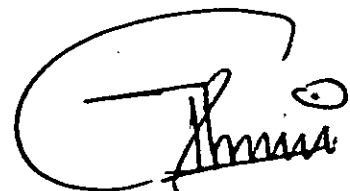
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Assistant to Commissioner.
Peshawar Division, Peshawar.
(Respondent No. 2)



Deputy Commissioner
Charsadda
(Respondent No. 3)



Commissioner
Peshawar Division Peshawar
(Respondent No. 1)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
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Deputy Commissioner Office, Charsadda.....

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In the matter of

Service Appeal No. 1318/2015

Imran Khan Patwari

Deputy Commissioner, Office Charsadda.Appellant

VERSUS

1. The Commissioner Peshawar Division Peshawar
2. The Assistant to Commissioner, Peshawar Division
Peshawar.
3. The Deputy Commissioner, Charsadda

.....Respondents

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS:-

1. That the appellant has a good cause of action.
2. That the instant appeal is filed within time.

3. That the appellant came to matribunal with clean hands.
4. That this Honourable Tribunal got ample jurisdiction to entertain the instant appeal.

ON FACTS:-

1. Para No. 1 of the appeal is correct.
2. Para No. 2 of the appeal is correct.
3. Para No. 3 of the appeal is correct, according to record.
4. Para No. 4 of the appeal is correct.
5. Para No. 5 of the appeal is correct.
6. As admitted as correct, hence no reply.
7. Since admitted as correct, however, to the extent of that the official was acquitted by Session Court order announced on 20/04/2015 and reinstated into seriously misoffice on 17/08/2015 in the light of law departmental letter No. SO (OP-1)LD/5-1/2012-Vol-III dated 02/07/2015 but without back benefits of service the appellant being aggrieved from such order submitted departmental appeal vide dated 18/09/2015 to the extent of leave without pay and

back benefits. The alleged period of absence from duty i.e. 30/06/2009 to 17/08/2015 has been treated as leave without pay thus denied the back benefits.

8. Incorrect, the appellant has a good cause of action.

GROUNDS:-

A. Denied. The appellant has not been treated in accordance with law, hence, his rights secured and guaranteed under the law are badly violated.

B. Correct to the extent of his retirement vide order dated 17/08/2015 and acquitted order of the Session court announced on 20/04/2015 but denied the rest of the para as the case of the appellant covered under FR-54 which is provided in Para B of the appeal.

C. Denied. Para C of the appeal is correct.

D. As admitted as correct, no comments.

E. Denied, Para E of the appeal is correct.

F. Denied. Para F of the appeal is correct.

G. Para G of main appeal is correct.

H. That the appeal has the right of raise any additional grounds at the time of arguments.

It is therefore, humbly prayed that on acceptance of this rejoinder, the comments of the respondents may kindly not be taken into consideration and the writ petition of the petitioner may kindly be accepted / allowed against the respondents as prayed for.



Appellant

Through



Zartaj Anwar

Advocate, Peshawar.

And

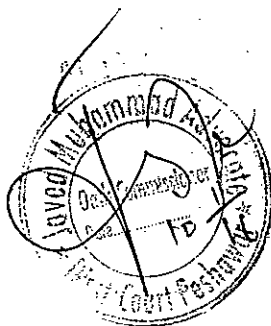


Saleem Abdullah

Advocate, Peshawar.

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that all the contents of instant rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honourable Court.



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

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Imran Khan Patwari

Deputy Commissioner, Office Charsadda.Appellant

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Through Appellant

Zartaj Anwar
Advocate, Peshawar.

And

Saleem Abdullah
Advocate, Peshawar.

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DEPONENT