

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1382/2015

Date of institution ... 11.12.2015

Date of judgment ... 13.02.2019

Said Wali, Ex-Chowkidar,
BHU, Abdullah Jan Killi Khyber Agency.
R/o Arjlinaade Qambar Khel Tehsil Bara, Khyber Agency.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health Department Peshawar.
 2. Director General, Health Department Khyber Pakhtunkhwa, Peshawar.
 3. Director Health Department FATA Warsak Road, Peshawar.
 4. Agency Surgeon Khyber Agency Jamrud.
 5. Political Agency Khyber Agency Qayum Stadium Road, Peshawar.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE RESPONDENTS WHO HAVE TAKEN NO ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF 90 DAYS.

Mr. Aslam Khan Khattak, Advocate.

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving as Chowkidar in Health Department at BHU, Abdullah Jan Killi Khyber Agency since his appointment i.e 25.07.1990. He was involved in

M. Amin
13.2.2019

criminal case under section 365-A PPC/11 FCR. The appellant was acquitted by the competent court vide judgment dated 03.01.1996, the appellant reported for duty but he was not allowed therefore, the appellant filed departmental appeal on 31.08.2015 for releasing of his salary from the year 1994 to 2004 with all back benefits and also prayed for compulsory retirement but the departmental appeal of the appellant was not decided, hence, the present service appeal.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was falsely involved in the aforesaid criminal case. It was further contended that the appellant was hon'ble acquitted by the competent court. It was further contended that after acquittal, the appellant reported for duty but the competent authority did not allow him to join the duty. It was further contended that the appellant filed departmental appeal but the same was not responded. It was further contended that since the appellant was hon'ble acquitted by the competent court therefore, the appellant was entitled for release of his salary from 08.10.1994 to 30.11.2004. It was further contended that the appellant have fourteen years service in his credit therefore, he was also entitled for compulsory retirement but the respondent department has neither paid salary for the aforesaid period nor passed any order for compulsory retirement of the appellant therefore, prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that there is no final original or appellate order against which the appellant is aggrieved therefore, the present service appeal is not maintainable under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was further contended that the appellant has submitted resignation from his post on 28.02.1995 which was accepted by the competent authority on 31.03.1995 (AN)

M. Amin
13.2.2019

and after acceptance of his resignation the competent authority has also appointed Mr. ^m ~~Miran~~ Gul S/o Muhammad Ghani at his post vide order dated 01.04.1995 but the appellant has concealed the fact from the Tribunal therefore, prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving as Chowkidar in Health Department. He was involved in a criminal case. Later on he was acquitted from the said criminal case. Though the appellant has claimed that he was acquitted from the criminal case therefore, he was entitled for grant of the arrears of pay and allowances with effect from 08.10.1994 to 30.11.2004 and also prayed for compulsory retirement due to 14 years service in his credit but the record reveals that the appellant had submitted resignation before the competent authority on 28.02.1995 and the said resignation of the appellant was accepted by the competent authority on 31.03.1995 and Mr. ^m ~~Miran~~ Gul S/o Muhammad Ghani was appointed at his post by the competent authority vide order dated 01.04.1995 therefore, the appellant has neither performed any duty after 31.03.1995 nor has remained civil servant any more. The record further reveals that there is neither final original or appellate order against which the appellant has filed the present service appeal therefore, the present service appeal is not maintainable under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Hence, 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
13.02.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

14.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 02.01.2019.


Reader

02.01.2019

Aslam Khan Khattak Advocate on behalf of learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Shah Nawaz Assistant for respondents present. Aslam Khan Khattak, Advocate, seeks adjournment as learned counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 13.02.2019 before D.B.


Member


Member

13.02.2019

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, the present service appeal is not maintainable under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Hence, 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
13.02.2019



(HUSSAIN SHAH)
MEMBER

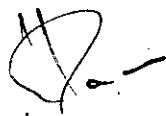

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER



18.05.2018


Learned counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 13.06.2018 before D.B.

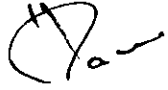

(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

13.06.2018

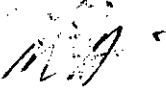
Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.08.2018 before D.B.



(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

07.08.2018


Appellant with counsel and Mr. Muhammad Jan learned Deputy District Attorney present. Adjournment requested. To come up for arguments on 02.10.2018 before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

02.10.2018

Learned counsel for appellant and Mr. Kabirullah Khattak learned Additional Advocate General present. Learned counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 14.11.2018 before D.B


(Hussain Shah)
Member


(Muhammad


14.12.2017 Learned counsel for the appellant present. Mr. Usman Ghani, learned District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 26.01.2018 Before D.B


(Gul Zeb Khan)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

26.01.2018 Mr. Jahan Afsar Paindakhel, Advocate present and submitted fresh wakalat nama on behalf of appellant, placed on file. Mr. Zia Ullah, DDA alongwith Jaffar Ali, Assistant for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.04.2018 before D.B.


Member
Executive


Member
Judicial

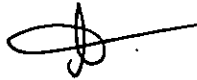
03.04.2018 Junior to counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available. Adjourn. To come up for arguments on 18.05.2018 before D.B


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

13.02.2017

Counsel for appellant and Mr. Muhammad Jan, Government Pleader for respondents present. Learned counsel for appellant submitted rejoinder, which is placed on file. To come up for arguments on 14.06.2017 before D.B.




(AHMAD HASSAN)
MEMBER




(ASHFAQUE TAJ)
MEMBER

14.06.2017

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Junior to Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 16.10.2017 before D.B.




(Gul Zeh Khan)
Member



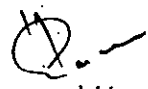
(Muhammad Amin Khan Kundi)
Member

16.10.2017

Counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 14.12.2017 before D.B.



(Ahmad Hassan)
Member (E)






(Muhammad Hamid Mughal)
Member (J)

Form- A
FORM OF ORDER SHEET

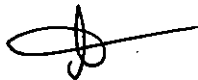
Court of _____

Case No. 1382/2015

S.No.-	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.12.2015	<p style="text-align: center;">The appeal of Mr. Said Wali presented today by Mr. Aslam Khan Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>29.12.15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2		

13.02.2017

Counsel for appellant and Mr. Muhammad Jan, Government Pleader for respondents present. Learned counsel for appellant submitted rejoinder, which is placed on file. To come up for arguments on 14.06.2017 before D.B.



(AHMAD HASSAN)
MEMBER



(ASHFAQUE TAJ)
MEMBER

14.06.2017

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Junior to Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 16.10.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member



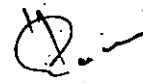
(Gul Zeh Khan)
Member

16.10.2017

Counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 14.12.2017 before D.B.



(Ahmad Hassan)
Member (I)



(Muhammad Hamid Mughal)
Member (J)

11.04.2016

Appellant with counsel and Mr. Muhammad Mahaz Madni, Assistant alongwith Sr.GP for the official respondents and counsel for respondent No. 5 present. Reply not submitted. Requested for adjournment. Last opportunity granted To come up for written reply/comments on 31.5.2016 before S.B.


Chairman

31.05.2016

Appellant in person, M/S Amjad Ali, Asstt. and Muhammad Maaz Madni, Asstt. alongwith Addl, AG for respondents No. 1 to 4 and Mr. Muhammad Furqan Yousafzai, Advocate/Legal Advisor for respondent No. 5 present. Written reply by respondents No. 1 to 4 submitted. Learned Legal Advisor also relies on the same on behalf of respondent No. 5. The appeal is assigned to D.B for rejoinder and final hearing for 18.10.2016.


Chairman

18.10.2016

Counsel for the appellant and Addl: AG for the respondents present. Counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and arguments on 13.02.2017.


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

29.12.2015

Counsel for the appellant present. He argued that the appellant was initially appointed as Chowkidar on 27.5.1990 at BHU Abdullah Jan Killi Khyber Agency ^whe was falsely implicated in a criminal case. That the appellant has been acquitted in the said case but the respondent-department is not letting him for performing his duty. That the appellant has been hon'ble acquitted and according to the judgment of the august Supreme Court reported in 1998-SCMR, 1993 he is entitled for pay and pension. That departmental appeal of the appellant has not been responded hence this service appeal was filed.

Appellant Deposited
Security & Process Fee >

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 24.2.2016 before S.B.


Member

24.02.2016


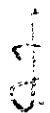

Counsel for the appellant, Mr. Maaz Madni, Assistant Litigation Officer alongwith Addl: A.G for respondents No. 1 to 4 and Mr. Muhammad Furqan, Advocate for respondent No. 5 present. Special Power of attorney on behalf of respondent No: 5 submitted. Requested for adjournment. To come up for written reply/comments on 11.4.2016 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1382/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.12.2015	<p style="text-align: center;">The appeal of Mr. Said Wali presented today by Mr. Aslam Khan Khattak 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		<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>29.12.15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. 1382 of 2015

Said Wali, Ex-Chowkidar, Appellant

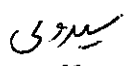
VERSUS


Govt of KPK through Secretary Health Department
Peshawar and others Respondents

Index

S.No.	Description of documents	Annexure	Pages
1.	Memo of appeal	-	1-4
2.	Extract from service book showing appellant's initial appointment	"A"	5
3.	Charge Under Section 365-A/11 FCR against the appellant	"B"	6-7
4.	Acquittal of appellant vide order dated 03/01/1996	"C"	8-11
5.	Departmental appeal dated 31/08/2015	"D"	12-13
6.	Extract from appellant's service book	"E"	14-24
7.	Wakalat Nama	In original	25

Dated // 12/2015


Appellant
Through


Aslam Khan Khattak
Advocate, Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. 1382 of 2015

Said Wali, Ex-Chowkidar,
BHU, Abdullah Jan Killi Khyber Agency
R/o Arjlinaade Qambar Khel Tehsil Bara, Khyber
Agency.

..... Appellant

K.P.K. Province
Service Tribunal
Dir. 1441
Dated 11-12-2015

VERSUS

- 1- Govt of KPK through Secretary Health Department Peshawar.
- 2- Director General, Health Department KPK Peshawar.
- 3- Director Health Department FATA Warsak Road, Peshawar.
- 4- Agency Surgeon Khyber Agency Jamrud.
- 5- Political Agent Khyber Agency Qayum Stadium Road, Peshawar.

..... Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT 1974, AGAINST THE RESPONDENTS
WHO HAVE TAKEN NO ACTION ON THE
DEPARTMENTAL APPEAL OF
APPELLANT WITHIN THE STATUTORY
PERIOD OF 90 DAYS.

Prayer

On acceptance of appeal, the respondents may be directed to pay the salary to the appellant from 08/10/1994 to 30/11/2004 and thereafter his whole service from 27/05/1990 to 30/11/2004 may be converted to that of

compulsory retirement from 01/12/2004 with full pensionary benefits including arrears.

Respectfully Sheweth:

Brief facts leading to the instant appeal are a-sunder: -

- 1- That the appellant was initially inducted in Service as Chowkidar on 27/05/1990 at BHU Abdullah Jan Killi Khyber Agency as revealed from extract from his service book at Annexure "A".*
- 2- That the appellant throughout his whole service has performed his duty with utmost of his capabilities and to the entire satisfaction of his superiors.*
- 3- That the appellant was falsely implicated in a criminal case registered at Hayatabad Peshawar Under Section 365-A/11 FCR vide annexure "B".*
- 4- That thereafter the trial was conducted by the judge Special Court and the appellant was acquitted from all the charges levelled against him and was declared innocent vide his order dated 03/01/1996. Copy is annexed as Annexure "C" and the appellant was released in the year 2004.*

- 5- That the appellant after his release has many times reported to join his service but he was not allowed.*

6- That the appellant's home/property was destroyed by Mangal Bagh and so the appellant alongwith his family / children had left his home and still stranded in the suburbs of Peshawar.

7- That in spite of above mentioned circumstances the appellant has tried his best to join his duty at BHU Abdullah Jan Killi but he was never permitted.

8- That the appellant has filed his departmental appeal dated 31/08/2015 vide Annexure "D" to respondent No.2 and 90 days have been elapsed and no response has been received so far and hence this appeal inter-alia on the following grounds:

GROUND:

A- That the appellant has been acquitted from the charges levelled against him by the criminal Court as revealed from annexure "C". So his acquitted is honourable for the reason that the prosecution has not been succeeded to prove their case against the appellant. So the appellant is fully entitled to grant of arrears of his pay and allowances from 08/10/1994 to 30/11/2004.

B- That the appellant was in the service of the Government from 27/05/1990 to 30/11/2004 i.e. 14 year 6 months and 03days as revealed from

his service book at annexure "E". So he is fully entitled to pension from 01/12/2004 with all back benefit under the law and denial of the respondents are against all norms of natural justice.

C- That in the matter of pay and pension, bar of limitation is not being applicable. To this effect, the appellant's appeal is within the time and shall not be resisted on the ground of bar of limitation.

D- That the respondents denial for not paying pay and pension to the appellant is illegal, malafide, without jurisdiction and without lawful authority which needs interference by this Hon'ble Tribunal.

E- That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

It is, therefore, prayed that on acceptance of appeal, the respondents may be directed to pay the salary to the appellant from 08/10/1994 to 30/11/2004 and also to retire him from service from 01/12/2004 including arrears till now.

Dated 11/12/2015

سید
Appellant
Through *Aslam*
Aslam Khan Khattak
Advocate, Peshawar

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	4 Pay in substantive post	5 Additional Pay for officiating	6 Other emolument falling under the term 'Pay'	7 Date of appointment	8 Signature
<u>B.P.S.I.R. 600-13-860</u>							
Sud Wali Chaudhary			Pay Rs 600/PM			27 ⁵ / ₄₀ PM	
do -			Pay Rs 613/PM			1 ¹² / ₉₀ FM	
S. Chaudhary B.P.S.-1 No. 20-26-1310 Temp -			Pay Rs 1024/PM			1 ⁶ / ₉₁ (FM)	
of Rs 920-28-1310 at Rs 1310							
do			Pay Rs 1050/PM			1 ¹² / ₉₁ (FM)	

ATTESTED

ashu

Note:—The entries in this page should be renewed or re-attested at least every five years, and the Signature in Lines 9 and 10 should be dated.

1. Name

Said Wali

2. Race

Afghan (Afidi)

3. Residence

Village of Jaliradae Dambur
Khal P.O. & Tehsil Bora-
Khyber Agency.

4. Father's name and residence

Sher Khan

5. Date of birth by Christian era as nearly as can be ascertained

1-7-1966
(ISC July, 1966)

6. Exact height by measurement

5-5"

7. Personal marks for identification

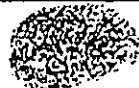
Scars on right forearm

8. Left hand thumb and Finger impression of (non-gazetted) officer

Little Finger



Ring Finger



Middle Finger



Fore Finger



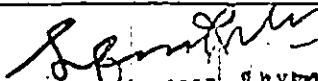
Thumb



9. Signature of Government servant



10. Signature and designation of the Head of the Office, or other Attesting Officer.


Said Wali
Khyber Agency
Khal P.O.

Better Copy

**IN THE COURT OF MR. AMJAD ALI KHAN, POLITICAL AGENT / DISTRICT
MAGISTRATE, KHYBER AGENCY.**

CASE No. 7-IV-95/PAK

PAK STATE **VERSUS**

- 1- Rehman Shah S/o Saudagar, Shalobar Qamber Khel Dre-Plarai.
- 2- Juma Baz S/o Itbar Gul, Shalobar Qamber Khel.
- 3- Said Mir S/o Buzarg Jamil, BZK.
- 4- Rahim, Afghan National Resident of Bazar Zakha Khel.
- 5- Havaladar, Afghan National R/o BZK.
- 6- Noor Bab, Afghan National R/o BZK.
- 7- P.O., Kausar Resident of Bara
- 8- Samandar, Malikdin Khel of Bara
- 9- Said Wali S/o Said Ghani Shalobar Qamber Khel.

Charge: - **KIDNAPPING OF IMRAN S/O
FARHAD AND SALMAN S/O
HIDAYATULLAH UNDER SECTION
365-A/11 FCR**

ORDER:

Brief facts of the case are that on 08/10/1994, two students namely Imran and Salman were kidnapped from Hayatabad by accused Rehman Shah etc for ransom and were taken to Bazar Zakha Khel area where they were confined in the house of accused No.3 Said Mir Son of Buzarg Jamil. After some time the relations of the kidnapes contacted P.O Kausar accused No.7 to collect information about the whereabouts of the kidnapes P.O., Kausar was a Hamsaya of Said Wali Son of Said Ghani, Shalobar Qamber Khel.

P.O Kausar after confirmation of presence of the kidnapes in the house of Said Mir, Bazar Zakha Khel arranged a commando action on the said house for release of the kidnapes.

On the night of 24/10/1994, a contingent of 13 pers including Said Wali, Shalobar Qamber Khel, P.O, Kausar and two others P.Os alongwith Irshad and Khisro entered the house of Said Mir and recovered the kidnapes. Five persons went into the house of Said Mir and guests and stayed for the night and at night time they arranged entry of the rest of their group into the house. The raiding party over powered the guard namely Bazistan and recovered the two childrens safely. Reportedly a sum of Rs.Six lacs was paid for this job to Said Wali, Shalobar Qambar Khel and co-herents.

AFFECTED

ash

CASE NO. 7-IV-95/PAK.

Annex

B
D7

FOR STATE.

VERSUS.

1. Rehman Shah s/o Saudagar, Shalobar Qamber Khel Dre-Plarai.
2. Juma Baz s/o Ithar Gul, Shalobar Qamber Khel.
3. Said Mir S/O Buzarg Jamil, BZK.
4. Rahim, Afghan National resident of Bazar Zakha Khel.
5. Havaldar, Afghan National r/o BZK.
6. Noor Bab, Afghan National " " "
7. P.O., Kausar resident of Bazar.
8. Samandar, Haliudin Khel of Bazar.
9. Said Wali s/o Said Ghani Shalobar Qamber Khel.

*Rehman Shah arrested on
21.11.94 vide
Special Report of Teh
dt 21/11/94.*

CHARGE:-

KIDNAPPING OF IMRAN S/O FARHAD AND
SALMAN S/O HIDAYATULLAH UNDER SECTION
365-A/11 PCR.

ORDER.

Brief facts of the case are that on 8.10.1994, two students namely Imran and Salman were kidnapped from Bayatabad by accused Rehman Shah etc for ransom and were taken to Bazar Zakha Khel area where they were confined in the house of accused No.3 Said Mir son of Buzarg Jamil. After some time the relatives of the kidnapes contacted P.O., Kausar accused No.7 to collect information about the whereabouts of the kidnapes. P.O., Kausar was a Hamsaya of Said Wali son of Said Ghani, Shalobar Qamber Khel.

P.O., Kausar after confirmation of presence of the kidnapes in the house of Said Mir, Bazar Zakha Khel arranged a commando action on the said house for release of the kidnapes.

On the night of 24.10.1994, a contingent of 13 persons including Said Wali, Shalobar Qamber Khel, P.O., Kausar and two other P.O.s alongwith Irshad and Khisro entered the house of Said Mir and recovered the kidnapes. Five persons went into the house of Said Mir as guests and stayed for the night and at night time they arranged entry of the rest of their group into the house. The raiding party over powered the guard namely Bazistan and recovered the two children safely. Reportedly a sum of Rs. six lacs was paid for this job to the Wali, Shalobar Qamber Khel and his co-herents.

ATTESTED

(COURT)

alsh

Better Copy

The political administration forced Shalobar Qamber Khel to hand over the culprits for legal action. The concerned tribe produced accused Minarai, Kinarai, Meena Gul, Akhtar Mohammad and Sardari for identification parade who were suspected to be involved in this kidnapping case. Accused No.1 Rehman Shah Son of Saudagar was identified to be the actual accused in the kidnapping case of Imran and Salman from Hayatabad.

On 04/12/1994 accused No.1 Rehman Shah recorded his confessional statement before Political Tehsildar, Bara in which he pleaded guilty of kidnapping of the two children from Hayatabad on the night of 8/9-10-1994 and conducting them to Bazaar Zakha Khel area.

Except accused No.1 Rehman Shah, Shalobar Qamber Khel the remaining accused could not be arrested. Accused No.3 Said Mir Bazar Zakha Khel was killed in police encounter action.

In order to find guilt or innocence of the accused, the case was referred to the following Jirga members to give their award on the issues framed below: -

JIRGA MEMBERS:

- 1- Mian Jan, Elder Kuki Khel.
- 2- Duran Gul, Elder Malikdin Khel
- 3- Sahar Gul Elder Aka Khel
- 4- Haji Ikhtiar Gul Pakhai Zakha Khel

Issues

- 1- In the night of confessional statements of the accused what punishment should be awarded to the accused.
- 2- Any other suggestions / recommendation?

ATTESTED
Aslan

The Jirga Member after perusal of the record of case file submitted their unanimous award may be referred as under: -
" As Rehman Shah accused was identified by the Kidnapees during identification parade and the accused recorded his confessional statement before Political Tehsildar, Bara, " members recommended punishment to the accused under the law.

I, agree with the unanimous award of the Jirga members and accordingly sentence accused Rehman Shah son of Samin are to 14 years R.T with a fine of Rs.20 Laacs or in default to suffer an additional 5 years S.I. under section 369-A / PPC /11 FCR, perpetual non bailable warrants of arrest be issued a accused at S.No.2,4 to 9.

Order Announced
Dated 14/06/1995

Political Agent / District Magistrate
Khyber Agency.

(11)

77 96

(7)

The political administration forced Shalobar Qamber Khel to hand over the culprits for legal action. The concerned tribe produced accused Minarai, Kinarai, Meena Gul, Akhtar Mohan and Sardari for identification parade who were suspected to be involved in this kidnaping case. Accused No.1 Rehman Shah son of Saudagar was identified to be the actual accused in the kidnaping case of Imran and Salman from Hayatabad.

On 4.12.1994 accused No.1 Rehman Shah recorded his confessional statement before Political Tehsildar, Bara in which he pleaded guilty of kidnaping of the two children from Hayatabad on the night of 8/9-10-1994 and conducting them to Bazar Zakha Khel area.

Except accused No.1 Rehman Shah, Shalobar Qamber Khel the remaining accused could not be arrested. Accused No.3 Said Mir Bazar, Zakha Khel was killed in police encounter action.

In order to find guilt or innocence of the accused, the case was referred to the following Jirga members to give their award on the issues framed below:-

JIRGA MEMBERS.

1. Mian Jan, elder Kuki Khel.
2. Duran Gul, elder Malikdin Khel.
3. Sahar Gul, elder Aka Khel.
4. Haji Ikhtiar Gul, Pakhai Zakha Khel.

I S S U E S.

1. In the light of confessional statement of the accused what punishment should be awarded to the accused?
2. Any other suggestions/recommendations?

The Jirga members after perusal of the record of the case file submitted their unanimous award which may be read as under:-

"As Rehman Shah accused was identified by the kidnapers during identification parade and the accused recorded his confessional statement before Political Tehsildar, Bara, therefore, the Jirga members recommended punishment to be awarded as per law."

I agree with the unanimous award of the Jirga members and accordingly sentence accused Rehman Shah son of Saudagar to 14 years R.T. with a fine of Rs.20 lacs or in default to suffer an additional 5 years S.I., under section 355-A/PPC/41 PCR. Perpetual non bailable warrants of arrest be issued against the remaining accused at S.NO.2,4 to 9.

ATTACHED

asla

Ali

POLITICAL AGENT/DISTRICT
NAGTSTRATE, LUNAR AGENCY.

ORDER ANNOUNCED.
DATED 14/6/1995.

Better Copy

MR. KHAN AKBAR KHAN JSC

Accused Beristan on bail while accused Hazrat Hanif, Rehman Shah and Said Wali in custody with their counsel and PP for the state present. PWs Imran Khan, Suliman and complainant Ibrahim present and examined. Counsel for accused requested that the case should be decided on the available evidence as the material witnesses have been examined in the case. Notice was given to the state. Arguments heard and record perused.

The allegations against the accused are that they on 08/10/1994 at about 22:45 hours in front of house No.202/J-3 Acheni Khawar and within the jurisdiction of PS Hayatabad alongwith absconding accused namely Khial Muhammad, Samandar, Juma Baz, Shoaib and dead accused Said Mir kidnapped Ibrahim, Imran and Suleman in order to extract ransom /tawan

On compliance the investigation complete challan was submitted against the accused in this Court. Accused were summoned. Accused Beristan, Hazrat Hanif, Said Wali and Rehman Shah attended the Court, copies of the relevant documents were provided to the accused seven days prior to the commencement of trial, as required under the law. Charge was framed against the accused facing trial to which they pleaded not guilty and claimed trial.

ATTESTED

ash

Better Copy

The material witnesses in the instant case are complainant Ibrahim (PW-3), Suleman (PW-4) and Imran (PW-5). Complainant Ibrahim while appearing in the Court deposed that on the night of occurrence, he and PWs Imran and Suleman were coming back to their house situated in Hayatabad in their motorcar bearing No. ICM 5421. At about 22.45 hours, when they reached close to their house, they parked the motorcar outside the main gate of the house and blew the horn of the motorcar for opening the main gate of the house. Meanwhile a person, duly armed with Kalashinkove came in front of their motorcar while his companions, who were four in numbers came from back side and caught hold of them. They were forcibly brought down of the motorcar and took them towards a nearby Khawar situated in the limits of village Achini. After covering some distance for about half an hour, on fact, the accused made them sit in a rd colour datsun vehicle. There were as many as three persons already sitting in the said vehicle. Out of the said persons one was having a white beard while the other two culprits were having clean shave. After covering about 40 minutes distance in the said datsun, they were taken to a place where Imran and Suleman were got down by the accused were as the complainant was taken by the said culprits in the same datsun and was brought back to a place and ultimately brought him down by them at a place close to cannal situated in TT. He covered some distance on foot and came to the settled area. He contacted the local police and lodged his report in the police station.

ATTESTED

ash

Better Copy

of murasila Ex-PA/1. After admitting the contents of murasila to be correct he put his signature over the same.

When this PW was cross-examined by the defence counsel, he shattered the prosecution case by saying that it is correct that the accused sitting in the Court are not the persons who had abducted him as well as his companions. He further admitted it correct that the persons had muffled their faces with a chaddar in order to conceal their identity. He did not charge the accused for the commission of the offence. In the cross-examination he further told that no identification parade was held by the police through him during investigation of the case and he was told by the I.O that the accused facing trial were the persons who had committed the offence.

Similarly, Suleman (PW-4) and Imran (PW-5) have also made material concessions in favour of the accused in their cross-examination.

XXX

In view of the above discussed evidence I came to the conclusion that there is no probability of the conviction of the accused in the long run even if the remaining evidence is recorded. It is a case of no evidence. It will be futile exercise to proceed further with the case. As such by invoking the provision of S.249-A Cr PC. all the four accused are acquitted of the charges levelled against them. Accused Baristan is on bail, his bail bonds stand discharged. Accused Hazrat Hanif, Rehman Shah and Said Wali are in custody, they be released forthwith from jail, if not required in any other case.

AFFECTED

ash

Better Copy

Accused Said Mir is dead and proceeding against him has been abated.

As regards the case of absconding accused Khial Muhammad, Samandar, Juma Baz, Shoiab, Rahim, Kosari, Haji and Norab, my this judgment shall have no bearing on their case. They are absconding and as such declared P.Cs. Perpetual warrant of arrest be issued against them. DM, Peshawar be asked to include their names in the register of P.Os maintained in his office.

Case property be kept intact till the arrest of absconding accused and their trial.

Announced
03/01/1996

Judge
Special Court, Peshawar

ATTACHED

ashm

3.1.1994

MR. KHAN AKBER KHAN JSC.

Accused Beristan on bail while accused Hazrat Hanif, Rehman Shah and Said Wali in custody with their counsel and PP for the State present. PWS Imran Khan, Suliman and complainant Ibrahim present and examined. Counsel for accused requested that the case should be decided on the available evidence as the material witnesses have been examined in the case. Notice was given to the State. Arguments heard and record perused.

The allegations against the accused are that they on 8.10.1994 at about 22.45 hours in front of house No. 202/J-3 Acheni Khawar and within the jurisdiction of P.S Hayatabad along with absconding accused namely, Khial Muhammad, Samander, Juma Baz, Shoaib and dead accused Said Mir kidnaped Ibrahim, Imran and Soleman in order to extract ransom/tawan.

On completing the investigation complete challan was submitted against the accused in this Court. Accused were summoned. Accused Beristan, Hazrat Hanif, Said Wali and Rehman Shah attended the Court; Copies of the relevant documents were provided to the accused seven days prior to the commencement of trial, as required under the law. Charge was framed against the accused facing trial to which they pleaded not guilty and claimed trial. Trial commenced.

ash

FORM "A"

FORM OF ORDER SHEET.

of

Order or other Proceedings with Signature of Judge
or Magistrate and that of Parties or Council,
where necessary.

2

3

The material witnesses in the instant case are complainant Ibrahim (PW-3), Suleman (PW-4) and Imran (PW-5). Complainant Ibrahim while appearing in the court deposed that on the night of occurrence, he and PWs Imran and Suleman were coming back to their house situated in Hayatabad in their motorcar bearing No. LCM 5421. At about 22.45 hours, when they reached close to their house, they parked the motorcar outside the main gate of the house and blew the horn of the motorcar for opening the main gate of the house. Mean while a person, duly armed with Klashinkove came in front of their motorcar while his companions, who were four in numbers came from back side and caught hold of them. They were forcibly brought down of the motorcar and took them towards a nearby Khawar situated in the limits of village Achini. After covering some distance for about half an hour, on foot, the accused made them sit in a red colour datsun vehicle. There were as many as three persons already sitting in the said vehicle. Out of the said persons one was having a white beard while the other culprits were having clean shave. After covering about 40 minutes distance in the said datsun, they were taken to a place where Imran and Suleman were got down by the accused whereas the complainant was taken by the said culprits in the same datsun and was brought back to a place and ultimately brought him down by them at a place close to Cannal situated in T.T. He covered some distance on foot and came to the settled area. He contacted the local police and lodged his report in the

ATTESTED*adm*

10

9/10

105

Amhali No. 270

Date of Order or Proceedings

Order or other Proceedings with Signature of Judge or Magistrate and that of Parties or counsel, where necessary.

3

of muresila Ex:PA/1. After admitting the contents of muresila to be correct he put his signature over the same.

When this PW was cross-examined by the defence counsel, he shattered the prosecution case by saying that it is correct that the accused sitting in the court are not the persons who had abducted him as well as his companions. He further admitted it correct that the persons had muffled their faces with a chadder in order to conceal their identity. He did not charge the accused for the commission of the offence. In the cross-examination he further told that no identification parade was held by the police through him during investigation of the case and he was told by the I.O that the accused facing trial were the persons who had committed the offence.

Similarly, Suleman (PW-4) and Imran (PW-5) have also made material concessions in favour of the accused in their cross-examination.

In view of the above discussed evidence I came to the conclusion that there is no probability of the conviction of the accused in the long run even if the remaining evidence is recorded. It is a case of no evidence. It will be futile exercise to proceed further with the case as such by invoking the provision of S. 240-A Cr.P.C. all the four accused are acquitted of the charges levelled against them. Accused B. Ristan is on bail, his bail bonds stand discharged. Accused Hazrat Hanif, Rehman Shah and Said Wali are in custody, they be released forthwith from jail, if not required in any other case.

TESTED

ash

No. Did it recd.

107
100
19

FORM "A"
FORM OF ORDER SHEET

(JI)

Court
Case
of

Order Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of Parties or Council, where necessary.
1	2	<p>Accused Said Mir is dead and proceedings against him has been abated.</p> <p>As regards the case xx of absconding accused Khafial Muhammed, Samander, Juma Baz, Shoab, Rahim, Kosari, Haji and Norab, my this judgment shall have no bearing on their case. They are absconding and as such declared P.Os. Perpetual warrant of arrest be issued against them. DM, Peshawar be asked to include their names in the register of P.Os maintained in his office.</p> <p>Case property be kept intact till the arrest of absconding accused and their trial.</p> <p>Announced. 3.1.1996</p> <p><i>Kate</i> Judge, Special Court, Pesh.</p>

er
s.
at

ashm

To,

The Director General Health,
Khyber Pakhtunkhwa Peshawar.

Subject: DEPARTMENTAL APPEAL FOR
RELEASE OF SALARY FROM 1995
ALONG WITH ALL BACK BENEFITS
UPTO 2004 AND ALSO TO TRANSFER
ME TO COMPULSORY RETIREMENT
FROM 2004 TILL NOW WITH ALL BACK
BENEFITS.

Respected Sir,

I have the honour to submit the following for
favour of your kind sympathetic considerations
please: -

- 1- That I was appointed as chowkidar in BPS-1 by
Agency Surgeon Khyber Landi Kotul at the initial
salary of Rs.600/- per month on 27/05/1990.
- 2- That I have performed my duty at BHIU Abdullah
Jan Killi with utmost of my capabilities and to the
entire satisfactions of my supervisors.
- 3- That I was falsely implicated in a criminal case
registered at Hayatabad, Peshawar. The trial was
conducted by the Judge Special Court in the year
1996 and I was acquitted from all the charges
levelled against me and has declared me innocent
vide his order dated 03/01/1996. Copy is annexed at
Annexure "A" and I was released in the year 2004.
- 4- That I wanted to go back home and to rejoin my
services as "Chowkidar" but to my extreme surprise
and shock, I could not join my service because my
home/properties were destroyed by Mangal Bagh.

ATTESTED

ashu

Resultantly I alongwith my family / children had left my home station and is still stranded in the suburbs of Peshawar.

- 5- That in spite of the above mentioned circumstances, I tried my best to rejoin my duty at BHU, Abdullah Jan Killi but I have never been permitted for the same.
- 6- That as per record, I have been shown on duty upto 30/11/2004 but no pay has been paid to me. Copy is annexed at Annexure "B". It is further submitted that I have been acquitted and so I am entitled to all monitory benefits from 08/10/1994 to 30/11/2004 because I was illegally kept away from duty.

It is, therefore, prayed that on acceptance of this departmental appeal, I may be paid salary from 08/10/1994 to 30/11/2004 including arrears and thereafter I may be converted into compulsory retirement from 01/12/2004 with full pensionary benefits to meet the ends of justice.

Your most obediently Servant

Dated 31/08/2015

Syed Wali S/o Sier Ghani
R/o Arjlinaade, Qambar Khel
Tehsil Bara, Khyber Agency

ESTD
asb

No. 597

Rs. 40

RP-51 (PD) (Rev)

Received a Registered Parcel Registered Insured

Postage Registration Fee Acknowledgement Fee In Office Fee

Addressed to DG Health

Total

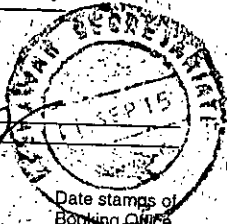
Weight 10 P Kg

Value Rs.

Sender's Name and Address Peshawar

Signature of Booking Official

Date stamps of Booking Office



Note: The entries in this page should be renewed or re-attested at least every five years and the Signatures in lines 9 and 10 should be dated.

1. Name *Said Wali*

2. Race *Afghan (Afidi)*

3. Residence *Village of Jalimadae Damban
Khet P.O. & Tehsil Bawa-
Khyber Agency.*


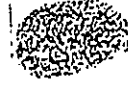
4. Father's name and residence *Shir Ghani*



5. Date of birth by Christian era as nearly as can be ascertained *1-7-1966
(ISC July, 1966)*

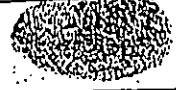
6. Exact height by measurement *5-5"*


7. Personal marks for identification *Scars on right forearm*

8. Left hand thumb and finger impression of (non-gazetted) officer

Little Finger:  Ring Finger: 

Middle Finger:  Fore Finger: 

Thumb: 

9. Signature of Government servant 

10. Signature and designation of the Head of the Office, or other Attesting Officer. *Said Wali*
Survey Officer Thyo
KANDIKOTAL

ashu

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating, state (a) substantive appointment, or (b) whether service counts for pension under Art. 371 C. S. R.	4 Pay in substantive post	5 Additional Pay for officiating	6 Other emolument falling under the term 'pay'	7 Date of appointment	8 Signature of Govt. official
<u>P.S.I. No. 600-13-860</u>							
And Wala Chaudhary			Pay Rs. 600/P.M.			27 ⁵ / ₉₀ FN	
do-			Pay Rs. 613/P.M.			1 ¹² / ₉₀ FN	
do			Pay Rs. 1024/P.M.			1 ⁶ / ₉₁ (FN)	
P.S. 20-26-1310 Temp			1991				
of Rs.	920-28-1310						
at Rs.	224						
Date		Chandigarh					
do			Pay Rs. 1050/P.M.			1 ¹² / ₉₁ (FN)	

ATTESTED
ashu

9 Name and position of the attesting officer (pages 1 to 8)	10 Date of termination of appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer	13 Nature and duration of leave taken	14 Leave Allocation of period or payment of arrears pay upto four months for which leave salary is payable to another Government Period Government to which payable	15 Signature of the head of the office or other attesting officer	16 Remarks (such as date of payment of leave salary, etc.)
--	--	--	--	--	--	--	---

Appointed as a Chartered Accountant in Public,
 No. 600-15-860, with Agency Service
 Office order No. 1038-39/5-13;
 dated 27-5-1990.

30 ¹¹/₉₀ AN Annual Increment Allowance

Service Verified upto 30 ¹¹/₉₀ AN

[Signature]
 RANJIT KAT

[Signature]
 W

Reg. filed in Basic Reg. Sec. 1991
 Finance Dept. W.P.F. Poshan, 11/11
 No. FD (PCC), 1/1/1991 dated 11/1/1991

[Signature]
 RANJIT KAT

TESTED
[Signature]

30 ¹¹/₉₁ AN

Annual Increment Allowance

Service Verified upto 30 ¹¹/₉₁ AN

[Signature]
 RANJIT KAT

[Signature]
 RANJIT KAT

(17)

Name of post	Whether substantive or acting and whether permanent or temporary	Manufacturing, at the (i) substantive appointment, or (ii) whether service ceases for position under Art. 373 C. S. R.	Pay Band	Additional Pay (if any)	Gross Pay
C. Bank - BPS - 1 Rs 970-70-13% Temp-			Pay Rs 1076/PM	1 12/92 (FM)	
do			Pay Rs 1102/PM	1 12/93	
CHANKIDAR BPS - 1 (1245-35-17%)			Pay Rs 1450/PM	1 6/94 (FM)	
do			Pay Rs 1525/PM	1 12/94 (FM)	

ashu

1995-35 177 93
 OF Rs 1490/ 6 94
 1995-35 177 93

9	10	11	12	13	14
Signature and designation of the head of the office or other official in charge of the office	Date of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Section, Part of the head office or other office of the officer	Allocation of period of leave on account of such leave, including the date of commencement and the date of termination of such leave	Remarks

	30/11/92 (AM)		Annual leave granted		Up to 30/11/92 (1/11)

	30/4/1995 AM		Annual leave allowed		Service verified upto 30/4/1995 AM

AFFECTED
ash

Day fixed - 12/1/1994, Civil Finance Deptt.
NUEP, Resubmit Letter No. FDC(P.R.C.) 1-1-94
C/Cell 306/194

Agency Surgeon Khyber
Lahore, 2001

	30/4/94 AM		Annual leave allowed		Service verified upto 30/4/94 (AM)
--	---------------	--	----------------------	--	------------------------------------

Agency Surgeon Khyber
Lahore, 2001

Agency Surgeon Khyber
Lahore, 2001

1	2	3	4	5	6	7	8
Whether sub- sive or officiating and whether permanent or temporary	If officiating, state (1) substantive appointment, or (ii) whether service counts for pension U.S.R. under Art. 371	Pay in substantive post	Additional pay for officiating	Other remuneration including leave pay	Name of appointment		
	1				1.7.51/PM	12 (P.M)	do-
					1.3.51/PM	12 (P.M)	do-
					1595/P.M	61/15	do-
					1.5.51/PM	15	

ESTD 2002

9 Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	10 Date of termination of appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer	13 Nature and duration of leave taken	14 Allotment of period of leave on average pay upto four months for which leave is available to another Government	15 Signature of the head of the office or other attesting officer	16 If leave is not availed, the date of the discontinuance of the leave should be noted
--	--	--	--	--	---	--	--

30-11-95
AN

Annual Increment Allowed

Service Verified Upto 30-11-95

Agency Surgeon Khyber Pakhtunkhwa
M. Lodi Kotol

Agency Surgeon Khyber Pakhtunkhwa
M. Lodi Kotol

30-11-96
AN

Annual Increment Allowed

Service Verified Upto 30-11-96 AN

Agency Surgeon Khyber Pakhtunkhwa
M. Lodi Kotol

Agency Surgeon Khyber Pakhtunkhwa
M. Lodi Kotol

30-11-97 (A.V)

Annual Increment Allowed

Upto 30-11-97 (A.V)

Agency Surgeon Khyber Pakhtunkhwa
M. Lodi Kotol

Agency Surgeon Khyber Pakhtunkhwa
M. Lodi Kotol

30-11-98 (A.V)

Annual Increment Allowed

Upto 30-11-98

Agency Surgeon Khyber Pakhtunkhwa
M. Lodi Kotol

Agency Surgeon Khyber Pakhtunkhwa
M. Lodi Kotol

ATTESTED
ash

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, (i) substantive appointment, or (ii) whether service counts for pension under Act. 371 U.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument (filling under the term "pay")	Date of appointment	Signature

BPS-1
(RS-1245-35-1770) Pay Rs: 1700/- P.M. 12/89

W Pay Rs: 1735/- P.M. 12/20/91

da Pay Rs: 1779/- P.M. 12/90 (F.N.D)

Asst BPS-1
(1870-55-3530) Pay Rs: 2695/- P.M. 12/2001

ESTD

08/1

9	10	11	12	13	14	15
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8.	Date of termination of appointment.	Reason of termination (such as promotion, transfer, dismissal, etc.).	Signature of the head of the office or other attesting officer.	Name and designation of leave taken.	Allocation of leave on a daily basis, month for which leave was taken, and date to which available.	Signature of the head of the office or other attesting officer.
	30.11.77 (A-M)		allowed		30.11.90 (A-M)	
			<i>[Signature]</i>			
	30.11.2001 (A-M)		<i>[Signature]</i>		30.11.2001	
			<i>[Signature]</i>			
	30.11.2001 (A-M)		<i>[Signature]</i>		Service Verified upto 30.11.2001	
			Agency: <i>[Signature]</i> LADBI, Kolkata			Agency: <i>[Signature]</i> LADBI, Kolkata

ATTESTED

[Signature]


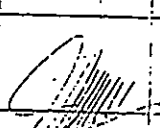
Pay fixed Rs. 2695/- p.m. in the
 New revised pay (1070.55-3520)
 vide Govt. of N.W.F.P. Finance Dept.
 order No. FD(PRC)1-N/2001 dt. 27-10-2001

[Signature]
 Agency: *[Signature]*
 LADBI, Kolkata

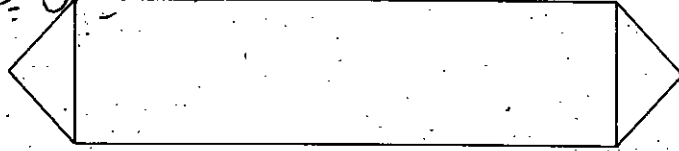
1 Name of person	2 Where station where offence took place	3 Description of offence under Sec. 321 C.S.D.	4 Pay in labour part	5 Additional Pay for offending	6 Other emoluments falling under the term "pay"	7 Date of appointment	8 Signature of officer
Chaukidar BPS-1 (1870-55-3520)						1 $\frac{12}{2002}$ (F.N)	
— do —						1 $\frac{12}{2003}$ (F.N)	
— do —						1 $\frac{12}{2004}$ (F.N)	

1870-55-3520

ash

9	10	11	12	13	14	15	
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8.	Date of termination of appointment.	Reason of termination (such as promotion, transfer, dismissal, etc).	Signature of the head of the office or other attesting officer.	Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is payable to another Government.	Signature of the head of the office or other attesting officer.	Reference to any recorded appointment or transfer or record of service of the Government servant.
	30 th 11 2002 (A.N)	Annual Increment Granted.			Service Verified Date 30-11-2002		
	30 th 11 2003 (A.N)	Annual Increment Allowed.	Agency Surgeon Khyber Landi Kotla		Date 30-11-2003 (A.N)		
	30 th 11 2004 (A.N)	Annual Increment Allowed.	Agency Surgeon Khyber at Landi Kotla		Date 30-11-2004 (A.N)		
			Agency Surgeon Khyber at Landi Kotla				

ATTESTED
asl



۱۱ دسمبر 2015ء پنجاب ایڈووکیٹ
 پیروی بنام سیکرٹری ٹیکس و عوارض
 سرویس ایس

مورخہ
 مقدمہ
 دعویٰ
 جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کے لیے اسلم خان صاحب

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق و ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوگا۔

Attested & accepted

(Signature)

۱۱ دسمبر 2015ء

ماہ

المرقوم

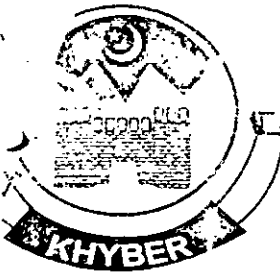
ایڈووکیٹ

العبد گداہ العبد

کے لئے منظور ہے۔

(Signature)

مقام



Political Agent Khyber

Date: 19/2/2016

Said Wali

No. 1021/NO.

vs

Govt. of K.P.K through Secretary Health

CERTIFICATE

for
Response No. (5)

It is certified that Mr. Muhammad Furqan, Advocate Peshawar High Court Peshawar, is standing Council of Political Administration, Khyber Agency, to appear before District courts and services tribunal on behalf of Political Administration Khyber Agency.

Handwritten signature and date: 19/2/16



Handwritten signature
Political Agent/
District Magistrate,
Khyber Agency
POLITICAL AGENT &
DISTRICT MAGISTRATE
KHYBER, 19/2/16

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

Handwritten initials: 571

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

Appeal No. 1382/2015

Said Wali, Chawkidar Appellant

Versus

Govt. of KPK through Secretary (H) & Others Respondents

Para wise Reply/Comments on behalf of respondent No. 1- 4.

Respectfully Sheweth;

Preliminary objections:

1. That the appellant has no cause of action/locus standi to file the present appeal.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That this Honorable Service Tribunal has got no jurisdiction to entertain the instant appeal.
4. That the instant appeal is bad for Mis-Joinder & Non-Joinder of necessary parties.
5. That the present appeal is barred by law.
6. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed.
7. That, the appellant had concealed the facts from this Honourable Court.

ON FACTS

1. Correct, to the extent of Service Book. But it is pertinent to mention here that the appellant has once tendered resignation from his service and one Wiran Gul is appointed on the post vacated by the appellant. (Copy attached as Annex-A)
2. Incorrect, subject to proof.
3. Pertains to appellants own record.
4. Pertains to court record. However, appellant itself admitted that he was acquitted from the charges leveled against him in 1996 but was released in 2004. The period from 1996 to 2004 needs proper justification.
5. Incorrect, the appellant didn't report for duty to anyone.
6. Pertains to the appellant's own record.
7. Incorrect, the appellant moved an application to Respondent No. 3, on which proper inquiry was conducted. Moreover, he has resigned from his job and another person has been appointed on his place, a copy of the said appointment order has been

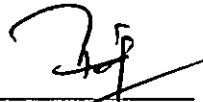
properly endorsed to the appellant. (Copy of the Inquiry report is attached herewith as Annex-B).

8. Correct; but it was badly time barred.

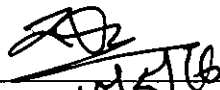
ON GROUNDS

- A. Correct, to the extent of acquittal but as stated above he had tendered resigned from service and even if he had been acquitted in the year 1996 he should have been to join his duty in 1996 he would have to join his duty in 1996.
- B. Incorrect, as stated above the appellant tendered resignation. Moreover, the period 14 years 06 months is not a qualifying service upon which the appellant be considered entitled for pension.
- C. Incorrect, it is the dwell settled principle of Law that "Law supports the diligent and not the indolent". However, he is not entitled for any such relief as claimed by the appellant.
- D. Incorrect, as stated above he was not denied rather he tendered resignation.
- E. That the respondents also seeks permission to advance other grounds and proofs at the time of arguments.

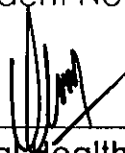
It is therefore most humbly prayed that the appeal devoid of merits/legal fooling, may be dismissed with cost.



Agency Surgeon,
Khyber at Jamrud.
Respondent No. 04



Director Health Services,
FATA, Peshawar
Respondent No. 03



Director General Healthy Services,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 02



SECRETARY (H),
Govt. of Khyber Pakhtunkhwa,
Health Department, Peshawar
Respondent No. 01

11/5/16


41

OFFICE OF THE AGENCY SURGEON KHYBER AT LANDIKOTAL.
OFFICE ORDER.

The resignation tendered by Mr. Said Wali chowkidar of Basic Health Unit, Abdullah Jan Killi, Tehsil Bera Khyber Agency, On 28.2.1995(AN) and accepted by undersigned, due to the gap of one month's notice On 31.3.1995(AN)

Mr. Wiroon Gul s/o Muhammad Ghani Shalober Tehsil Bera Khyber Agency is hereby appointed as chowkidar BPS-1 (Rs. 1245-35-1770) in BHU: Abdullah Jan Killi Bera Khyber Agency, against the vacant post of Mr. Said Wali Ex-chowkidar. His appointment is purely temporary basis and his services can be terminated at any time without any reasons being assigned. If he wishes to resign to the service, he will have to give one month's notice or one month's pay in the lieu thereof, which will be deposited into government treasury.

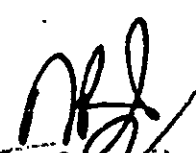
He will be governed by such rules ^{and} ~~the~~ regulation relating to such category of staff are issued from the govt. time to time. His appointment will be subject to his medical fitness certificates. If he wishes to accept this order on the above terms and ~~sanctioned~~ conditions he may report to the incharge of BHU: Abdullah Jan Killi, for duty.

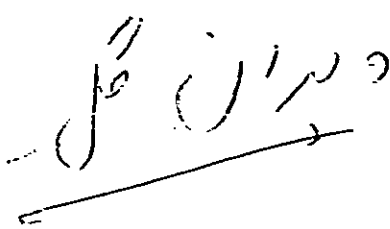

Agency Surgeon Khyber,
at Landikotal.

No. 1010-14 /PF:(K-13) dated Landikotal the 01/04/1995

Copy forwarded to the:-

01. Medical Officer i/c BHU: Abdullah Jan Killi.
02. Agency accounts Officer Khyber at Peshawar.
03. Mr. Said Wali Ex-chowkidar BHU: Abdullah Jan Killi.
04. Mr. Wiroon Gul s/o Muhammad Ghani Shalober Tehsil Bera.
05. Accountant of the undersigned,
for information.


Agency Surgeon Khyber,
at Landikotal.



42

Confidential

Enquiry Report

Introduction:

The undersigned is nominated as an enquiry officer to conduct a fact finding enquiry into the application submitted by Mr. Said Wali S/O Sher Ghani, Chowkidar – BHU Abdullah Jan Killi attached to Agency Surgeon, Khyber Agency (Copy attached at Annex – A).

Core Subject of the Application:

The complainant submitted an application through a learned council – Mr. Mazhar Ali Shah, Advocate to the Director Health Services FATA on 29-01-2015, wherein it is stated:

1. That he was appointed as Chowkidar at BHU Abdullah Jan Killi in 1990.
2. That he was illegally/falsefully implicated in a criminal case in the year 1995.
3. That a trial was conducted in a Special Court and he was exonerated of all the charges levelled against him in 1996 and released in 2004.
4. That he visited the office of Agency Surgeon Khyber to resume his services but was told that he had tendered resignation on 28-02-1995 and, therefore, is not entitled to rejoin his service.
5. That the applicant claimed that he had never tendered his resignation from service before anyone.
6. That the applicant since then ran pillar to post to seek justice but in vain.
7. That the applicant found record of his service book in 2015, which revealed that no one was ever appointed against his post and his service was verified till 2004.

- 8. That the applicant in light of record in his possession, i.e., Service Book, claimed that someone had been usurping/taking his salaries with all benefits/increments.
- 9. That the applicant, lastly, prayed to reinstate him in service with all back benefits and initiate action against the wrong doers(Copy attached at Annex – B& B1).

Record Requested to Provide for Enquiry Proceedings:

The Agency Surgeon, Khyber Agency was requested to provide the following relevant record for the enquiry proceedings:

- i) Service Book along with Personal File of the applicant.
- ii) Resignation of the applicant.
- iii) Statement of Pay drawn by Chowkidar, BHU Abdullah Jan Killi since 1995.
- iv) Source I and II / Manual Bills since 1995 and,
- v) Any other record pertaining to the post of Chowkidar, BHU Abdullah Jan Killi.(Copy attached at Annex – C).

Findings/Observations:

The personal file of the applicant and those appointed subsequently on the post were missing from the Agency Record Room and it is pleaded by the concerned staff that the case of the applicant was twenty five (25) years old and those appointed thereafter are twenty (20) years old, hence record is unavailable at Record Room of the Agency. The record made available was the Service Books and some of the Manual Bills.

The record made available was thoroughly examined, the applicant was interviewed along with feedback from the Agency concerned and, thereafter, it is revealed:

- 1. That Complainant was appointed as a Chawkidar in BPS-I on 27-05-1990 and posted in BHU Abudlah Jan Kalli, Khyber Agency vide Agency

44

Surgeon Khyber Office Order No.1038-39/K-13, dated 27-05-1990 (Copy of page 5 of Service Book attached at Annex – D).

2. That the applicant continued his services till 28-02-1995 and he has been paid for the mentioned period.
3. That the applicant along with eight (08) others was charged in a criminal case of kidnapping of two students Mr. Imran S/O Farhad and Mr. Salman S/O Mr. Hidayatullah from Hayatabad on 08-10-1994 for ransom. The case was registered at Hayatabad Police Station.
4. That the Political Agent, Khyber Agency on the recommendation of Jirga Members, under Section 365-A/11 FCR issued perpetual non bail able warrants of arrest of the applicant along with two others on 14-06-1995 (Copy of Case No. 7-IV-95/PAK, Political Agent Khyber Agency attached at Annex – E & E1).
5. That the applicant was arrested thereof in 1995 and sent to Peshawar Prisons, Peshawar as under trial prisoner.
6. That the applicant was exonerated/acquitted from charge of criminal offense of kidnapping for ransom by Mr. Khan Akbar Khan, Judge Special Court, Peshawar on 03-01-1996. The decision was made as, "Accused Hazrat Hanif, Rehman Shah and Said Wali are in custody, they be released forthwith from Jail, if not required in any other case." (Copy of Judgement attached at Annex – F, F1, F2 & F3).
7. That the applicant was released from jail on 03-01-1996 as per Judgement of the Judge of Special Court, Peshawar, whereas it is claimed by the applicant that he was released from prisons in 2004.
8. That the applicant could not provide any evidence of his release from prisons in 2004, and if it is considered then why he remained in prisons for such a long period of almost eight (08) years. Was he involved some other case and spent the period as punishment?
9. That the complainant in due course of enquiry submitted an affidavit on a stamp paper on 13-03-2015, duly attested by the Oath Commissioner and stated therein that he was released in 2004 and thereafter intended

45

to resume his services. He enquired about his job from the Office of Agency Surgeon Khyber and was told by the Agency Head Clerk Mr. Badshah that he had tendered resignation in 1995, hence is not entitled to rejoin his service and his services were terminated. The applicant solemnly declared in statement that he had never tendered resignation in any form (Copy of Declaration on Oath attached at Annex – G).

10. That the office of Agency Surgeon, Khyber Agency was asked to produce the resignation of the applicant, but the office failed to produce such document to the enquiry officer confirming that no resignation was tendered by the applicant. Furthermore, no resignation entry has been made in the service book of the applicant.

11. That the applicant was arrested in a criminal case in 1995, acquitted in 1996, released in 2004 and failed to resume service till date but, surprisingly, his Service is verified till 30-11-2002 and his Service Book is maintained till 2004. (Copies of pages of Service Book attached at Annex –H, H1 to H10)

12. That the Office Order duly signed by the Agency Surgeon vide No. 1010-14/PF(K-13), dated 01-04-1996 issued from the Office of Agency Surgeon Khyber at Landikotal reads:

"The resignation tendered by Mr. Said Walichowkidar of Basic Health Unit, Abdullah Jan Killi, Tehsil Bara Khyber Agency, on 28-02-1995 (AN) and accepted by the undersigned, due to the gap of one month's notice on 31-03-1995 (AN)."

"Mr. Wiran Gul S/O Muhammad Ghani Shalober Tehsil Bara Khyber Agency is hereby appointed as Chowkidar BPS-1 (Rs.1245-35-1770) in BHU Abdullah Jan Killi Bara Khyber Agency, against the vacant post of Mr. Said Wali Ex-Chowkidar..." (Copy of Office Order attached at Annex – I).

13. That it is pertinent to point out here that no such resignation letter is provided to the inquiry officer by the Agency Surgeon office Khyber. Furthermore no resignation entry has been made in the service book of Mr. Said Wali Chowkidar and the service book is maintained up to 01-12-2004 and service verified till 2002.

14. That Mr. Wiran Gull S/O Muhamamd Ghani was appointed without fulfilling the codal formalities. He has been paid salaries till May 2000. (Copy of Manual Pay Bills attached at Annex - J, J1 to J31).

15. That the Service Book of Mr. Wiran Gul S/O Mr. Muhammad Ghani is maintained 01-12-2007, whereas his service is verified till 30-11-2002 (Copy of pages of Service Book attached at Annex - K, K1 to K10).

16. That the Agency Surgeon Khyber again appointed another person, Mr. Muhammad Rasool S/O Muhammad Ghani as Chowkidar Abdullah Jan Killi on the recommendation of Political Agent Khyber vide office order No. 1447-51/K-13, dated 01-06-2001. The Political Agent made the recommendation vide letter No. 2025/V, Post/AG/2000, dated 08-05-2001. (Copy of Office Order attached at Annex - L).

17. That the Service Book of Mr. Muhammad Rasool is maintained till 30-11-2009, whereas his service is verified up to 30-11-2003 by the Agency Surgeon (Copy of pages of Service Book attached at Annex - M, M1 to M6).

18. That the officials of the Agency Surgeon office provided the manual pay bills of Mr. Muhammad Rasool till November 2004 and it is claimed that the incumbent is paid salaries till date. (Copy of Manual Pay Bills attached at Annex - N, N1 to N25).

Conclusion:

1. That the applicant failed to produce any document/evidence/arguments about his delayed release as is claimed by him. He was acquitted in the Criminal case on 03-01-1996 by the Special Court, Peshawar and he claimed release in 2004. He failed to produce any evidence that why was he illegally detained in the prisons.
2. The applicant failed to produce any document pertaining to the withdrawal or cancellation order which was promulgated by the Political Agent Khyber for perpetual non bail able warrants of arrest of the applicant along with two others on 14-06-1995.
3. That the applicant only once visited the office of Agency Surgeon, Khyber in 2004 as per his statement enquiring about his status of service and failed to make an appeal thereafter in the matter and appeared after eleven (11) years and forwarded an application to the Director

Health Services FATA through a learned council – Mr. Mazhar Ali Shah, Advocate on 29-01-2015.

4. That the applicant failed to produce any arguments why was he remained silent for eleven (11) years after enquiring about status of his service in 2004.
- 5/ That the above factual status strongly advocates that the applicant had made up his mind that he is no more on job.
6. That the appointment of Mr. Weran Gul S/O Muhammad Ghani was made without nomination of the Political Administration as is mandatory in Agencies of FATA for such posts as incumbents being owner of the land. Furthermore, the codal formalities required for recruitment are not taken into account while appointing Mr. Wiran Gul.
7. That the appointment of Mr. Muhammad Rasool S/O Mr. Muhammad Ghani is made on 01-06-2001 on the recommendation of Political Administration.
8. That the three (03) Service Books are maintained for the same post and Service is verified in all of them.
9. That there is no record of any document which could be considered as resignation of the applicant.
10. That the applicant moved the case after knowing the fact that his service book is still maintained otherwise he had made up his mind that he is no more on job.
11. That Mr. Subhan Ullah, Mr. Abad Shah and Mr. Muhammadullah head clerks have maintained the three (03) service books for a single and same post during their tenures.
- 12/ That ample time was provided to the applicant along with his council to produce an evidence of his illegal detention in the prisons for the period of nine (09) years from 1996 to 2004 but could not produce any document in support of claim of the applicant illegal detention.
13. The claim of the applicant is not maintainable.

Recommendations:

1. The matter shall be sent to the establishment/law department for further opinion in the matter and proceedings under E&D Rules against the wrongdoers if deem appropriate.

(Concluded)

April 13, 2015:

Dr. Sahibzada M. Khalid.
Enquiry Officer
DHS; FATA; Peshawar.

CONFIDENTIAL

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No.1382/2015

Said Wali, Ex-Chowkidar

VERSUS

Secretary Health Department Peshawar and others

APPELLANT'S REJOINDER

Respectfully Sheweth:

Preliminary Objection:

The 7 preliminary objections raised by the respondents in their written comments are irrelevant to the fact of case, wrong, incorrect and are denied in every detail. The appellant has a genuine cause of action and his appeal does not suffer any formal defect whatsoever.

ON FACTS:

- 1) That the respondents have admitted that the appellant's service book from 27/05/1990 to 30/11/2004 was correctly maintained by them. As regards the contention of respondents that the appellant has tendered resignation to respondent No.4 dated 28/02/1995 is

absolutely wrong and incorrect which fact is proved that the appellant has not tendered resignation from the signature of respondent No.4 on appellant's service book from 30/11/1990 to 30/11/1996. Moreover, the appellant has also submitted on affidavit that he has never tendered any resignation from service vide Annexure "A".

2to6) Incorrect. Paras 2 and 6 of appeal are correct and its replies are incorrect.

7) That the appellant though has submitted on application to respondent No.3 for release of salary. Moreover, the appellant has never been associated with the inquiry and nor its copy has been provided to the appellant and thus only one sided action has been taken against the appellant which is highly illegal under the law and may be declared illegal, unsustainable under the law and may be set aside.

8) That appellant's representation is for pension on which the limitation is not applicable and so the respondent's contention that the appellant's representation was time barred is absolutely wrong and incorrect under the law.

GROUND:

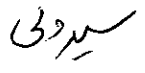
- A) That the appellant has been acquitted from the charge by the competent Court and as per judgments of august Supreme Court of Pakistan all acquittals are Honourable and there can be no acquitted which may treated as dis-honourable. In such circumstances, the appellants is entitled to grant of arrears of his pay and allowances from 08/10/1994 to 30/11/2004. It is further submitted that the appellant after his acquittal had reported to join his service. But he was not allowed by his superiors.
- B) Incorrect. As stated above the appellant has never tendered resignation. His 14 years 6 months and 03 days service is qualifying service for pension
- C) Incorrect. That the appellant is entitled to pay from 08/10/1994 to 30/11/2004 and as well as to pension from 27/05/1990 to 30/11/2004 because the limitation factor is not applicable on pay and pension as per judgment of Superior Courts
- D) Incorrect. The appellant was not allowed to join duty and he has never tendered

resignation. To this effect detail explanations have been given in above paras


E) Grounds E of appeal is correct and its reply is incorrect.

It is, therefore, prayed that on acceptance of appeal and rejoinder the respondents may be directed to pay the salary to the appellant from 08/10/1994 to 30/11/2004 and thereafter his whole service from 27/05/1990 to 30/11/2004 may be converted to compulsory retirement from 01/12/2004 with full pensionary benefits including arrears.

Dated 11/02/2017


Appellant

Through


Aslam Khan Khattak
Advocate, Peshawar.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No.1382/2015

Said Wali, Ex-Chowkidar

VERSUS

Secretary Health Department Peshawar and others

AFFIDAVIT

I, Said Wali, Ex-Chowkidar do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



39
DEPONENT

11-2-17

وکالت نامہ

بعدالت چیئرمین سروس ٹریبونل کے جی کے پشاور

سید ولی اسپلانٹ نام سیکرٹری

منجانب اسپلانٹ دعویٰ اجرم سروس اول

تھانہ ایف آئی آر تاریخ 26-01-2018


باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام سروس ٹریبونل کے جی کے پشاور کے لئے

جہان افسر پائندہ خیل ایڈووکیٹ ہائی کورٹ، پشاور کو بدین شرط وکیل مقرر کیا ہے کہ میں

ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بزور تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داختمہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد دہاشی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا یگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سند ہے مورخہ 26-08-2018 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:


JEHAN AFSAR KHAN
PAINDAKHEL
Advocate, Peshawar
Cell No. 0333-9433554

BEFORE THE SENIOR CIVIL JUDGE, PESHAWAR

Syed Wali.....vs.....Sahibzada Mohammad etc.

INDEX

S.NO	Description of Document	Annexure	Page
1	Copy of the Suit		1-5
2	Addresses of the Parties		6
3	Copy of the Judgment Judge Special Court	'A'	7-9
4	Copy of the Resignation Letter	'B'	10
5	Copy of the Service Book	'C'	11-16
6	Copy of the Application to Defendant No. 4 alongwith Enquiry Report	'D' & 'E'	17-25
7	Court Fee & Wakalatnama		

Plaintiff

Through



Mazhar Ali Shah,
Advocate High Court.

BEFORE THE SENIOR CIVIL JUDGE, PESHAWAR

Syed Wali s/o Sher Ghani, r/o Arjalinaade, Qamber Khel, Tehsil Bara, Khyber Agency.

..... (Plaintiff)

VERSUS

1. Sahibzada Mohammad Raheem Jan Afridi s/o Abdul Baqi r/o Phase 2, Street # 5, House No. 24/84, Hayatabad, Peshwar. (EX-AGENCY SURGEON / KHYBER)
2. Government of Khyber Pakhtunkhwa through Secretary Health Department Peshawar.
3. Additional Chief Secretary Federally Administered Tribal Areas, Warsak Road, Peshawar.
4. Director General Health, Health Department FATA, Warsak Road, Peshawar.
5. Political Agent Khyber Agency Qayuum Stadium, Peshawar.
6. Agency Surgeon, Khyber at Jamrud.
7. Government of Khyber Pakhtunkhwa through Secretary Finance, Peshawar.
8. Inspector General Prison Department (Since 1996-2004), KPK, Peshawar.
9. Superintendent Jail (Since 1996-2004), KPK, Peshawar.

SUIT FOR

1. DECLARATION TO THE EFFECT THAT

A. PLAINTIFF IS ENTITLED FOR;

The recovery/release of salary since 1995 till 2004 alongwith back benefits, compensation, damages (for mental, physical torture alongwith financial loss) caused by the defendants, in respect of service at BHU Abdullah Jan killi as Chowkidar BPS-1, for preparing an illegal, fake, fabricated & fictitious resignation letter by defendant No. 1 and maintaining three service books for the same post by the defendants No. 1-7 thereby

usurping the salary of plaintiff, and now the act of not releasing/ disbursing the salary with back benefits/compensation to the plaintiff by the defendants is an act illegal against the law and facts hence liable to be declared void & ineffective upon the rights of the plaintiff.

B. THE DEFENDANT NO. 8, POSTED AS AN INSPECTOR GENERAL PRISON department, KPK, Peshawar since 1996 to 2004, and similarly the **DEFENDANT NO. 9, SUPERINTENDANT JAIL, KPK, Peshawar** since 1996 to 2004, had illegally detained/confined the Plaintiff for a period of 8 years inspite of the clear directions/orders of the Judge Special Court Mr. Khan Akbar Khan Dated: 3.1.1996 for release of the plaintiff and the refusal on the part of the defendant No. 8 & 9 to pay the compensation/damages to the plaintiff is an act, illegal against the law and facts hence liable to be declared void & ineffective upon the rights of the plaintiff.

2. RECOVERY OF;

- i) **DAMAGES** To the tune of 4.5 million rupees (Forty Five Lac Rupees), from defendant No.1, for preparing a fake, fabricated, illegal, fictitious resignation letter on behalf of plaintiff thereby causing mental, physical torture and a great financial loss to the plaintiff.
- ii) **SALARY** since 1995 till 2004 alongwith back benefits and **DAMAGES** to the tune of 3.5 Lac Rupees (Thirty Five Lac rupees) from defendants No. 1 to 7 for usurping the salary of the plaintiff illegally thereby causing mental, physical torture and a great financial loss to the plaintiff.
- iii) **DAMAGES** To the tune of 3.5 million rupees (Thirty Five Lac Rupees) from defendant No. 8 & 9 for illegal detention/confinement for a period of 8 years inspite of the clear directions/orders of the Judge Special Court Mr. Khan Akbar Khan Dated: 3.1.1996 for release of the plaintiff.

3. PERMANENT/ MANDATORY INJUNCTION to the effect that defendants be permanently restrained not to refuse the payment of the outstanding amount in the shape of salary, damages & compensation to the Plaintiff and further be directed to release/disburse the same.

- Value of the subject-matter for the purpose of court fee and jurisdiction is Rs. 200/- for Relief 1, Rs. 15000/- for Relief 2 & Rs. 100/- for Relief 3.
- Court Fee = Rs. 15000/- Annexed herewith Cause of action accrued to the plaintiff on 19-12-16 after the denial & refusal of the defendants.

Respectfully Sheweth,

1. That the Plaintiff had been appointed as 'Chowkidar' BPS-I by the office of 'Agency Surgeon Khyber, Landikotal' against the initial salary of Rs. 600/- per month in the year 1990.
2. That the Plaintiff performed his duties at BHU Abdullah Jan killi efficiently and with full dedication without any complaint against him till 1995 when in the same year the plaintiff had been illegally/falsely implicated in a criminal case registered at hayatabad, Peshawar however later on when the trial was conducted by the Judge Special Court Mr. Khan Akbar Khan in the year 03-01-1996, the judge exonerated the applicant of all the charges leveled against him and declared him innocent and the order for the acquittal/release of the Plaintiff were issued. However the defendants No. 8 & 9 illegally detained/confined the Plaintiff for a period of 8 years without any justification when the Plaintiff was not involved in any other offence. (Copy of the Judgment is attached herewith as Annexure 'A')
3. That the plaintiff was released in the year 2004. The plaintiff wanted to go back home and rejoin his service as 'Chowkidar' but to the extreme misfortune, surprise and shock of the plaintiff the home/properties of the plaintiff were destroyed by Mangal Bagh. Resultantly the plaintiff along with his family/children had to leave the hometown. The plaintiff is still stranded with his family/children in the suburbs of Peshawar.
4. That inspite of the abovementioned circumstances and also being on the hit list of Taliban (Lashkar e Islam) the Plaintiff still wanted to rejoin and report for his job at BHU, Abdullah Jan killi as it was the only source of bread and butter/source of living for the Plaintiff in such a volatile situation. However the Plaintiff was further taken by surprise, when the Plaintiff was informed that he had tendered resignation on 28-02-1995 and also told that the Plaintiff can not rejoin his service neither can claim salary. It is pertinent to mention here that the Plaintiff had never tendered his resignation before any one and the same was illegally, fraudulently prepared by defendant No. 1 which the applicant found in the year 2015. (Copy of the illegal/fake resignation letter is attached herewith)
5. That since then the Plaintiff ran from pillar to post seeking justice but to no vain.
6. That it was also in the year 2015 when the applicant found through a record of service book that no one was ever appointed against the applicant's post but someone else had been usurping/taking his salary with all benefits/increments. According to the available record the applicant was shown in service taking salary alongwith increments and benefits up to the year 30-11-2004. (Copy of the Service Book record is attached herewith)


7. That on 29.01.15 the Plaintiff made an application to the defendant No. 4 for the redressal of grievances. The defendant No. 4 ordered an inquiry dated: 02-02-15. Dr. Sahibzada Khalid, Assistant Director EPI was appointed as an inquiry officer who submitted his report thereby admitting alongwith other material facts/findings it was also found that three service books were illegally maintained by the defendants for the same post and salary was extracted from the national exchequer thereby illegally usurping the salary etc by the defendants No.1 to 7. **(Copy of the application & enquiry report is attached herewith)**
8. That the Plaintiff has gone through a lot all these years first by false implication in a criminal case, illegal confinement/detention, secondly by losing his home/properties at the hands of Mangal Bagh and thirdly by fraudulently being deprived of his job and salary especially by defendant No. 1 alongwith other defendants.
9. That the Plaintiff seeks declaration that A) Plaintiff is entitled for the recovery/release of salary since 1995 till 2004 alongwith back benefits, compensation, damages (for mental, physical torture alongwith financial loss) caused by the defendants, in respect of service at BHU Abdullah Jan killi as Chowkidar BPS-1, for preparing an illegal, fake, fabricated & fictitious resignation letter by defendant No. 1 and maintaining three service books for the same post by the defendants No. 1 to 7 thereby usurping the salary of plaintiff, and now the act refusal non-releasing/discharging the salary with back benefits/compensation to the plaintiff by the defendants is an act illegal against the law and facts hence liable to be declared void & ineffective upon the rights of the plaintiff. B) The Defendant no. 8, posted as an inspector general prison department, KPK, Peshawar since 1996 to 2004, and similarly the DEFENDANT NO. 9, SUPERINTENDANT JAIL, NWFP, Peshawar since 1996 to 2004, had illegally detained/confined the Plaintiff for a period of 8 years inspite of the clear directions/orders of the Judge Special Court Mr. Khan Akbar Khan Dated: 3.1.1996 for release of the plaintiff and the refusal on the part of the defendant No. 8 & 9 to pay the compensation/damages to the plaintiff is an act, illegal against the law and facts hence liable to be declared void & ineffective upon the rights of the plaintiff.
10. That the Plaintiff seeks RECOVERY OF i) **DAMAGES** To the tune of 4.5 million rupees (**Forty five Lac Rupees**), from defendant No.1, for preparing a fake, fabricated, illegal, fictitious resignation letter on behalf of plaintiff thereby causing mental, physical torture and a great financial loss to the plaintiff ii) **SALARY** since 1995 till 2004 alongwith back benefits and damages to the tune of 3.5 Lacs (Thirty Five Lacs rupees) from defendants No. 1 to 7 for usurping the salary of the plaintiff illegally thereby causing mental, physical torture and a great financial loss to the plaintiff iii) **DAMAGES** To the tune of 3.5 million rupees (**Thirty Five Lac Rupees**) from defendant No. 8 & 9 for illegal detention/confinement for a period of 8 years inspite of the clear directions/orders of the Judge Special Court Mr. Khan Akbar Khan Dated: 3.1.1996 for release of the plaintiff.

- 5
11. That the Plaintiff seeks Permanent/ Mandatory Injunction to the effect that defendants be permanently restrained not to refuse the payment of the outstanding amount in the shape of salary, damages & compensation to the Plaintiff and further be directed to release/disburse the same.
 12. That the defendants resides in Peshawar & the cause of action accrued to the plaintiff within the territorial jurisdiction of this Hon' able Court after the last refusal of the defendant on 19-12-2016. This Hon' able court is competent to try the instant suit.
 13. That value of the subject-matter for the purpose of court fee and jurisdiction has been properly valued in the heading of the plaint.

It is therefore most humbly prayed that a decree may graciously be granted in favour of the plaintiff against the defendants as prayed for in the heading of the plaint.

Any other relief which has not been specifically asked for and which this Hon' able court deem necessary for the just decision of the case may also be granted.

Plaintiff

Through 
Mazhar Ali Shah,
Advocate High Court.

AFFIDAVT

I, Syed Wali s/o Sher Ghani do hereby solemnly affirm and declare on oath that the contents of the abovetitled suit are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon' able court.

ATTESTED



21-12-16


DEPONENT

BEFORE THE SENIOR CIVIL JUDGE, PESHAWAR

Syed Wali.....vs.....Sahibzada Mohammad etc

ADDRESSES OF THE PARTIES


PLAINTIFF

Syed Wali s/o Sher Ghani, r/o Arjalinaade, Qamber Khel, Tehsil Bara, Khyber Agency.

DEFENDANTS

1. Sahibzada Mohammad Raheem Jan Afridi s/o Abdul Baqi r/o Phase 2, Street # 5, House No. 24/84, Hayatabad, Peshwar. (Ex-Agency Surgeon, Khyber)
2. Government of Khyber Pakhtunkhwa through Secretary Health Department Peshawar.
3. Additional Chief Secretary Federally Administered Tribal Areas, Warsak Road, Peshawar.
4. Director General Health, Health Department FATA, Warsak Road, Peshawar.
5. Political Agent Khyber Agency Qayyum Stadium, Peshawar.
6. Agency Surgeon, Khyber at Jamrud.
7. Government of KPK through Secretary Finance.
8. Inspector General Prison Department (Since 1996-2004), NWFP, Peshawar.
9. Superintendent Jail (Since 1996-2004), NWFP, Peshawar.

Plaintiff

Through 
Mazhar Ali Shah,
Advocate High Court.