

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT ABBOTTABAD

Service Appeal No. 832/2012

Date of Institution... 11.07.2012

Date of decision... 17.10.2017

Syed Abdul Ali Shah son of Syed Sajjad Hussain Shah, R/O Pairan, Tehsil and District Mansehra, presently posted as Record Keeper/Record Room General Sessions Court, Mansehra. ... (Appellant)

Versus

1. District & Sessions Judge, Mansehra and 3 others. .... (Respondents)

MR. DILDAR AHMAD KHAN LUGHMANI,  
Advocate

... For appellant.

MR. MUHAMMAD BILAL  
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. MUHAMMAD AMIN KHAN KUNDI,

... CHAIRMAN  
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was granted major penalty of compulsory retirement vide order of the Authority dated 28.06.2010. The same was appealed against departmentally which was converted into minor punishment of 3 consecutive increments on 30.05.2012. The appellant thereafter filed the present service appeal on 11.07.2012. The charge against the appellant was misplacement of two confessional statements handed over to him by the

then Judicial Magistrate, who was serving at relevant time as Reader of the Court. In the first round of departmental proceedings, the enquiry officer exonerated the appellant but the Authority did not agree with the findings and ordered for fresh enquiry. It was in the backdrop of fresh enquiry that the major penalty of compulsory retirement was imposed and then was converted into minor penalty and lastly the present service appeal.

### ARGUMENTS

3. The learned counsel for the appellant argued that the whole proceedings were initiated and culminated under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 and that at the relevant time the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in vogue and hence the proceedings under Rules of 1973 were illegal and void. He further argued that it was not the job of the Reader of the Court to have the custody of confessional statements as nothing is mentioned in the law or rules in this regard. He further argued that when on the basis of the same set of evidence the first enquiry officer came to the conclusion that the accused was not guilty then how could the second enquiry officer on the basis of same set of evidence could hold otherwise. He added that the learned appellate authority converted the major punishment into minor punishment mainly on the ground that the evidence available before the enquiry officer was not sufficient to prove the guilt of the appellant then how could he be awarded any punishment. He further added that no enquiry report was furnished to the appellant in view of judgment reported in PLD 1981-Supreme Court-176. That no show cause notice was ever served by the authorized officer on the appellant.

4. On the other hand, the learned Deputy District Attorney argued that regardless of job descriptions of the staff of the District Judiciary, it was admitted by the appellant in his reply to the charge sheet that the custody of confessional statements were handed over to him. That the whole proceedings were conducted in accordance with law and rules and


that the appellate authority had already taken a lenient view in converting the major punishment into minor one.

### CONCLUSION.

5. The first objection of the learned counsel for the appellant qua the applicability of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 is not convincing because Section 2 (e) of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 defines "person in Government service" and while defining this terms exclude a Judge of the High Court or a court subordinate to the High Court and any employee thereof, which means that the appellant being employee of the subordinate court to the High Court is not a person in Government service for the purpose of the said Ordinance. Secondly, the Ordinance has never expressly repealed the rules *supra* rather Section 11 of the Ordinance has given to it an overriding effect viz-a-viz the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there under. This clearly means that the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 were very much applicable to the staff of the subordinate courts to the High Court. Coming to the issue of duty of the appellant to have the custody of the confessional statements, the same though is not expressly mentioned in the job descriptions of the Reader of Judicial Magistrate in any rules but it does not mean that the job description is all inclusive. If a Presiding Officer of a court gives any responsibility to any of his subordinate he is bound to fulfill that responsibility and if he feels that he is not bound by any rule or law to carry out that responsibility he can refuse at the time when he is given that responsibility. However, for academic discussion, a notification of the Peshawar High Court bearing letter No. 3282-3307/Admn, dated Peshawar 3rd November, 2010 is very much relevant and is pertinent to this issue. This letter has been sent to all the Judicial Officers that after recording the confessional statements the Magistrate should hand over the

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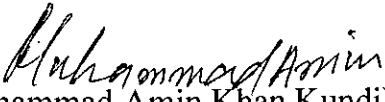
confessional statements to the concerned court of trial and if he is not certain about the concerned Court of Trial then to the concerned Sessions Judge. But even in such situation the concerned Presiding Officer can hand over the confessional statements to any of his subordinates for custody.




6. Coming to the compliance with the procedure prescribed for the Authorized Officer under Rule 5 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973, it was the duty of the authorized officer under sub rule 4 after determination whether the charge was proved and if so was also to decide tentatively the imposition of major or minor penalty. And then he was bound to serve on the appellant a final show cause notice communicating him the penalty to be imposed alongwith a copy of the enquiry report and giving him a reasonable opportunity within the prescribed time to defend himself against the proposed action. But the recommendations of the Authorized Officer dated 17.6.2010 does not fulfill the requirements as mentioned in the said rule. The Authorized Officer after receiving the report of the enquiry officer straight away recommended the imposition of major penalty without any Show cause notice, without giving copy of enquiry report to the appellant and without affording personal hearing to the appellant. The Authority was then bound under sub rule 5 to pass appropriate order. But in the present case the final show cause notice has been given by the Authority only.

7. As a sequel to the above discussion, this Tribunal reaches the conclusion that the Authorized Officer has not followed the mandatory requirements of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 as mentioned above which resulted in miscarriage of justice to the appellant. Therefore, the present appeal is accepted, the penalty is set aside. However, the Authority (District & Sessions Judge, Mansehra) is directed to proceed from the stage where enquiry officer submitted his report to the Authorized Officer by appointing a new Authorized Officer and further

proceedings shall be conducted in accordance with the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 as the pending proceedings are to be conducted under the said rules in view of Rule 23 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. The issue of back benefits shall be subject to the final outcome of the denovo proceedings. Parties are left to bear their own costs. File be consigned to the record room.

  
(Muhammad Amin Khan Kundi)  
Member

  
(Niaz Muhammad Khan)  
Chairman  
Camp Court, A/Abad

ANNOUNCED

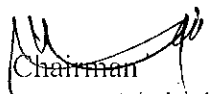
17.10.2017

15. 18.07.2017

Agent to counsel for the appellant and Mr. Muhammad Bilal, DDA for respondents present.

Since the issue of jurisdiction in similar cases is pending at principal seat and those cases are fixed for 16.08.2017. The present case is therefore adjourned till the decision of issue of jurisdiction at principal seat. To come up for further proceedings on 17.10.2017 before D.B at Camp Court A/Abad.

  
Member

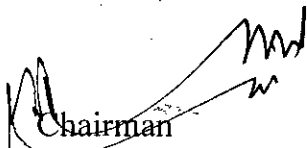
  
Chairman  
Camp court, A/Abad

17.10.2017

Appellant with counsel, and Mr. Muhammad Bilal, Deputy District Attorney alongwith Syed Asif Hussain Shah, Superintendent for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

  
Member

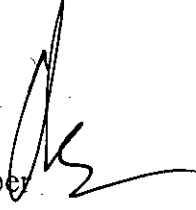
  
Chairman  
Camp Court, A/Abad.

ANNOUNCED  
17.10.2017

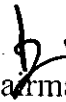
20.09.2016

Appellant in person and Mr. Muhammad Siddique Sr.GP for the respondents present. Counsel for the appellant is not available. Seeks adjournment. Adjourned for final hearing before the D.B on 18.1.2017 at camp court, Abbottabad.

Member



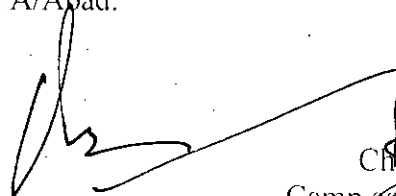
Chairman  
Camp court, A/Abad



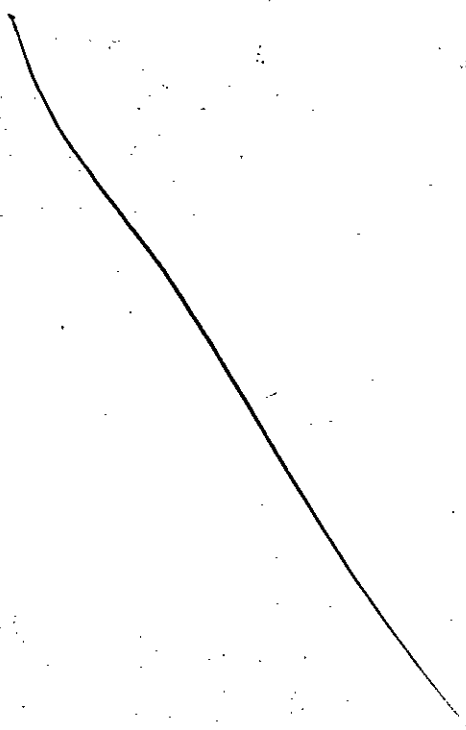
18.01.2017

Appellant in person and Mr. Muhammad Siddique, Sr.GP for the respondents present. Since a full bench has been constituted for the purpose of determining jurisdiction of this Tribunal in case relating to judiciary as such the appeal is adjourned for final hearing to 18.07.2017 before D.B at camp court A/Abad.

Member



Chairman  
Camp court A/Abad.



17.6.2015

Appellant in person and Mr.Muhammad Tahir Aurangzeb, G.P for respondents present. Due to non-availability of D.B, appeal is adjourned for final hearing before D.B to 21.10.2015 at camp court A/Abad.

  
Chairman  
Camp Court A/Abad

21.10.2015

None present for appellant. Mr.Muhammad Tahir Aurangzeb, G.P for respondents present. Due to non-availability of D.B, appeal to come up for final hearing before D.B on 15.3.2016 at Camp Court A/Abad..

  
Chairman  
Camp Court A/Abad.

15.03.2016

Appellant in person and Mr. Muhammad Saddique, Sr.G.P for respondents present. Arguments could not be heard due to non-availability of D.B. To come up for final hearing before D.B on 20.9.2016 at Camp Court A/Abad.

~~Appellant in person and Mr. Muhammad Saddique, Sr.G.P for respondents present. Arguments could not be heard due to non-availability of D.B. To come up for final hearing before D.B on 20.9.2016 at Camp Court A/Abad.~~

~~Appellant in person and Mr. Muhammad Saddique, Sr.G.P for respondents present. Arguments could not be heard due to non-availability of D.B. To come up for final hearing before D.B on 20.9.2016 at Camp Court A/Abad.~~



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19.01.2015

Appellant in person, M/S Muhammad-Asif, Ass<sup>t</sup>: for respondent No.1 and

Muhammad Ashraf, Supdt. for respondent No.2

alongwith Mr. Muhammad Tahir, Aurangzeb, G.P

for respondents present. Written reply/


comments not submitted. Requested for

further time. Allowed. Directed to submit

written reply/comments positively on

16.3.2015 at camp court A/Abad.

APPOINTED

  
Chairman  
Camp Court A/Abad

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16.3.2015

Appellant in person, M/S Muhammad Asif,

Assistant for respondent No.1 and Muhammad Ashraf,


Supdt: for respondent No.2 alongwith Mr. Muhammad-

Tahir Aurangzeb, G.P for respondents present.

Written reply submitted. The appeal is assigned

to D.B for rejoinder and final hearing for


17.6.2015 at camp court A/Abad.

  
Chairman  
Camp Court A/Abad

Appellant Deposited  
Security & Process Fee  
Rs. 350/- Bank  
Receipt is Attached with File.

10/9/14

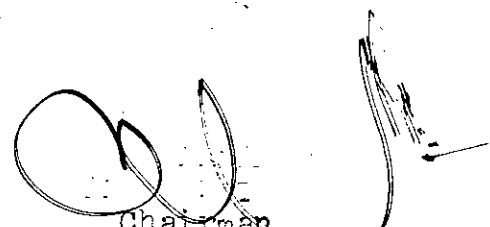
concluded that in the circumstances, the imposition of penalty by the authority was not warranted by the law. The points raised at the Bar need consideration. Admit, subject to all just objections. Process fee & security be deposited within 10 days. Thereafter, notices be issued to the respondents for written reply/comments at camp court A/Abad on 20.10.2014.



Chairman  
Camp Court A/Abad

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20.10.2014 Appellant in person, M/S Muhammad Sharif, Supdt. and Sherazi Ahmad, Junior Clerk on behalf of of respondent with Mr. Muhammad Tahir Aurangzeb, G.P present. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments, positively, at camp court A/Abad on 19.01.2015.



Chairman  
Camp Court A/Abad

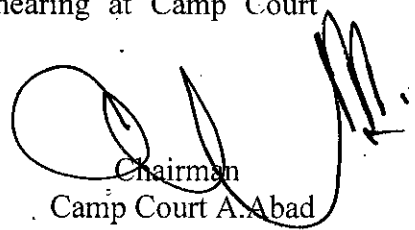
14.4.2014

Appellant with counsel present and heard. The learned counsel for the appellant, inter-alia, contended that in his order/judgment dated 30.5.2012, the Hon'ble Administrative Judge/Appellate Authority accepted the appeal of the appellant and while setting aside the order of the authority i.e. District & Sessions Judge, Mansehra, whereby, the appellant was compulsorily retired from service, the Hon'ble appellate authority reinstated the appellant in service with no back benefits and also with a penalty of stoppage of three consecutive increments'. The learned counsel maintained that withholding of back benefits after reinstatement of the appellant was a penalty not provided for in the disciplinary law and in view of imposition of the penalty of stoppage of three consecutive increments, ~~the same~~ amounted to double jeopardy. The learned counsel further contended that not only the appellant was earlier exonerated by the inquiry officer, Ms. Javeria Sarfaj Khan, vide inquiry report dated 20.11.2009, but the Hon'ble Administrative Judge also expressed the opinion that it cannot be held with certainty that the lapse was on the part of the appellant. The learned counsel further pointed out that even the Authorized Officer also agreed with the findings of the said inquiry officer whereby the appellant was exonerated of the charges, vide his order/findings dated 5.1.2010. The learned counsel

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14/01/2013

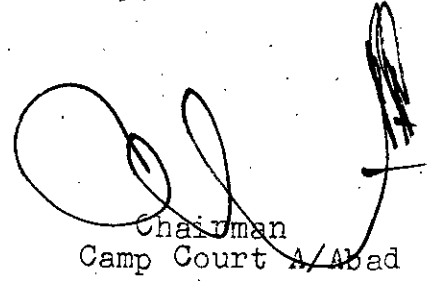
No one is present on behalf of the appellant. Preliminary arguments could not be heard due to strike of the Bar. To come up for preliminary hearing at Camp Court A/Abad on 17/06/2013.

  
Chairman  
Camp Court A/Abad

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17.6.2013

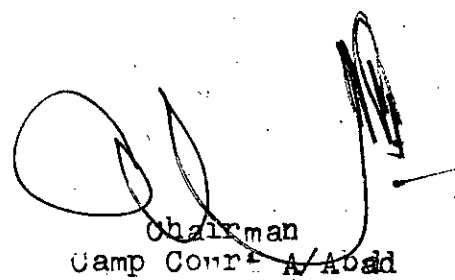
No one is present on behalf of the appellant. Notices be issued to the appellant and his counsel for preliminary hearing at camp court A/Abad on 17.12.2013.

  
Chairman  
Camp Court A/Abad

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17.12.2013

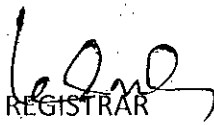
Appellant present in person, and requested for adjournment due to non-availability of his counsel. To come up for preliminary hearing at camp court A/Abad on 14.4.2014.

  
Chairman  
Camp Court A/Abad

The appeal of Mr. Syed Abdul Ali Shah Record Keeper Session Court Mansehra, received today i.e. on 11/07/2012 is incomplete on the following scores which is returned to the counsel for the appellatant for completion and resubmission within 15 days:-

- 1- Page Nos.38 to 41 of the appeal are illegible which may be replaced by legible one.
- 2- Two more copies/sets of the appeal along with annexure i.e. complete in all respect may also be submitted with the appeal.

No. 777 /S.T,  
Dt: 12/07 /2012.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

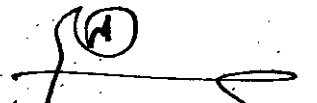
Mr. DILDAR AHMAD KHAN ADV. MANSEHRA

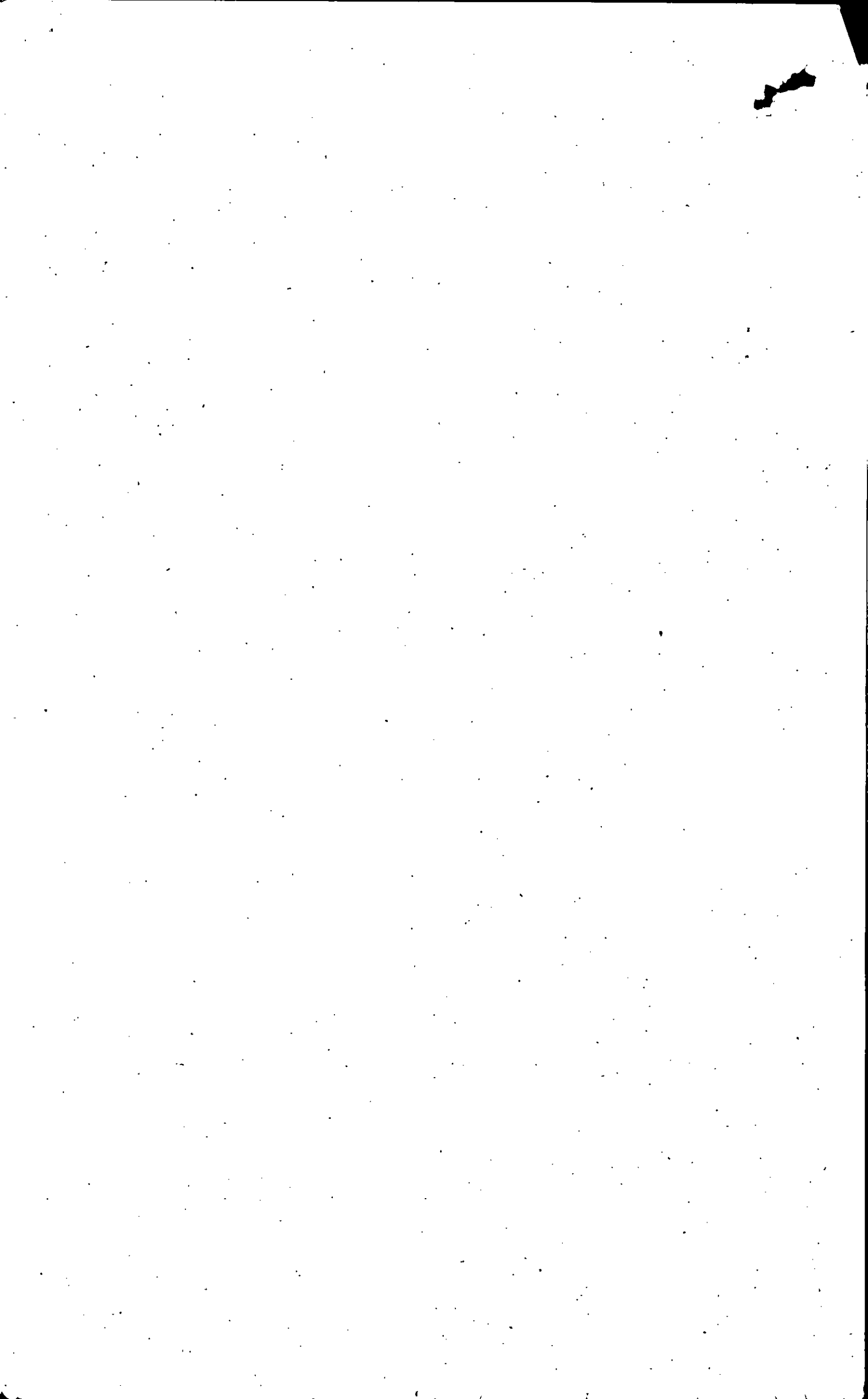
Respected sir

The above mentioned objections were

Removed, please Re submit the  
file before the honourable  
Tribunal

Dildar Khan  
Advocate -  
counsel for  
Appellant.

  
20.7.012



original

**BEFORE THE SERVICE TRIBUNAL,  
KHYBER PAKHTUN KHWA PESHAWAR**

Appeal no. 832/12

Syed Abdul Ali Shah..... Appellant

Versus

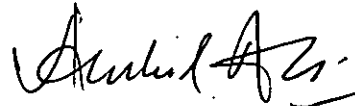
District & Sessions Judge, Mansehra etc..... Respondents

**SERVICE APPEAL**

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Dated 30-06-2012



Syed Abdul Ali Shah  
.....Appellant

Through

  
**DILDAR AHMED KHAN LUGHMANI,**  
Advocate High Court  
Mansehra.

**BEFORE THE SERVICE TRIBUNAL,  
KHYBER PAKHTUN KHWA PESHAWAR**

Appeal no. 832/12

A. V. J. Peshawar  
No. 795  
11-07-12

Syed Abdul Ali Shah son of Syed Sajjad  
Hussain Shah caste Syed resident of Pairan,  
Tehsil and District Mansehra presently  
posted as Record Keeper Record Room  
General Sessions Court, Mansehra  
.....Appellant

**VERSUS**

1. District & Sessions Judge, Mansehra.
2. Honourable Administrative Judge, Peshawar  
High Court, Peshawar.
3. Mr. Murad Ali Shah, Civil Judge, presently  
posted at Upper Dir
4. Mr. Shafique Tanoli, presently Sessions  
Judge, Kohistan .....respondents.

**SERVICE APPEAL AGAINST THE  
ORDER DATED 30.05.2012 PASSED BY  
RESPONDENT NO.2 TO THE EXTENT  
OF WITHHOLDING THE BACK  
BENEFITS AND STOPPAGE OF  
THREE CONSECUTIVE INCREMENTS  
OF THE APPELLANT.**

11/7/12

**PRAYER: -**

On acceptance of instant appeal,  
impugned judgment and order to the  
extent of withholding the back  
benefits and stoppage of the  
increments may kindly be set aside

re-submitted to  
and filed.

23/7/12



- 2 -

and the appellant may graciously be given back benefits and the increments may also be kindly given to the appellant.

Respectfully Sheweth!

1. That, the appellant was inducted in the lower judiciary in the year 1985-86 and performing his services since then without any stigma on the service record of the appellant.
2. That, in the year 2007, the appellant was posted as a reader with Mr. Abdul Wahab Qureshi, judicial Magistrate-IV Mansehra. In the meanwhile some confessional statements were recorded by the above-mentioned Judicial Magistrate on 13.01.2007 in case FIR No.15 dated 09.01.2007 and case FIR No.438 dated 12.10.2006 P.S. Saddar Mansehra.
3. That, the appellant kept the above-mentioned confessional statements in the record and the appellant served with the above-mentioned honourable Magistrate upto 27.10.2007. Later on the appellant was got transferred to the court of

Miss Nadia Syed, Judge Family Court, Mansehra where appellant assumed the charge on 29.10.2007 and the appellant handed over the charge to one Muhammad Ayaz Reader.

*(Copy of the Charge report is annexed as annexure "A").*

4. That, in the year 2009 it was found that the above-mentioned original confessional statements were missing as the trial of case FIR No.15 dated 09.01.2007 was pending in the court of Syed Kamal Hussain Shah, Additional Sessions Judge-I, Mansehra, who addressed a letter to the District & Sessions Judge, Mansehra about furnishing information regarding the loss of the confessional statements. The learned respondent No.1 appointed Mr. Zahid Mehmood, Additional Session Judge-II, Mansehra as authorized Officer on 21.07.2009.

*Attested copies of both the orders are annexed as annexure "B").*

5. That, Mr. Zahid Mehmood, the then authorized Officer appointed Miss

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Javeria Sartaj, Civil judge, Mansehra are inquiry officer who conducted the inquiry and recorded evidence and ultimately he submitted the inquiry report to Mr. Ishfaq Taj, the then Additional District & Sessions judge-III, Mansehra. On receiving the inquiry report, Mr. Ishfaq Taj, Additional District and Sessions judge-III, Mansehra onward submitted the report to the respondent No.1.

**(Attested copy of the proceedings, evidence, inquiry report and report of the authorized Officer are annexed as annexure "C")**

6. That, after receiving the inquiry report from inquiry Officer as well as authorized Officer, the leaned respondent No. 1 remanded the case back to the then AD&SJ-II, authorized Officer for re-inquiry vide order dated 15-02-2010. After receiving the order from respondent No. 4,

~~4~~

AD&SJ-II, Syed Murad Ali Shah, Civil Judge, Manserha has been appointed as inquiry Officer, who conducted the inquiry, recorded the evidence and submitted his report to the authorized Officer.

**(Attested Copies of the order dated 15-02-2010, report of inquiry officer, evidence and report of the authorized Officer are annexed as annexure "D").**

7. That, respondent No.1 after receiving the inquiry reports, issued final show cause notice to the appellant. The appellant submitted his reply to respondent No.1.

**(Attested copy of final show cause notice and reply are annexed as annexure "E")**

8. That, the respondent No.1 by imposing the major penalty, compulsory retired the appellant vide order dated 28-06-2010. **(Attested copy of**

the order dated 28-06-2010 is annexed as annexure "F").

9. That, feeling aggrieved from the order of respondent No.1, appellant filed an appeal before Honourable respondent No.2.

(Attested copy of the appeal is annexed as annexure "G").

10. That, during the course of proceedings before the Honourable respondent No.2, respondent No.1 submitted his comments. (Attested copy of the appeal is annexed as annexure "H").

11. That, the learned respondent No.2 vide its judgment and order dated 30-05-2012 accepted the appeal of the appellant and reinstated the appellant in service, but the Honourable respondent No.2 withheld the back benefits of the appellant and also stopped three consecutive increments. (Attested copy of the judgment dated 30-05-2012 is annexed as annexure "I").

12. That, the appellant being aggrieved from the judgment and order passed by Honourable respondent No.2 to the extent of stoppage of increments and withholding of the back benefits, seeks the gracious indulgence of this Honourable Court inter alia on the following grounds: -

#### GROUNDS

- i. That, the judgment and order of the Honourable respondent No.2 to the extent of withholding of back benefits and stoppage of three increments is wrong, illegal, against the law and facts which is not tenable in the eyes of law.
- ii. That, the Honourable respondent No.2 has not taken into consideration the material available on the file while disposing the appeal of appellant as it is crystal clear from the available record that the appellant since his induction in the judicial department has a good service record and there is no even a single stigma on the service record of

the appellant. When the original confessional statements were reported to be lost, the appellant was not posted with the concerned Judicial Magistrate as the appellant was got transferred and took charge with another Family Judge, Mansehra. Appellant handed over the charge and all the relevant record to Mr. Muhammad Ayaz Reader. He never reported about the loss of original confessional statement, to any responsible officer for about two years. Due to this reason, Miss Javeria Sartaj Civil Judge, Mansehra as well as Mr. Ishfaq Taj, Additional Sessions Judge, Mansehra only issued warning to the appellant keeping in view all this record.

- iii. That, respondents No.3 and 4 fixed the responsibility on the appellant without any record and reasons. Similarly, respondent No.1 passed the order of compulsory retirement against the appellant without any reason and justification.
- iv. That, the order of learned respondent No.2 is the result of mis-reading and

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Non-reading of the record/evidence available on the file.

- v. That, appellant also sworn affidavit before the Honourable respondent No.2 about his innocence and the learned respondent No.2 also took the verbal oath before his goodself, this fact is also reflected in the impugned judgment and order even then the impugned order was passed against the appellant.
- vi. That, the copy of the confessional statements were already exhibited during the course of proceeding of case FIR No. 15 and 438 and both the cases were also decided by the respondent No.4. (Attested copy is attached herewith.)



- vii. That, no one has suffered from the loss of the confessional statements, the honorable respondent No.2 should exonerate the appellant from the charge.
  
- viii. That, appellant has 25/26 years service career and there is even not a single complaint against the appellant regarding mis-maintenance / management of the record.
  
- ix. That, there is different opinions of the inquiry / authorized officers.  
One is exonerating the appellant while the other is leveling charge against the appellant. The appellant cannot be punished even for minor penalty keeping in view the available record.
  
- x. That, the learned respondent No.3 has also not complied with the relevant provisions of

law while conducting the inquiry against the appellant.

xi. That there is nothing on the record which may demonstrate that the appellant has ever gain any monetary benefits form anyone and similarly there is even not a single iota of evidence that anyone has suffered from monetary or any other loss.

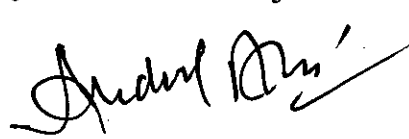
xii. That, there is no evidence against the appellant that the confessional statements were lost in the period of appellant or form the appellant, rather I handed over the charge including all record which was in my possession to my successor . copy of charge report is also annexed.

has not taken into consideration these important facts of the case.


- xiii. That, the appellant has taken oath on the Holy Quran that he has never committed such like act but the learned respondent No.2 has not taken into consideration the oath of the appellant.
- xiv. That, the judgment and order of the Honourable respondent No.2 to the above-mentioned extent is not maintainable in the eyes of law in any manner whatsoever.

It is, therefore, most humbly prayed that on acceptance of instant appeal, impugned judgment and order to the extent of withholding the back benefits and stoppage of the increments may kindly be set aside and the appellant may graciously be given back benefits and the increments may also be kindly given to the appellant.

Dated 30.06.2012

  
Syed Abdul Ali Shah  
...Appellant

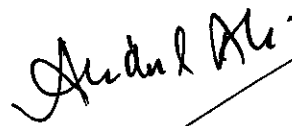
Through

  
DILDAR AHMED KHAN LUGHMANI,  
Advocate High Court,  
Mansehra.

**AFFIDAVIT.**

I, Syed Abdul Ali Shah son of Syed Sajjad Hussain Shah caste Syed resident of Pairan, Tehsil and District Mansehra presently posted as Record Keeper Record Room General Sessions Court, Mansehra, Appellant, do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Dated 30.06.2012



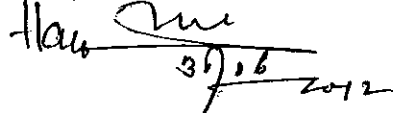
Syed Abdul Ali Shah  
(DEPONENT)

Attested

Hakim Ullah Khan

(Advocate) Notary Public

Distt: Mansehra.



30/6/2012

**BEFORE THE SERVICE TRIBUNAL,  
KHYBER PAKHTUN KHWA PESHAWAR**

Syed Abdul Ali Shah .....Appellant

**VERSUS**

District & Sessions Judge, Mansehra etc.  
..... Respondents

**SERVICE APPEAL**

**CORRECT ADDRESSES OF THE PARTIES**

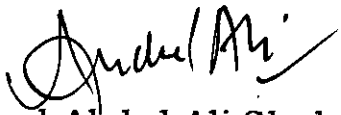
**APPELLANT**

Syed Abdul Ali Shah son of Syed Sajjad Hussain Shah caste Syed resident of Pairan, Tehsil and District Mansehra presently posted as Record Keeper Record Room General Sessions Court, Mansehra.

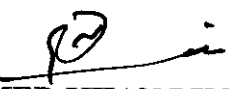
**RESPONDENTS**

1. District & Sessions Judge, Mansehra.
2. Honourable Administrative Judge, Peshawar High Court, Peshawar.
3. Mr. Murad Ali Shah, Civil Judge, presently posted at Upper Dir
4. Mr. Shafique Tanoli, presently Sessions Judge, Kohistan.

Dated 30.06.2012

  
Syed Abdul Ali Shah  
...Appellant

Through

  
**DILDAR AHMED KHAN LUGHMANI,**  
Advocate High Court,  
Mansehra.

15

# Annexe - A - 15

## CHARGE REPORT

In compliance <sup>to</sup> the order of Hon'ble District & Sessions Judge; Manshra vide Order No. 1851-95 dated 25.10.07, Syed Abdul Ah Shah Reader do hereby relinquish the charge of the post of Reader today, on 29.10.07 (F.N).

Annex "A"

Am  
 (Syed Abdul Ah Shah)  
 Reader to Abdul Wahab  
 Euroshi civil judge,  
 Manshra.

I have taken over the charge of the post of Reader as above dated 29.10.07 (F.N).

Seen and placed  
 on record file.  
J. K. K.

?  
M. A. A.  
 Reader CS to  
 Manshra

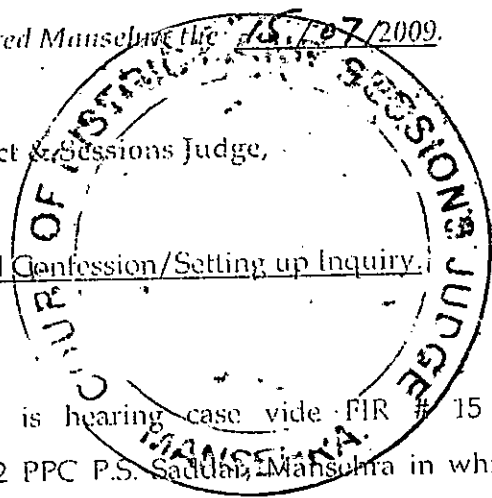
copy.

نقل آفیس "ب" 21/7/09  
799  
16/9/2009

# Ann; 'B' -16

No. 408 ASJ-I, Msr Dated Manshehra the 15/07/2009.

To: The learned District & Sessions Judge, Manshehra.  
Subject: Missing of Original Confession/Setting up Inquiry.



Dear Sir,

Annex "B"  
(5/11/02)

This court is hearing case vide FIR # 15 dated 09.01.2007 u/s 302 PPC P.S. Saddar, Manshehra in which Mr Abdul Wahab Qureshi learned former CJ/JM, Manshehra purportedly recorded confessional statement of the accd Intiaz s/o Khani Zaman on 13.01.2007 but the same has been missed/lost and was led secondary evidence thereof. It is, therefore, brought into your notice for setting up inquiry and to fix the responsibility of the delinquent person(s) as the matter is of great concern and grave nature with the judicial record.

Handwritten notes in Urdu script, including "مذکورہ" and "مذکورہ" repeated.

*Syeda Kamal Hussain Shah*  
15/7/09

SYEDA KAMAL HUSSAIN SHAH,  
Additional Sessions Judge-I,  
Manshehra.

*Handwritten signature/initials*

ATTESTED  
Signature: *[Signature]*  
Date: 22-06-16

17


17

**OFFICE ORDER.**

Consequent upon the written report bearing No.408 dated 15.07.2009, sent by the court of Syed Kamal Hussain Shah, Additional District & Sessions Judge-I, Mansehra, respecting missing of original confession in case FIR No.15 dated 09.01.2007 registered under section 302 PPC with Police Station Saddar, Mansehra.

Therefore, in order to arrive at just and proper conclusion, I deem it proper to hold a departmental inquiry in the matter, as such I, Anwar Hussain, District & Sessions Judge, Mansehra being Authority, hereby appointed Mr. Zahid Mehmood, Additional District & Sessions Judge-III, Mansehra as Authorized Officer with the directions to look into the matter and appoint a Judicial Officer as Inquiry Officer and fix responsibilities on the shoulders of concerned defaulter/ official and also submit his recommendation along-with inquiry report to the undersigned within the shortest possible time, for further necessary action.

**Dated:21.07.2009**


  
District & Sessions Judge,  
Mansehra.

**OFFICE OF THE DISTRICT & SESSIONS JUDGE, MANSEHRA.**

No. 3784-86 / Dated Mansehra the 21/07/2009.

Copy forwarded for information and necessary action to:-

1. Syed Kamal Hussain Shah, Additional District & Sessions Judge-I, Mansehra with reference to his letter quoted as above.
2. Mr. Zahid Mehmood, Additional District & Sessions Judge-III, Mansehra / Authorized Officer. Original letter / complaint furnished by Additional District & Sessions Judge-I, Mansehra is also enclosed herewith.
3. Office Copy.

  
District & Sessions Judge,  
Mansehra.

**ATTESTED**  
P12  
22-06-12



C.D. No. 4853  
Date 22-06-12  
Country P 27  
Urgent effs 7  
Tel. 27  
Fax 27  
Date 22-06-12  
Cause of  
Date 23-06-2012

نقل درجہ اولیٰ بجہ فاضل آڈیٹر مشین لکھنے والا - اٹھواں نمبر 799 / آر آر / 16/07/2009

18 5 1/2 سہ 27 7/5 اور 1/6 غائبہ

No. 408 ASJ-I, Msr Dated Manshra the 15/07/2009

To

The learned District & Sessions Judge,  
Manshra.

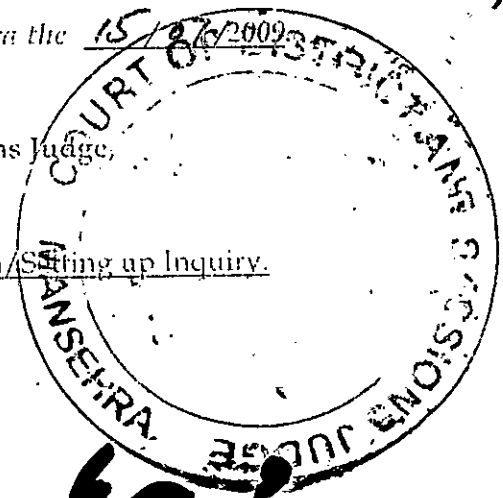
Subject:

Missing of Original Confession / Setting up Inquiry.

Dear Sir,

Arizener "C"  
- (10 Page)

**Ann: 'C'-18**



ATTESTED  
*[Signature]*  
Date 22-06-11

200

1877

OFFICE OF THE MR. ZAHID MEHMOOD ADDL: DISTRICT & SESSIONS  
JUDGE/AUTHORISED OFFICER MANSEHRA.

19  
2  
3

ORDER. 1.

27.07.09.

19

Two sheets, one complaint letter second office order of inquiry received from the Office of learned District & Sessions Judge, Mansehra. File of inquiry be prepared. Present perused. In order to conduct inquiry under the Govt: of NWFP, Public Servants Efficiency and Disciplinary Rules 1973 against the accused/official, Miss Javeria Sartaj Civil Judge/JMIC Mansehra is appointed as inquiry officer with the direction to hold an inquiry and submit her report at the earliest for further appropriate action alongwith the recommendation of the Inquiry Officer. Statement of allegations coupled with the inquiry file be sent to the Inquiry Officer who should summon the defaulter. Accused/Official should attend the same, when called for by the Inquiry Officer. File be sent under the proper Index.

(Zahid Mehmood)  
AD&SJ/Authorised Officer,  
Mansehra.

ATTESTED

P/2  
22-06-11

20

Or.1

31.7.09

Inquiry received from the court of learned ADJ Zahid Mehmood, be registered. Concerned official be summoned for 1.9.2009. Lauwa

O.2 1.9.2009

Accused/official present, given copy of statement of allegations. To come up for reply on 5.9.2009 Lauwa

O.3 5.9.2009

Accused/official present. Reply not submitted as he requested for adjournment, which granted for 12.9.09 Lauwa

O.4 12.9.2009

Accused official present. Reply to statement of allegations submitted. To come up for evidence from complainant side. Concerned Muharrir/Reader and I.O be noticed alongwith record for 25.9.09 Lauwa

O.5 26.9.09

Accused official present. Witnesses not summoned. Muharrir is directed to issue the process today and concerned Muharrir/Reader and IO be positively summoned for 10.10.09 Lauwa

Or.6 10.10.09

Accused official present. Muharrir has issued the process against Muharrir/Reader of learned the then Abdul Wahab Qureshi; instead of the Muharrir Reader of Syed Kamal Hussain Shah learned ADJ, Mansher he is directed to fresh issue the notice to Muharrir/Reader of Syed Kamal Hussain Shah, learned ASJ, Mansher for 20-10-09 Lauwa

ATTESTED

P.13  
22-06-11

0.7. 20.10.09

None present. Accused/official and witnesses be positively

noticed for 24-10-09

*Javeria*

0.8 24.10.09

Accused/official present. Muharrir Bashir of learned ASJ-I, Mansehra, despite service absent, be arrested through NAWA for 28-10-09 alongwith record of case FIR No. 15/07, u/s 302 PPC.

*Javeria*

0.9 28.10.09

Accused/official present. Muharrir Bashir of learned ASJ, present, his statement recorded as EW-1. Similarly statement of accused/official recorded as AW-1. To come up for order on 20-11-09

*Javeria*

O.10 20.11.09

Vide my detailed inquiry report separately placed on file, accused/official Abdul Ali Shah Reader is **Exonerated** from the charges, however, he is **Warned** to be careful in future. The inquiry report is submitted before the Court of Mr. Zahid Mehmood ASJ-III, Mansehra, / Authorized Inquiry Officer, for further necessary action, please.

*Javeria*  
(JAVERIA SARTAJ KHAN)  
CJ/Inquiry Officer, Mansehra.

20/11/09

ATTESTED

*Javeria*  
Signature

Date: 22-11-09

IN THE COURT OF JAVERIA SARTAJ KHAN CIVIL JUDGE-VIII/  
INQUIRY OFFICER MANSEHRA.

Inquiry file no. 32/6 OF 2009.

Date of Institution 31.07.2009  
Date of Decision 20.11.2009

Inquiry Against **Syed Abdul Ali Shah** Ex-Reader to the court of Mr. Abdul Wahab Qureshi the then J.M, Mansehra.

INQUIRY REPROT.

Brief facts of the Inquiry in hand are that instant inquiry has been marked to this court by Mr. Zahid Mehmood learned ADJ-III, / Authorized Inquiry Officer, Mansehra, for conducting inquiry against Syed Abdul Ali Shah, Ex-Reader to the court of the then JM, Mansehra, who was reportedly on the written report bearing no. 408 dated 15.7.2009 of Mr. Syed Kamal Hussain Shah learned ASJ-I Mansehra, has missed/lost the confessional statement of accused Imtiaz recorded on 13.1.2007 involved in case FIR No. 15 dated 9.1.2007 u/s 302 PPC PS Saddar Mansehra. On complaint of learned ASJ-I, Mansehra, an Inquiry is ordered to be conducted and Mr. Zahid Mehmood learned ASJ-III, appointed as Authorized Officer, who marked the same to the court of undersigned for conducting inquiry against the accused/official, under Govt. of NWFP, Public Servants Efficiency & Disciplinary Rules, 1973.

ATTESTED  
Signature  
20-11-09

Zahid  
20-11-

On receipt of inquiry accused/official was summoned, who attended the court, copy of statement of allegations given to him, who filed reply and case was fixed for evidence.

Abdul Basir Muharrir appeared as EW-1, on behalf of complainant, who brought original record of case FIR no.15 dated 9.1.2007 u/s 302 PPC PS Saddar Mansehra, who stated that original of said confessional statement was not available on file, however photo copies of same are exhibited as ExPW5/1 to ExPW5/3 on original file. During cross examination he admitted that in the instant case Prosecution had submitted application for secondary evidence on 29.11.08 which was accepted and statement of Abdul Wahab Qureshi learned JM, Mansehra was recorded.

On the other hand Statement of Abdul Ali Shah Reader accused/official recorded as RW-1.

Accused/official in his reply to show cause notice stated that said file has been submitted for trial by his successor and in case while submitting the judicial file and had there been no confessional statement, it could have been pointed out at the outset, but such a disclosure has been made after the elapse of sufficient time. He further stated that said file has come into the hands of so many officials of the court, therefore, responsibility can not be fixed against accused/official in absence of cogent or concrete evidence.

I have gone through the available record.

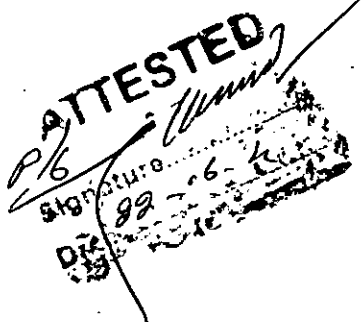
After which I came to the conclusion that as per complaint original confessional statement of accused Imtiaz FIR No. 15 dated 9.1.2007 u/s 302 PPC PS Saddar Mansehra has been found missing, during recording statement of Mr. Abdul Wahab Qureshi, the then learned JM, Mansehra and complaint was submitted by learned ASJ-I to learned D&S,J, Mansehra, for setting up inquiry and to fix the responsibility of the delinquent person (s). Record of relevant file of case FIR No.15 u/s 302 PPC would reveal that statement of Abdul Wahab Qureshi the then learned J.M Mansehra has been recorded, after granting permissions for secondary evidence to Prosecution. Confessional statement of accused Imtiaz was recorded on 13.1.2007, while statement of Abdul Wahab Qureshi the then learned JM, Mansehra was recorded on 29.11.2008, after 1 year and 10 months. As per statement of accused/official he was transferred from the court of Mr. Abdul Wahab Qureshi the then learned J.M Mansehra on 27.10.2007. No cogent record /evidence is available on file which could fix the responsibility only on accused/official, as challan was put in court on 28.5.07 and at that time this fact, (missing of original confessional statement) has not brought into surface. Furthermore statement of Abdul Wahab Qureshi then learner J.M, Mansehra has already been recorded and photo copy of said are already exhibited on court file.

In the light of my above findings, accused/official Abdul Ali Shah Reader is **Exonerated** from the charges, however, he is **Warned** to be careful in future.

Dated. 20.11.2009

*Javeria*  
(JAVERIA SARTAJ KHAN)  
CJ-VIII/Inquiry Officer,  
Mansehra.

20-11-09





شہادت نامہ / اقرار نامہ / Addl / اقرار نامہ / اقرار نامہ

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22  
10

799  
16/07/2009  
5 1/2

27 2/3

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1/6

No. 408 ASJ-I, Msr Dated Manshira the 15/07/2009.

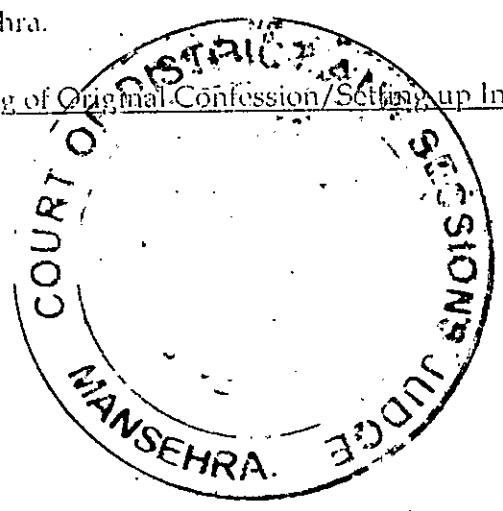
To

The learned District & Sessions Judge,  
Manshira.

Subject:

Missing of Original Confession / Setting up Inquiry.

Dear Sir,



ATTESTED

Signature  
Date: 22-06-11

28-10

بیان عبدالعزیز محترم عدالت جناب آئی سی آئی کے کال سنٹر سے مندرجہ ذیل

مہر جنت جیل سے مندرجہ ذیل ناکھ شدہ بلٹروں کے بارے میں استیوار

عدالت نمبر 15 حمرہ 1-06-9 از ایڈیشن 302302

لاہور میں - جسکی ناکھ شدہ پر اہل بیان (Confession) موجود

مذہب میں جنت ثلوث کے بارے میں 9 x 9 x 9 ہیں - جنت ثلوث

پر میر عدالت جناب عبدالوہاب قریشی صاحب کی ہے - مقدمہ

میں بیان عبدالوہاب قریشی صاحب کی ہے - مقدمہ

عدالت سے مندرجہ ذیل ہے - درج ذیل بیان ہے

5 دست سے Confession بیان پر میر عدالت ثبت شدہ ہے

5 دست سے مندرجہ ذیل ہے بیان پر میر عدالت سے مندرجہ ذیل

مقدمہ میں درج ذیل ہے ہرگز ثلوث کی یاد تازہ نہیں ہے - 5 دست سے

حمرہ 29 نوٹس میں جو مندرجہ ذیل ہے میر عدالت سے مندرجہ ذیل

مذہب ثلوث سے - درج ذیل ثلوث کی یاد تازہ نہیں ہے

5 دست سے مندرجہ ذیل ہے - 5 دست سے مندرجہ ذیل

5 دست سے مندرجہ ذیل ہے - 5 دست سے مندرجہ ذیل

5 دست سے مندرجہ ذیل ہے - 5 دست سے مندرجہ ذیل

5 دست سے مندرجہ ذیل ہے - 5 دست سے مندرجہ ذیل

XX

ATTESTED  
Signature  
Date: 22-10-06

(جج ایڈیشن 302302)

بیان عبدالغنی سید، ریڈر ایف۔ پی۔ ایف۔ 1957ء کانپور

بہر صحت بیان کیا۔ 2007ء میں لکچر ریڈر عدالت پنجاب عبدالوہاب  
 قمر شین جوڑتین کی شہادت میں عبدالغنی قمر شین کی شہادت لکھی گئی۔ 2007ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 عدالت میں محفوظ کیا گیا۔ اس کے بعد عدالت نے 27/10/07ء  
 ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 قمر شین کی شہادت میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 اس کے بعد عدالت نے 28/10/07ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 عدالت سے (Part on Court) میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں

XX  
 یہ دست خط حسب وقت بیان شدہ پنجاب عبدالوہاب قمر شین کی شہادت میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں

شہادت میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں  
 لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں لکچر ریڈر ایف۔ پی۔ ایف۔ 1957ء میں

ATTESTED  
 Signature  
 Date: 22/10/07

25

OR: 25.11.09.

Inquiry file received back.  
Place for 03.12.2009 for further proceedings.

(Zahid Mehmood)  
AD&SJ-III/Authorised  
Officer Mansehra.

OR: 03.12.09.

The instant case file is fixed  
for further proceedings on 18.12.09.

(Zahid Mehmood)  
AD&SJ-III/Authorised  
Officer Mansehra.

OR: 18.12.2009.

The instant case file is fixed  
for further proceedings on 10.5.10.

(Ashfaq Raza)  
ASJ-III/Authorised  
Officer Mansehra.

ORDER  
5.1.2010.

Inquiry report received.

Examination of inquiry report reveals that an inquiry against Syed Abdul Ali Shah Ex Reader to the court of Mr. Abdul Wahab Qureshi, the then Judicial Magistrate Mansehra was initiated on the complaint of Syed Kamal Hussain Shah the learned Addl: Sessions Judge-I Mansehra, qua the

accused-official has misplaced the confessional statement of the accused Imtiaz recorded on 13.1.07, facing trial in case FIR No. 15, dated 9.1.07, under section 302 PPC of Police Station Saddar Mansehra. On the receipt of complaint, the authority directed inquiry against the accused-official.

Mr. Zahid Mehmood, learned ADJ-III, Mansehra, my predecessor-in-office was appointed as an Authorized Officer and same was marked to Javeria Sartaj Khan, Civil Judge-XIII, Mansehra as an Inquiry Officer. Her detailed report has been received. She recorded evidence and statement of accused-official and came to the conclusion that accused-official was transferred from the court of Abdul Wahab Qureshi, Judicial Magistrate on 27.10.07. That no evidence was available on record, which could directly fix the responsibility only on the accused-official and therefore, had exonerated the accused-official Syed Abdul Ali Shah from the charges with the warning to be careful in future.



05.01.2010

22-5-10

I find myself in consonance with the inquiry report as the accused-official got transferred from the court of the Judicial Magistrate and thereafter, the record came under the custody of the other reader, henceforth the accused official alone could not be held liable. However, warning be issued to the accused-official as suggested and report be sent to the authority.

*[Handwritten signature]*

Ashfaque Taj,

Addl: District & Sessions Judge-III,  
Mansehra

05.01.2010



J.D. No. 4853  
Date 22-06-12  
Court Fee for buy  
Urgent enq. of  
Total ent. of  
Name of Officer Rizwan  
Date of Issue 22-06-12  
Cause of Issue —  
Date of Receipt 23-06-2012

38

10

Re inquiry

Ann: 'D' - 27

OFFICE ORDER.

It has been brought into my notice by Mr. Ishfaq Taj Additional District & Sessions Judge-III, Mansehra vide his letter No. 23 dated 10-02-2010 informed that a sessions case titled "The State Vs Asad Shah" vide the FIR No. 438 dated 12-10-2006, registered under section 302/109/34 PPC with Police Station Saddar Mansehra is pending in his court, in which Mr. Abdul Wahab Qureshi the then Civil Judge-cum Judicial Magistrate, Mansehra purportedly recorded the confessional statement of the accused Asad Shah son of Zamin Shah on 13-01-2007 and handed over the same in original to his Reader namely Abdul Ali Shah, for safe custody but the same has not been found on the record available with the court.

On summoning, the official concerned appeared and requested the court for giving him some more time, so that he may be able to trace and produce the same before the court concerned. On 06-02-2010 he failed to produce the original confessional statement, but has produced the photocopy of the same coupled with the questionnaire and the certificate.

The officer concerned asked the undersigned for beginning an enquiry to fix the responsibility of the delinquent official as the matter is of great concern and grave nature regarding missing of evidence.

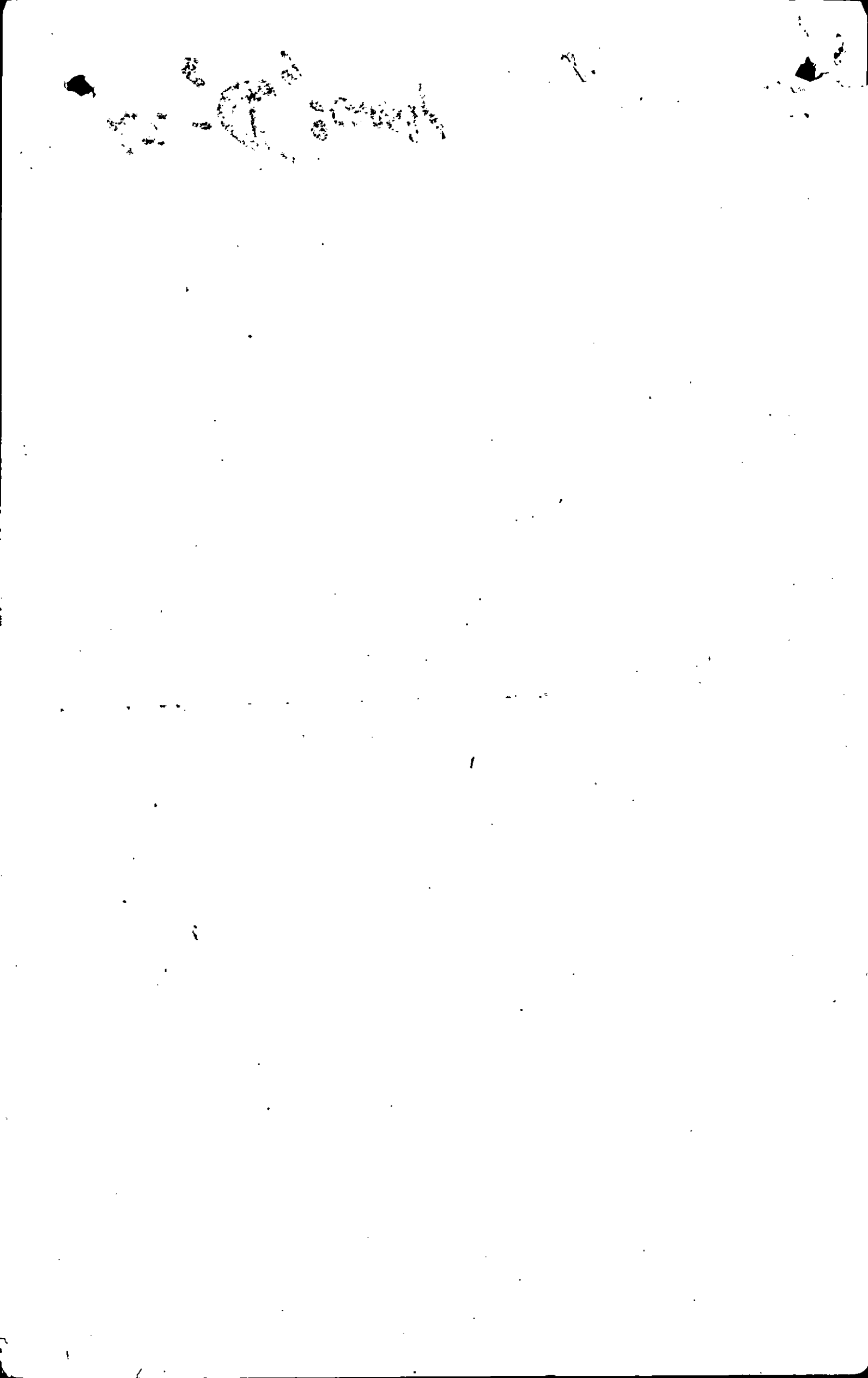
The Judicial Officer concerned also informed the undersigned that previously an inquiry in case FIR No.15 dated 09-01-2007, registered u/s 302 PPC, with Police Station Saddar, Mansehra was also conducted against this official in the same manner, on the complaint of Syed Kamal Hussain Shah Additional District & Sessions Judge-I Mansehra in which the said official has also misplaced the confessional statement(s) of the accused. As a result of the said inquiry a warning was issued to him, after conclusion of inquiry on 05-01-2010.

On receipt of the instant report, the office produced the inquiry file already conducted against him on the complaint of Additional District & Sessions Judge-I, Mansehra on the directions of the undersigned and the same has been perused.

Record shows that after receipt of the written report vide No: 408 dated 15-07-2009, the undersigned being Authority, appointed Mr. Zahid Mehmood the then Additional District & Sessions Judge-III, Mansehra as an Authorized Officer vide Office Order bearing Endst: No: 3784-86 dated 21-07-2009,

Annex "D"  
(02/19)





with the directions to look into the matter and appoint a Judicial Officer as Inquiry Officer and to fix responsibilities on the shoulders of the concerned defaulting official(s). He was also directed to submit his recommendation alongwith his inquiry report to this office within the shortest possible time.

The above named Authorized Officer after receipt of inquiry file alongwith office order mentioned above appointed Ms Javeria Sartaj Civil Judge-VIII, Mansehra, as an Inquiry Officer for holding a departmental inquiry into the matter against the official(s) concerned, who completed the said inquiry and submitted her report to Mr. Zahid Mehmood the then Additional Session Judge-III/Authorized Officer, Mansehra for further necessary action vide her Order Sheet No. 10 dated 20-11-2009. The file was received back in the court of Additional District & Sessions Judge-III/Authorized Officer, Mansehra on 25-11-2009 and remained there up to 18-12-2009.

In the meanwhile Mr. Zahid Mehmood the then Additional District & Sessions Judge-III, Mansehra/Authorized Officer was transferred and Mr. Ishfaq Taj assumed the duties in his place, who returned the same inquiry file to this office on 05-01-2010, with the remarks that as there was no evidence on record except the only statement of accused official (Abdul Ali Shah) which could directly fix the responsibility only on the accused official and therefore, had exonerated the accused official from the charges with the warning to be careful in future.

The present report against the said official clearly shows the lack of interest in performance of his official duty. On the other hand, the enquiry officer and the authorized officer is supposed to forward his recommendations and cannot decide the issue. It is the function of Appointing Authority who can award the punishment to any delinquent person(s) after approval of suggestions submitted by the Authorized Officer. In this inquiry, the Inquiry Officer has awarded the punishment to the official concerned which is a violation of Rules and is therefore of no consequence or legal effect. It is relevant to mention here that in fact warning is also a minor punishment under the relevant Rules but the Inquiry Officer is not competent to award the same under the Rules.

Similarly the Authorized Officer can remand the said Inquiry report back to the officer concerned for re-conducting the inquiry or rewriting the final order according to Rules, but both the Inquiry Officer as well as the Authorized Officer failed to perform their functions according to requirement of

Rules. As such in the light of above noted circumstance I deem it proper to remand not only the pervious inquiry report to Mr. Shafique Ahmed Tanoli Additional District & Sessions Judge-II, Mansehra who is appointed as Authorized Officer to hold a departmental inquiry in the matter, but also appoint Authorized Officer in the present written report submitted by Islifaque Taj Additional District & Sessions Judge-III, Mansehra vide No.23 dated 10-2-2010 to hold a separate inquiry against the same official as he is involved in both the cases and submit his both reports alongwith his opinions/recommendations within the shortest possible time for further necessary action.

Dated 15-02-2010

  
District & Sessions Judge,  
Mansehra

OFFICE OF THE DISTRICT & SESSIONS JUDGE, MANSEHRA

No. 1061- 67 / Dated Mansehra the 15/02/ 2010

Copy forwarded for information and necessary action to:

1. Syed Kamal Hussain Shah, Additional District & Sessions Judge-I, Mansehra with reference to his letter quoted as above.
2. Mr. Shafique Ahmed Tanoli, Additional District & Sessions Judge-II/Authorize officer, Mansehra.
3. Mr. Ishfaq Taj Additional District & Session Judge-III, Mansehra with reference to his letter quoted as above.
4. Senior Civil Judge, Mansehra
5. Miss Javeria Sartaj Civil Judge-VIII, Mansehra.
6. Official concerned for information with the directions to appear before the Authorized Officer as and when summoned.
7. Office copy.

  
District & Sessions Judge,  
Mansehra

30

من اذ شانه ان من سنه لدا فاه الزمان دانت  
28/6/10

30

2/10/10

From:

The District & Sessions Judge,  
Mansehra.

To

Syed Kamal Hussain Shah,  
Additional District & Sessions Judge-I,  
Mansehra.

No. 4052 /

Dated Mansehra the 05 / 07 / 2010.

SUBJECT:

DEPARTMENTAL PROCEEDING/ ACTION.



TESTED  
Signature  
22-06-10

31

Order-1.  
20.2.2010

Enquiry file received from the court of District & Sessions Judge, Mansehra. It be registered. Accused-official be summoned for 4.3.10.

(Shafiq Ahmad Tanoli)  
AD&SJ-II, Mansehra/Authorized Officer.

N.R

04.03.10

Accused/official present P.O is on leave. To come up for previous proceeding on 12.3.10.

Recd  
A.D.J.-II, Mansehra

Order-2.  
12.3.2010

Accused-official namely Syed Abdul Ali Shah present. To come up for statement of allegations & charge sheet on 25-3-10.

(Shafiq Ahmad Tanoli)  
AD&SJ-II/Authorized Officer, Mansehra.

Order-3:-  
25.03.2010

Syed Abdul Ali Shah accused/official is present. Statement of allegations and the charge sheet framed. In order to conduct inquiry under the Govt. of NWFP, Civil Servant Efficiency and Disciplinary Rules 1973, Syed Murad Ali Shah, Civil Judge, Mansehra is appointed as Inquiry Officer with the direction to hold an inquiry and submit his report at the earliest. Statement of allegations and charge sheet coupled with the inquiry file be sent to the Inquiry Officer. Accused/official is present who is directed to appear on 08.04.2010 before the aforesaid Inquiry Officer and submit his written reply. File be sent under the proper index.

(SHAFIQ AHMAD TANOLI)  
A.D.J-II, Mansehra/ Authorized Officer.

ORDER-4:-  
17.06.2010

Inquiry report received.

I was appointed as Authorized Officer by the learned District & Sessions Judge, Mansehra vide his order bearing endst. # 1061-67, dated 15.02.2010 to hold fresh inquiry against Syed Abdul Ali Shah, Ex-Reader, who has missed/lost the confessional statement of the accused recorded by Abdul Wahab Qureshi, learned Judicial Magistrate, Mansehra in two murder cases registered vide FIR # 15, dated 09.01.2007, u/s 302 PPC of P.S Saddar Mansehra and FIR # 438, dated 12.10.2006, u/s 302/109/34 PPC of P.S Saddar Mansehra.

The missing of the confessional statement came to light during the trial of murder case registered vide FIR # 15 dated 09.01.2007 u/s 302 PPC in the court of learned Additional Session Judge-I, Syed Kamal Hussain Shah and he brought into the notice of learned Sessions Judge, Mansehra for inquiry and action.

The confessional statement in case FIR # 438 dated 12.10.2006 u/s 302/109/34 PPC of P.S Saddar was also lost by the same accused/official and reported by the learned Additional Sessions Judge, Mr Ashfaq Taj, during the trial of the case.

On receipt of the file from the authority, Syed Murad Ali Shah was appointed as Inquiry Officer after charge and statement of allegation and his report has been received after recording the evidence, he <sup>has</sup> found the accused official guilty/responsible for loss of confessional statement. B

It is admitted fact that both the confessional statements recorded by the then Judicial Magistrate were handed over to the accused official Syed Abdul Ali Shah for proper custody, however, later on he was transferred and he handed over the charge to Muhammad Ayyaz, Reader who has categorically stated that no confessional statement was handed over to him.

Though no specific procedure for the custody of the confessional statement is prescribed in the law and procedure, however, in practice it is always handed over to the Reader of the court for safe and proper custody and he produces the same at the time of examination of the Judicial Officer who recorded the confessional statement. Therefore, the accused/official cannot be exonerated from the responsibility and liability of the loss/misplacement of the confessional statement which is very material piece of evidence and it has been observed with great concern that judicial record has sometime been tempered, which favours the accused. Therefore, I am in agreement with the finding of Inquiry Officer and hold accused/official Abdul Ali Shah responsible for the loss of the confessional statement and recommend the major penalty of compulsory retirement. This report be sent to the authority.

TESTED  
Signature  
Date 22-6-10

(SHAFIQ AHMAD TANOLI)  
Additional Sessions Judge-II,  
Mansehra.

32

Or-1  
8.4.10: Inquiry received from The Court  
of Learned S.J. Manschra. Be registered.  
Concerned official be summoned for 9/10.

Syed Ghaffar Ali Shah  
Chief Justice / JMC  
Mansuwa.

Or-2  
9.4.10: Accd/official present. Given copy  
of statement of allegation. To come  
up for reply on 10/4/10.

Syed Ghaffar Ali Shah  
Chief Justice / JMC  
Mansuwa.

Or-3  
10/4/10: Delinquent official present. Requested for  
time to submit detail reply therefore  
the date is adjourned and proper time  
is given to the official to produce proper  
reply in his defence. To come up on  
date 23/4/10.

Syed Ghaffar Ali Shah  
Chief Justice / JMC  
Mansuwa.

Or-4  
23.4.10: Accd/official present. Reply not submitted  
as he requested for adjournment which granted  
for 25/4/10.

Syed Ghaffar Ali Shah  
Chief Justice / JMC  
Mansuwa.

22-06-12

0-5  
26/4/10

Delinquent official present. Reply submitted, which is not satisfactory therefore evidence witnesses be summoned for date 27/4/10. Reader to the court of learned Kamal Hussain Shah and learned Shafiq Taj AOS be summoned for date fixed along with record.

JMC/Jnsing Officer  
Syed M. Ad Ali (Shah)  
Ch. Judge / JMC  
Manshra

0-6  
27/4/10

Accused/official present. Amjad Hussain Reader to the court of Honorable ASI present his statement recorded. Mohar to the court of ASI Syed Kamal Hussain Shah and Mohar to the court of ASI Shafiq Tausi be summoned for date 28/4/10.

JMC/Jnsing Officer

0-7  
28/4/10

Accused/official present. Abdul Bari Mohar present, his statement recorded. Mohar recorded/keep Mohrafiz Khan and the Mohar to the court of learned ASI II to be summoned for date 28/4/10.

JMC/Jnsing Officer

ATTESTED  
Signature  
-22-6-10



0-8  
29/11/10  
9  
33

Accused official present. Statement to the Moharar to the court of ~~least~~ <sup>least</sup> Honble. ASJ II, and Record Officer of Mohafiz Khan and Reader Ayaz who took charge from accused official. To come up for statement of accused official on date 30/11/10. JMIC/Inquiry Officer

0-9  
30/11/10

Accused official present, his statement recorded to come up for further proceedings on date 3/5/10. JMIC/Inquiry Officer

0-10  
3/5/10

Accused official present. To come up for further proceedings on date 5/5/10.

0-11  
5/5/10

Vide my detail report of the inquiry consisting of three pages, checked and signed by one where necessary and submitted today for your kind perusal and further necessary orders of Authorized Officer. JMIC/Inquiry Officer

plg  
22-6-10

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22-06-22  
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 apt. 2  
 apt. 2  
 22-6-k  
 Cause of  
 23-06-272

Statement of Alleged  
من واریت کے لئے

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28/1

20/3

34

2/10-1

From:

The District & Sessions Judge,  
Mansehra.

To

Syed Kamal-Hussain Shah,  
Additional District & Sessions Judge-I,  
Mansehra.

No.

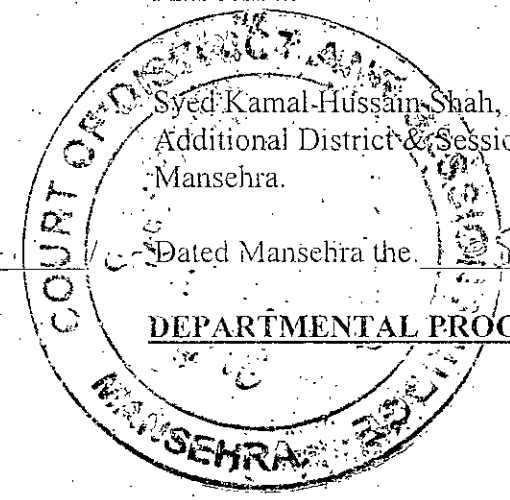
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Dated Mansehra the

25/27/2010.

SUBJECT:

DEPARTMENTAL PROCEEDING/ ACTION.



*Plt. Card*  
Date: 22-06-10

NE

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CHARGE

Whereas, the undersigned being Authorized Officer in your case has been directed by the Authority/District & Sessions Judge, Mansehra to conduct inquiry against you under the Government Servants (E&D) Rule 1973 on the following allegations: -

That you Abdul Ali Shah, Ex-Reader to the Court of Mr Abdul Wahab Qureshi the then Judicial Magistrate, Mansehra, have missed/lost the confessional statement of accused Imtiaz recorded on 13.01.2007 involved in case FIR # 15 dated 09.01.2007 u/s 302 PPC registered in P.S Saddar Mansehra and FIR # 438 dated 12.10.2006, u/s 302/109/34 PPC, P.S Saddar regarding which you failed to offer any plausible explanation.

And, your act amounts to misconduct and lack of interest in performing of your duty as a public servant, as detailed in enclosed statement of allegations already provided and you are hereby charge by the same.

And, charge you for the same with direction to submit written defence and state if you desire to be heard in person.

Mansehra  
25.03.2010

*Abdul Ali Shah*

Abdul Ali Shah,  
Ex-Reader, to the court of  
Abdul Wahab Qureshi, Judicial Magistrate,  
Mansehra,

*(Shafiq Ahmad Tanoli)*  
Addl: District Sessions Judge-II,  
Mansehra, Authorized Officer.

*(Signature)*  
Date: 22.06.10

28

STATEMENT OF ALLEGATION

Whereas you Abdul Ali Shah, Ex-Reader to the Court of Mr Abdul Wahab Qureshi the then Judicial Magistrate, Mansehra, have missed/lost the confessional statement of accused Imtiaz recorded on 13.01.2007 involved in case FIR # 15 dated 09.01.2007 u/s 302 PPC registered in P.S Saddar Mansehra and FIR # 438 dated 12.10.2006, u/s 302/109/34 PPC, P.S Saddar, regarding which you failed to offer any plausible explanation. As such, which prima-facie indicates your negligence and incompetency.

Therefore, why you should not be proceeded under the Government of N.W.F.P Civil Servant (Efficiency and Discipline) Rule 1973, in accordance with law.

Dated: 25.03.2010.

(Shafiq Ahmad Tanoli)  
Addl: District Sessions Judge-II,  
Mansehra, Authorized Officer.

*Abdul Ali*

Abdul Ali Shah,  
Ex-Reader, to the court of  
Abdul Wahab Qureshi, Judicial Magistrate,  
Mansehra,

4854

22-06-11

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22-06-11

23-06-272

*[Signature]*  
Date 22-6-11

4052

فصل حکم قضیہ عدالت مانسہرہ میں مقدمات کے احوال اور فیصلوں کی اطلاع دینے کے لئے

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سید

20/1

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2/10-1

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From:

The District & Sessions Judge,  
Mansehra.

To

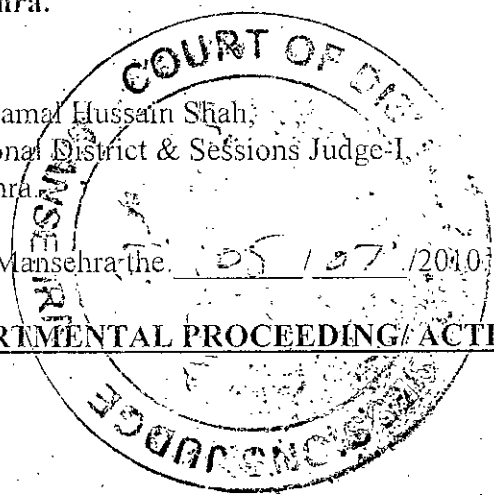
Syed Kamal Hussain Shah,  
Additional District & Sessions Judge-I,  
Mansehra.

No. 4052 /

Dated Mansehra the 05/07/2010

SUBJECT:

DEPARTMENTAL PROCEEDING/ ACTION.



ATTESTED

*[Signature]*  
22-06-10



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IN THE COURT OF SYED MURAD ALI SHAH JUDICIAL MAGISTRATE-  
III, MANSEHRA.

Inquiry File No. 97/4  
Date of Institution: 18.04.2010  
Date of Decision: 5.05.2010

38  
سید محمد علی شاہ

INQUIRY REPORT:

Brief facts of the inquiry in hand are that the instant inquiry has been marked to this court by learned Mr Shafique Ahmed Fanoli ADJ-II /authorized officer Manshra for conducting inquiry against Syed Abdul Ali Shah Ex-Reader to the court of Abdul Wahab Qureshi the then JMJC, Manshra, who was reported to on the written report of Mr. Syed Kamal Hussain Shah learned ASI-I, Manshra has missed/lost the confessional statement of accused Imtiaz recorded on 13.01.2007 in case FIR No.15 dated 9.01.2007 u/s 302 PPC of PS Saddar Manshra. Initial the inquiry was conducted by the learned civil Judge Miss Javeria Sartaj which was remanded alongwith the inquiry in the case FIR No.438 dated 12.10.2006 u/s 302/109/34 PPC of PS Saddar Manshra in which the then learned JMJC recorded the confessional statement of accused Assad Shah on date 13.01.2007 and the same was also lost by the accused official Abdul Ali Shah.

The authorized officer served the accused official with charge sheet and statement of allegation and marked the inquiry to the undersigned. During inquiry the accused official was summoned who attended the court and submitted his reply on date 26.04.2010 and the inquiry was fixed for evidence.

Amjad Hussain Reader to the court of Learned ASI-III, appeared as PW-1 and stated that he was posted as Reader in the court of Learned ASI-I, Manshra, case titled State VS Imtiaz Shah bearing FIR NO.15 u/s 302 PPC dated 9.01.2007 of PS Saddar was pending for trial in which the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of accused Imtiaz on 13.01.2007 when the judicial magistrate attended the court for recording the statement it was found that the original confessional statement of accused Imtiaz was missing from the file. PW-1 further stated that now he is posted reader in the court of learned ASI-II, Manshra the case titled as State VS Assad Shah bearing FIR No.438 dated 12.10.2006 u/s 302/109/34 PPC of PS Saddar was pending for trial in the said court in which the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of accused Assad Shah on date 13.01.2007 and the original of the same was missing from the file.

Murad Ali

22.06.11

recording

PW-2 Abdul Baseer Moharrir to the court of learned ASJ-I, Manshara stated that case titled as State VS Imtiaz bearing No.48/7 instituted on 19.06.2007 decided on 9.01.2010 vide FIR No.157/S/302 PPC of PS Saddar was decided and the same was consigned to Record Room on 14.01.2010.

PW-3 Mohammad Sohail Moharrir in the court of learned ASJ-II, Manshara stated that he is posted as Moharrir in the court of learned ASI II, Manshara and produced the record of the case bearing FIR NO.438 dated 12.10.2006 u/s 302/109/34 PPC the relevant page of the order of the then learned Judicial Magistrate is Ex.PW3/1.

PW-4 statement of Change Record filed in the office of record room Sessions court Manshara stated case FIR No.15 dated 9.01.2007 u/s 302 PPC of PS Saddar has been sent to the August Peshawar High court vide letter of the office of Hon'able District & Sessions Judge, Manshara bearing letter No.862 dated 2.02.2010 the copy of which is Ex.PW4/1.

PW-5 statement of Mohammad Avaz Reader stated that he has received the charge of the post of reader in the court of the then Judicial Magistrate Abdul Wahab Qureshi on the transfer of the reader Abdul Ali Shah and nothing was handed over by the reader Abdul Ali Shah nor he is in the knowledge of any confessional statement recording during the days of Abdul Ali Shah.

Statement of the accused official was recorded who stated that he was posted in the court of the then learned Judicial Magistrate, Abdul Wahab Qureshi on 13.01.2007 the learned Judicial Magistrate recorded the confessional statement of accused Assad and Imtiaz in case FIR No.15 dated 9.01.2007 u/s 302 PPC and in case FIR No.438 dated 12.10.2006 u/s 302 PPC. The confessional statements were kept in court on date 29.10.2007 he was transferred as reader to the court of then learned Judicial Magistrate Nadia Syed and handed over the charge to Avaz Reader. The record of the court was also in use of other staff i.e. Niah court stony, Moharrir etc therefore, the habits of the misplacement of the confessional statement could not only be fixed upon him.

I have gone through the available record.

After the perusal of the available record it is evident that the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statements of accused Imtiaz in case FIR No.15 dated 9.01.2007 u/s 302 PPC of PS Saddar and confessional statement of accused Assad in case FIR No.138 dated 12.10.2006 u/s 302/109/34PPC of PS Saddar Manshara. Both the confessional statements were recorded on the same date i.e. 13.01.2007 the original of the confessional statements were handed over to the then reader of the court Abdul Ali

ATTESTED  
29-06-17

*Muhammad*

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Shah for safe custody. When challan of the above mentioned cases were put in court for trial, during the trial of the said cases it was disclosed that the original of the confessional statements are missing/lost. The inquiry was set up to fix the responsibility of the delinquent person or person(s).

Statement of allegation and charge sheet was given to the accused official Abdul Ali Shah who submitted his reply.

The perusal of reply submitted on date 26.04.2010 reveals that after the recording the confessional statements the original of the same were kept in the court and the photo copy of the same were handed over to the IO. This fact has been mentioned in para NO.2 of the reply of the accused official. It is the duty of the reader of the court to keep all such record and officials letter in safe custody and reader of the court is responsible for the safety of such record/files. The statement of the reader Mohammad Avaz was also recorded who denied that any such thing was handed over to him by the accused official. In cross examination as PW-5 reader Mohammad Avaz stated that register peshi, register fine, English file and other court records like books etc were present in court and self stated that no confessional statements or other statements were handed over to me nor the same was present in the court. The statement of the accused official was also recorded who also in his cross examination admitted that after recording the confessional statement in the said cases the then learned Judicial Magistrate handed over the same to him and he further admitted that he had not handed over the charge to reader Avaz on any list of court articles/assets.

In the light of the above findings I am of the view that the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of accused Imtiaz and Assad in the above mentioned cases and handed over the original of the same to the accused official Abdul Ali Shah who was the reader in the said court and the available record suggest that the accused officials has lost/misplace the confessional statements as the same were handed over to the accused officials by the then learned Judicial Magistrate and accused officials has not handed over the same after his transfer to reader Mohammad Avaz who took charge from the accused official. I am of the view that accused official deserver capital punishment.

ATTESTED  
Signature  
22-6-10

Signature  
Judicial Magistrate-III, Mensehra, Inquiry of.

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D. No. ....

Date 22-06-14

Court P. M.

Urgent Yes

Particulars

Case No. 22-06-14

Date of ...

Date of ...

Case No. 23-06-2012

Date of ...

شماره 40 / منبره 20/1/2010

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28/6/10

20/1/10

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20/1/10

From:

The District & Sessions Judge,  
Mansehra.

To

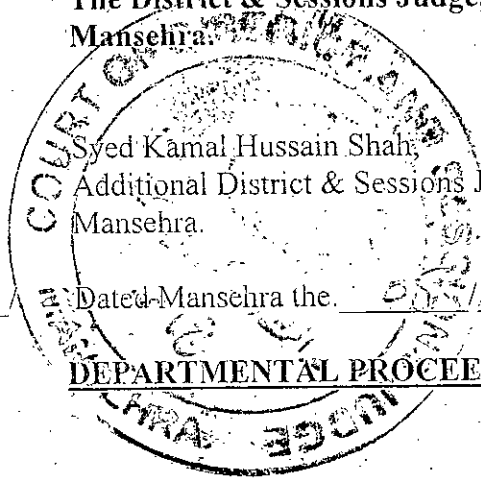
Syed Kamal Hussain Shah,  
Additional District & Sessions Judge-I,  
Mansehra.

No. 4052

Dated Mansehra the 07/07/2010.

SUBJECT:

DEPARTMENTAL PROCEEDING/ ACTION.



ATTESTED

Signature: [Signature]  
Date: 22-06-10

PW-1

Statement of Amjad Hussain Reader in the court of Hon'ble ASJ-III, Manshera.

Stated that I was posted as Reader in the court of Hon'ble ASJ-I, Manshera.

The case titled as "State Vs Imtiaz Shah" case FIR No.15 dated 9.01.2007 u/s 302 PPC of PS Saddar Manshera was pending for trial in the said court. Learned judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of the accused Imtiaz on 13/11/2007 when the learned judicial Magistrate Abdul Wahab Qureshi appeared for evidence in court. It was observed by the Hon'ble ASJ-I and original confessional statement was missing from the file.

Now I am posted as Reader in the court of Hon'ble ASJ-III, Manshera the case titled as State Vs Assad Shah vide FIR No.438 dated 12.10.2006 u/s 302/109/34 PPC of PS Saddar Manshera is pending for trial in the said court in which the learned judicial Magistrate Abdul Wahab Qureshi the then Civil judicial Magistrate Manshera recorded the confession statement of accused Assad Shah on date 13.01.2007. When the learned judicial Magistrate appeared in court for evidence the Hon'ble ASJ-III Manshera observed that the confessional statement of the accused Assad Shah was missing from the file.

XX It is correct that the statement of learned judicial Magistrate Abdul Wahab Qureshi was recorded in the trial of both the above mentioned cases. Self stated that the statement of learned judicial Magistrate was recorded on the permission of the court through secondary evidence and the photo copies of the confessional statements in both the cases were provided by Abdul Ali Shah the then reader in the court of learned judicial Magistrate Manshera namely Abdul Wahab Qureshi.

R.O & AC

27.04.2010

SYED MURAD ALI SHAH,  
Judicial Magistrate-III,  
Manshera.

Handwritten signature and stamp of the Magistrate.

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IN THE COURT OF SYED MURAD ALI SHAH JUDICIAL MAGISTRATE -III,  
MANSEHRA:

Inquiry file No. 97/4  
Date of Institution: 08.04.2010  
Date of Decision: 05.05.2010.

38

Better copy

INQUIRY REPORT:

Brief facts of the inquiry in hand are that the instant inquiry has been marked to this court by learned Mr. Shafique Ahmed Tanoli, ADJ\_II/authorized officer Mansehra for conducting inquiry against Syed Abdul Ali Shah, Ex-Reader to the court of Abdul Wahab Qureshi, the then JMIC, Mansehra, who was reported to on the written report of Mr. Syed Kamal Hussain Shah, learned ASJ-I, Mansehra has missed/lost the confessional statement of accused Imtiaz record on 13.01.2007 in case FIR No.15 dated 09.01.2007 under section 302 PPC of PS Saddar Mansehra initial the inquiry was conducted by the learned civil Judge Miss Javeria Sartaj which was remanded alongwith the inquiry in the case FIR No.438 dated 12.10.2006 under section 302/109/34 PPC of PS Saddar in which the then learned JMIC recorded the confessional statement of accused Assad Shah on date 13.01.2007 and the same was also lost by the accused official Abdul Ali Shah.

The authorized officer served the accused official with charge sheet and statement of allegation and marked the inquiry to the undersigned. During the inquiry the accused official was summoned who attended the court and submitted his reply on date 26.04.2010 and the inquiry was fixed for evidence.

Amjid Hussain Reader to the court of learned ASJ-III appeared as PW-1 and stated that I was posted as Reader in the court of learned ASJ-I, Mansehra case titled the State versus Imtiaz Shah bearing FIR No.15 under section 302 PPC dated 09.01.2007 of PS Saddar was pending for trial in which the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of accused Imtiaz on 13.01.2007 when the Judicial Magistrate attended the court for recording the statement it was found that the original confessional statement accused Imtiaz was missing from the file PW-1 further stated that now he is posted reader in the court of learned ASJ-III, Mansehra the case titled as State versus Assad Shah bearing FIR No.438 dated 12.10.2006 under section 302/109/34 PPC of PS Saddar was pending for trial in the said court in which the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of accused Assad Shah on date 13.01.2007 and the original of the same was missing from the file.

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PW-2 Abdul Baseer Moharrir to the court of learned ASJ-I, Mansehra stated that case titled as State versus Imtiaz bearing No.48/7 instituted on 19.06.2007 decided on 09.01.2010 vide FIR No.15 under section 302 PPC of PS Saddar was decided and the same was consigned to Record Room on 14.01.2010. **39**

PW-3 Mohammad Sohail Moharrir in the court of learned ASJ-II, Mansehra stated that he is posted as Moharrir in the court of learned ASJ-II, Mansehra and produce the record of the case bearing FIR No.438 dated 12.10.2006 under 302/109/34 PPC the relevant page of the order of the then learned Judicial Magistrate is Ex PW-3/1.

PW-4 statement of Changaiz Record lifter in the office of record room Sessions Court Mansehra stated case FIR No.15 dated 09.01.2007 under section 302 PPC of PS Saddar has been sent to the august Peshawar High Court vide letter of the office of Honourable District & Sessions Judge, Mansehra bearing letter No.862 dated 02.02.2010 the copy of which is Ex PW4/1.

PW-5 statement of Mohammad Ayaz Reader stated that he has received the charge of the post of reader in the court of the then Judicial magistrate Abdul Wahab Qureshi on the transfer of the reader Abdul Ali Shah and nothing was handed over by the reader Abdul Ali Shah nor he is in the knowledge of any confessional statement recording during the days of Abdul Ali Shah.

Statement of the accused official was recorded who stated that he was posted in the court of the then learned Judicial Magistrate Abdul Wahab Qureshi on 13.01.2007 the learned Judicial Magistrate recorded the confessional statement of accused Assad and Imtiaz in case FIR No.15 dated 09.01.2007 under section 302 PPC and in case FIR No.438 dated 12.10.2006 under section 302 PPC. The confessional statements were kept in court on dated 29.10.2007 he was transferred as reader to the court of the then learned Judicial Magistrate Nadia Syed and handed over the charge to Ayaz reader. The record of the court was also in use of other staff i.e Naib Court, Steno, Moharrir etc therefore, liabilities of the misplacement of the confessional statement court not only be fixed upon him.

I have gone through the available record.

After the perusal of the available record it is evident that the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statements of accused Imtiaz in case FIR No.15 dated 09.01.2007 under section 302 PPC of PS Saddar Mansehra and confessional statement of accused Assad in case FIR No.438 dated 12.10.2006 under section 302/109/34 PPC of PS sadder Mansehra both the confessional statements were recorded on the same date i.e 13.01.2007 the original of the confessional statements were handed over to the then reader of the court Abdul Ali

Better Copy

Shah for safe custody. When challan of the above mentioned cases were put in court for trial, during the trial of the said cases it was disclosed that the original of the confessional statements are missing/lost. The inquiry was set up to fix the responsibility of the delinquent person or person(s). 40

Statement of allegation and charge sheet was given to the accused official Abdul Ali Shah who submitted his reply.

The perusal of reply submitted on date 26.04.2010 reveals that after the recording the confessional statement the original of the same were kept in the court and the photo copy of the same were handed over to the IO. This fact has been mentioned in para No.2 of the reply of the accused official. It is the duty of the reader of the court is responsible for the safety of such record/files. The statement of the reader Mohammad Ayaz was also recorded who denied that any such thing was handed over to him by the accused official. In cross examination as PW-5 reader Mohammad Ayaz stated that register peshi register fine English file and other court records like books etc were present in court and self stated that no confessional statement or other statements were handed over to me nor the same was present in the court. The statement of the accused official was recorded who also in cross examination admitted that after recording the confessional statement in the said case the then learned Judicial Magistrate handed over the same to him and he further admitted that he had not handed over the charge to reader Ayaz on any list of court articles/assests.

In light of the above findings I am of the view that the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of accused Imtiaz and Assad in the above mentioned cases and handed over the original of the same to the accused official Abdul Ali Shah who was the reader in the said court and the available record suggest that the accused officials has lost/misplace the confessional statement has the same were handed over to the officials by the then learned Judicial Magistrate and accused officials has not handed over the same after his transfer to reader Mohammad Ayaz who took charge from the accused official I am of the view that accused official deserver capital punishment.

Sd/-  
Syed Murad Ali Shah,  
Judicial Magistrate-II/Inquiry Officer  
Manshra.

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PW-1 Statement of Amjid Hussain Reader in the court of Hon'ble ASJ-III, Mansehra.

State that I was posted as Reader in the court of Hon'ble ASJ-I, Mansehra. The case titled as "State versus Imtiaz Shah" case FIR No.15 dated 09.01.2007 under section 302 PPC of PS Saddar Mansehra was pending for trial in the said court learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of the accused Imtiaz on 13.01.2007 when the learned Judicial Magistrate Abdul Wahab Qureshi appeared for evidence in court it was observed by the Hon'ble ASJ-I and original confessional statement was missing form the file.

Now I am posted as Reader in the court of Hon'ble ASJ-III, Mansehra the case titled as State versus Assad Shah vide FIR No.438 dated 12.10.2006 under section 302/109/34 PPC of PS Saddar Mansehra is pending for trial in the said court in which the learned Judicial Magistrate Abdul Wahab Qureshi the then Civil Judicial Magistrate, Mansehra recorded the confessional statement of accused Assad Shah on date 13.01.2007. When the learned Judicial Magistrate appeared in the court for evidence the Hon'ble ASJ-III, Mansehra observed that the confessional statement of the accused Assad Shah was missing from the file.

XX. It is correct that the statement of learned Judicial Magistrate Abdul Wahab Qureshi was recorded in the trial of both the above mentioned cases. Self stated that the statement of learned Judicial Magistrate was recorded on the permission of the court through secondary evidence and the photo copies of the confessional statements in both the cases were provided by Abdul Ali Shah the then reader in the court of learned Judicial Magistrate Mansehra namely Abdul Wahab Qureshi.

R.O & AC  
27.04.2010

Sd/-  
Syed Murad Ali Shah,  
Judicial Magistrate-III,  
Mansehra.

*Better copy*

بیان عبدالصمد محمد عبدالرحمن علی بیگ شاہ صاحب AST-I علی گڑھ

Pw-2  
28/4/10

بیان کیا کہ فضل محمد 48/7 روپے 6/07 19 فیصد 1/10 9 ملک نمبر 15/07

302 ٹھکانہ مالگیرہ بہ عنوان "شرکار سدا امتیاز" محل منگور

9/10 فیصد سو گروہ 14/10 کو داخل شدہ لاگانہ عذاب ڈسٹرکٹ سیشن جج مالگیرہ

صوبہ کے لیے

XX اس نسبت میں ازین 10/09 28 کو صبر ایساں روپے عدالت میں جو یہ سہ سہ چنانچہ

رپورٹ 1-EW طلبہ ہو چکے ہیں درست ہے کہ اس وقت برکارڈ کی موجودگی

میں جو بیان دیا جا رہا ہے درست ہے۔

سید درخت لکھنؤ

JMIC

28/4/10

RECEIVED  
22-6-10

7-9-06  
02899-6-11  
ATTESTED

SYED MURAD ALI SHAH,  
Judicial Magistrate-III,  
Mansehra.

29.04.2010  
R.O&AC

Statement of Mohammad Sohail Dak Moharrir in the court of Hon'ble ASJ-II, Mansehra. ASJ-II, Mansehra, On oath

stated that I am posted as Moharrir in the court of Hon'ble ASJ-II, Mansehra. Today I produced the case record FIR No.438 dated 12.10.2006 u/s 302/109/34 PPC of PS Sadder the relevant page which pertains the order of the learned Judicial Magistrate regarding the confessional statement is FN.PW3/1. Original seen and returned.

XX It is correct that the statement of learned Judicial Magistrate Abdul Wahab Qureshi was recorded in this case and exhibited as FN.PW8/4, FN.PW8/5 and FN.PW8/6 respectively.

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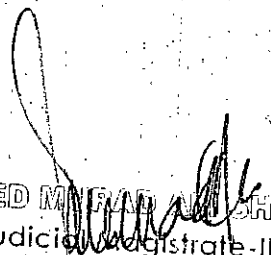
PW-4 Statement of Changaiz Record letter in the Office of RRG Sessions court  
Mansehra On oath

Stated that I am Record letter in the General record room. Record room of case FIR  
No.15 dated 9.01.2007, u/s 302 PPC of PS Saddar, Mansehra has been sent to the  
August Peshawar High Court Peshawar vide letter of the office of Hon'able  
District & Sessions Judge, Mansehra bearing letter No.862 dated 2.02.2010. The  
copy of the letter is Ex.PW4/1.

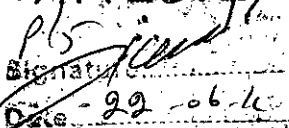
XX (NIL)

R.O&AC

29.04.2010

  
SYED MIRAN SHAH,  
Judicial Magistrate-III,  
Mansehra.

ATTESTED

  
Signature  
Date - 22-06-10

Statement of Mohammad Ayaz Reader in the court of JMIC-III, Manshera  
On oath

stated that I have received the charge of the post of Reader in the court of then  
learned Judicial Magistrate Abdul Wahab Qureshi on the transfer the Reader  
Abdul Ah Shah. Nothing was hand over to me nor I know about any confessional  
statement recorded during the days of Abdul Ah Shah.

XX It is correct that Register pesh register fine, English file and other court  
record like books, fine receipts etc were present in the court. Self stated that no  
confessional statement or other statements was handed over to me nor the same  
was present in the court. It is correct that I handed over the charge to reader Ayaz  
alongwith the court record. It is incorrect to suggest that I handed over the photo  
copy of the said confessional statement to reader Ayaz after my transfer. Self stated  
that the accused/official has obtained the photo copy of the said confessional  
statement from the file pending for trial.

R.O&AC

29.04.2010

SYED NURAD ALI SHAH,  
Judicial Magistrate-III,  
Manshera

ATTESTED  
09.6.11

45

PW-5  
45  
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Statement of Abdul Ali Shah Reader in the court of JFC-I Mansehra.

15

Stated that I was posted as Reader in the court of Abdul Wahab Qureshi JM-IV that on 13.01.2007 the then learned JM recorded the confessional statement of accused Assad and Intiaz in case FIR No.15 dated 9.01.2007 and in case vide FIR No.438 dated 12.10.2006 u/s 302 PPC. Confessional statements were kept in the court. On dated 29.10.2007 I was transferred as a Reader to the court of JM Nadia Syed and on date 29.10.2007 I handed over the charge to Ayaz Reader. Record of the court is also in use of other staff i.e. Naib court, Steno, Moharrir etc therefore, the liability of the miss placement of the confessional statement only be fixed upon me. The statement of learned JM Abdul Wahab Qureshi has been recorded in the said cases on the basis of secondary evidence. I have exonerated in inquiry bearing file No.32/06 dated 20.11.2009.

XX It is correct that the then learned JM has recorded the confessional statement in the above mentioned cases. It is correct that after recording the confessional statements in the said cases the then learned JM handed over the said confessional statement to me. Self stated that due to rush of work in the court the learned JM may have handed over the original statements to IO and kept the photocopies for the court. It is correct that I have not handed over the charge to the reader Ayaz on list of court articles/assets. Self stated that whole charge is given to reader Ayaz on charge report.

R.O&AC

30.04.2010

SYED MURAD ALI SHAH,  
Judicial Magistrate III,  
Mansehra

4854  
22-06-12  
23-06-12  
23-06-12

ATTESTED  
Signature  
22-06-12

من ناسن شکر کاروانس کو جواب از شہل مسندہ لیدات صاحبہ الراجستری دارالکتب و ماہیالو

28

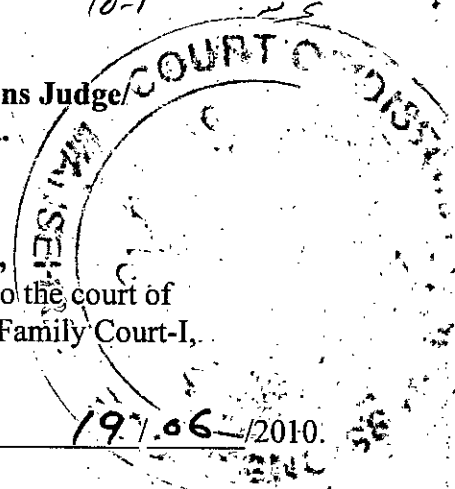
From 28-6

20-3

20-1

47

The District & Sessions Judge  
Authority, Mansehra.



To  
**Annex E-47**  
Annex C

Syed Abdul Ali Shah,  
Senior Clerk/ Reader to the court of  
Civil Judge-XI/Judge Family Court-I,  
Mansehra.

(4)

No. 3726

Dated Mansehra the 19.06.2010.

SUBJECT:

FINAL SHOW CAUSE NOTICE.

Memo.

Syed Murad Ali Shah, Judicial Magistrate-III, Mansehra/Inquiry Officer completed and submitted Inquiry report's file conducted against you before Mr. Shafique Ahmad learned Additional District & Sessions Judge-II, Mansehra/Authorized Officer, in which the I.O declared you responsible for the loss of the confessional statement and the learned Authorized Officer satisfied with the inquiry proceedings and agreed with the submissions of the I.O and they both (I.O and Authorized Officer) proposed award of major penalty of compulsory retirement, to you.

In light of above noted circumstances you are hereby served with this Show Cause Notice under the NWFP Government Servant (Efficiency & Discipline) Rules, 1972 communicating to you about the major penalty to be imposed. In this respect copy of the Inquiry report and recommendations of the Authorized Officer are also enclosed herewith for perusal, per requirements of relevant Rules.

You are, directed to submit your reply (in person) within seven days from the receipt of this notice otherwise it should be presumed that you have no defense to protect yourself. Your excuse should be considered, later-on.

*[Signature]*  
District & Sessions Judge/  
Authority, Mansehra.

No. 3727-31 Dated 19/06.2010.

Copy forwarded to :-

1. The Registrar, Peshawar High Court, Peshawar, for favour of information, please;
2. The Member Inspection Team, Peshawar High Court, Peshawar, for favour of information, please;
3. Mr. Shafique Ahmad Tanoli, Additional District & Sessions Judge-II, Mansehra/Authorized Officer with reference to his Order-sheet No. 4 dated 17.06.2010, for information;
4. The Senior Civil Judge, Mansehra for information, necessary action and communication to the official concerned, for strict compliance; and
5. Syed Murad Ali Shah, Judicial Magistrate-III, Mansehra/Inquiry Officer with reference to his Inquiry Report dated 05.05.2010 for information;
6. Office Copy.

**TESTED**  
*[Signature]*  
Date 22.06.10

*[Signature]*  
District & Sessions Judge/  
Authority, Mansehra.

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- 2 -

any specific procedure has been laid down, but while handing over the charge, all the documents which are kept in the custody of the reader are always handed over to the successor. In this way Muhammad Ayaz had received all the documents from the petitioner including the confessional statement. Had the petitioner been posted as a reader in the said Court till the evidence of the Magistrate before the Session Court, then it would have been the exclusive responsibility of the petitioner to have given an explanation relating to the missing of confessional statement. The handing over of charge to Muhammad Ayaz Reader by itself is a circumstance, which denotes that all the documents were handed over and received by him and as such the petitioner can not be saddled with the responsibility as arrived at by the inquiry officer.

3. That initially an inquiry was conducted by Judicial Magistrate, who has exonerated the petitioner from the said allegations on the ground that as the charge was handed over to Muhammad Ayaz, therefore, it was very difficult to fix the responsibility. Despite the petitioner was issued a warning by

ATTESTED

P. 3

29-6-4

learned Additional Session Judge/ Authorized Officer in this respect. The matter was remanded and Syed Murad Ali Shah was appointed as Inquiry Officer, who conducted an inquiry and the finding arrived at by him was also accepted by the authorized officer and hence the instant final show cause notice. It is worth mentioning that when the matter has been inquired into by two inquiry officers, like Judicial Magistrate and the finding of both the inquiry officers is at variance with one another, this perse is sufficient for extending benefit to the petitioner.

In view of the above, it is most humbly prayed and requested that the petitioner may kindly be absolved from the allegations leveled against the petitioner.

Dated: 23-06-2010

*Syed Abdul Ali Shah*.....  
 Syed Abdul Ali Shah.....Petitioner

J.E. No. 4854  
 Date 22-06-10  
 C. No. 1077  
 Urgent  
 Total Fee  
 Date 22-06-10  
 Cause Off  
 2010-06-23

TESTED  
 Signature  
 Date 22-06-10

22

نقل جو ایشو کا رولس از شیئر منسٹر لیاہ طاہر الدین ڈرائنگ 28-1-2007  
28-1-2007

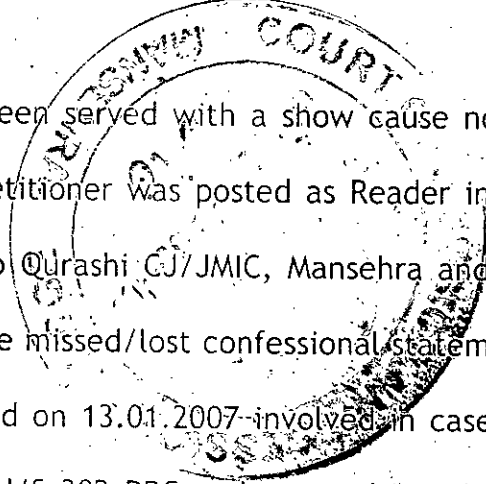
BEFORE THE COURT OF HONOURABLE SYED MURAD ALI  
SHAH CIVIL JUDGE/JMIC/INQUIRY OFFICER,  
MANSEHRA

50

Subject: REPLY TO SHOW CAUSE NOTICE.

Respected Sir,

1. That the petitioner has been served with a show cause notice stating therein that the petitioner was posted as Reader in the Court of Mr. Abdul Wahab Qurashi CJ/JMIC, Mansehra and the petitioner is stated to have missed/lost confessional statements of accused Imtiaz recorded on 13.01.2007 involved in case FIR No. 15 dated 09.01.2007 U/S 302 PPC and accused Assad Shah recorded on 13.01.2007 involved in case FIR No. 438 dated 12.10.2006 U/S 302/34 PPC Police Station Saddar, Mansehra.
2. That no doubt the confession statements of accused Imtiaz and Assad Shah were recorded by the then Judicial Magistrate Mr. Abdul Wahab Qurashi and after recording the confession statements, the I.O was permitted to obtain photocopies of the confession statements. The confessional statements were retained in the file meant for keeping such confessional statements which is always kept in the Almara of the Court.
3. That, the documents including the file of confession statements is accessible to the Steno and other court officials as the documents are asked/requisitioned by the court. Moreover, the petitioner was transferred from the court of Mr. Abdul Wahab Qurashi CJ/JMIC, Mansehra vide order No. 1851-95 dated 25.10.07 by the honourable District & Sessions Judge, Mansehra and the entire charge was hand over to the successor including the file containing the confession statements on 29.10.07. It is



28-1-2007

ATTESTED  
P. H.  
29-10-07

(9)

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worth mentioning that the file has been submitted for trial during the successor of the petitioner and in case while submitting the judicial files and had there been no confessional statements, it could have been pointed out at the outset but such a disclosure has been made after the lapse of sufficient time. (Photo copy of charge report is annexed herewith).

4. That, the said confession statements file has come into the hands of so many officials of the court, therefore, the responsibility cannot be fixed against the petitioner in the absence of any cogent or concrete evidence.
5. That, both the confession statements of the accused named above in their cases during the trial, copies of the confession statements has been exhibited.
6. That, in the previous inquiry proceedings the learned Inquiry Officer has exonerated from the charge leveled against the petitioner. (copy of the said order is already placed on the record).
7. In view of the above, it is most humbly submitted that the petitioner may kindly be absolved from the indictments so made.

Dated: 23.04.2010.

Your's Obediently,

*(Signature)*

(Syed Abdul Ali Shah)  
Reader to the Court of CJ/JFC-I,  
Mansehra.

4854

J.C. No. ....

Date: 22-06-12

Case No. P-14

Urgent: epld. R

File No. ut R

Page No. Rjt

Page No. 22-06-12

Page No. ....

Page No. ....

Date: 23-06-2012

TESTED

*(Signature)*

22-06-12

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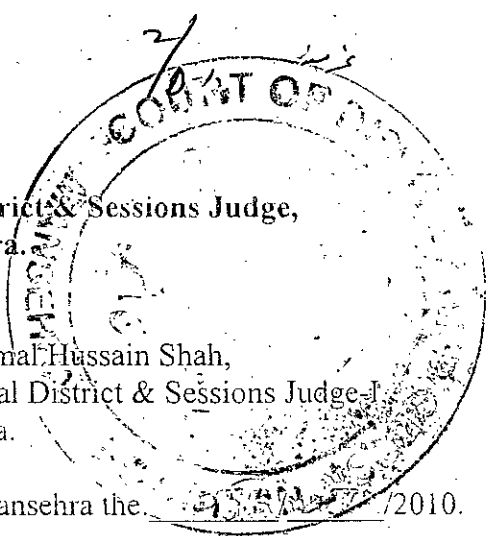
نقل فائز ڈیڑہ از مشرف مندرجہ ذیل کے درجہ اولیٰ ڈسٹرکٹ 49-4

28-06-10

2-3-10

From:

The District & Sessions Judge,  
Mansehra.



Syed Kamal Hussain Shah,  
Additional District & Sessions Judge-I  
Mansehra.

No. 4052 /

Dated Mansehra the 22-06-10 /2010.

SUBJECT:

DEPARTMENTAL PROCEEDING/ ACTION.

Ann: 'F-51'  
Dmra  
(JW3)

*[Signature]*  
Signature  
22-06-10



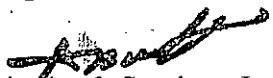
10/2/74

FORM - "A"

**FORM OF ORDER SHEET.**

**Court of Mr. Anwar Hussain, District and Sessions Judge,**  
**Mansehra.**

Departmental inquiry No. 2/01 of 2010. Departmental inquiry against Syed Abdul Ali Shah, Senior Clerk/Reader to the court of Ms. Mahjabeen, Civil Judge-XI/Judge Family Court-I, Mansehra.

Order No:	Date of Order	Detail of order/proceedings with signature of the Judicial Officer
05.	18.06.2010.	<p>Enquiry file alongwith recommendation of the Authorized Officer received back from the court of Mr. Shafiq Ahmad Tanoli, Additional District and Sessions Judge-II, Mansehra/Authorized Officer and perused. I fully agreed with the proposals/recommendation of the Authorized Officer concerned, as such, office is directed to issue a final Show Cause Notice to the accused official involved in this enquiry with the directions to submit his reply within seven days from the receipt of said notice through Senior Civil Judge, Mansehra. Copy of this notice be also submitted to the Registrar, Peshawar High Court, Peshawar, Member Inspection Team, Peshawar High Court, Peshawar for information alongwith all other concerned Judicial Officers.</p> <p>File to come-up on 28.06.2010 for submission of reply by the official concerned and also for his person appearance and hearing. The Muharrir is directed to enter instant file in the relevant register, also.</p> <p style="text-align: right;"> District &amp; Sessions Judge, Mansehra/ Authority.</p>
06.	28.06.2010.	<p>Accused-official Syed Abdul Ali Shah in person present. Record perused which reveals that the accused-official has already submitted his reply to show cause notice, on 25.06.2010, which is available on the file, also perused and found not satisfactory.</p> <p>The brief facts of instant inquiries are that Syed Kamal Hussain Shah, vide his letter No. 408 dated 15.07.2009, had submitted a report to the undersigned about the missing/lost of confessional statement in respect of accused Intiaz son of Khani Zaman in case FIR # 15 dated 09.01.2007 registered under section 302 PPC with Police Station, Saddar Mansehra, which was recorded by Mr. Abdul Wahab Qureshi, the then Judicial Magistrate, Mansehra, on 13.01.2007, with the request to set up inquiry and to fix the responsibility of the delinquent official(s) as the matter was of great concern and grave nature with the judicial record.</p>

34

Order No:	Date of Order	Detail of order/proceedings with signature of the Judicial Officer
		<p>On receipt of said report, the undersigned vide Office Order bearing Endorsement No. # 3784-86 dated 21.07.2009 had appointed Mr. Zahid Mehmood, the then Additional District &amp; Sessions Judge-III, Mansehra as Authorized Officer with the directions to hold an departmental inquiry in the matter and submit inquiry report alongwith his opinion/recommendations within the shortest possible time, for further necessary action.</p> <p>Vide Order # 1 dated 27.07.2009 the Authorized Officer had appointed Miss. Javeria Sartaj, Civil Judge-VIII, Mansehra as an Inquiry Officer in the matter and send the inquiry file to her for doing the needful.</p> <p>The Inquiry Officer had submitted her inquiry report to the Authorized Officer on 20.11.2009. For the reasons recorded in her report, she instead submitting the report to the Authorized Officer, had "Exonerated" the delinquent official and had warned him to be careful, in future and sent the inquiry file to the then Authorized Officer, who kept the file with him from 25.11.2009 to 03.12.2009.</p> <p>In the meanwhile, the then Authorized Officer was transferred and Mr. Ashfaq Taj had assumed the duties in his place, who vide order sheet dated 05.01.2010 submitted the inquiry file back to this court, which was pending in this office, for approval of the undersigned.</p> <p>Mr. Ashfaq Taj, Additional District &amp; Sessions Judge-III, Mansehra, vide his letter # 23 dated 10.02.2010 had submitted a report on the same manner about the missing of another original confessional statement alongwith questionnaire in respect of accused Asad Shah son of Zamin Shah in case FIR # 438 dated 12.10.2006 registered under section 302/109/34 PPC with Police Station, Saddar Mansehra which was also recorded by Mr. Abdul Wahab Qureshi, the then Judicial Magistrate, Mansehra, on 13.01.2007 and was handed-over to the present accused/official Abdul Ali Shah, he being Reader of the court, for safe custody. The Judicial Officer concerned also requested for setting up inquiry to fix the responsibility of the delinquent official as the matter is of great concern and grave nature regarding missing of evidence.</p> <p>After receipt of this report, the undersigned vide Office Order # 1061-67 dated 15.02.2010 (copy of this order is available on the inquiry file which is itself explanatory) had appointed Mr. Shafique Ahmad Tanoli, Additional District &amp; Sessions Judge-II, Mansehra as a Authorized Officer not</p>

*[Handwritten signature]*

**TESTED**  
*[Handwritten signature]*  
 Date 22-5-16

only to look into the matter in hand, but the same powers were also conferred upon him in the connected inquiry, against this official which was earlier submitted by Mr. Ashfaq Taj (on behalf of Mr. Zahid Mehmood, the then Additional District & Sessions Judge-III, Mansehra/Authorized Officer, due to his transfer from Mansehra) meaning thereby both these inquiries were consolidated through this order because one and the same official was involved in both the different reports/inquiries.

The learned Authorized Officer after receipt of these inquiries and attendance of the accused-official, framing of statement of allegations, and charge sheet, was appointed Syed Murad Ali Shah Civil Judge-cum-Judicial Magistrate III, Mansehra as a Inquiry Officer and sent the inquiry file to his court, for doing the needful.

The Inquiry Officer completed and resubmitted the inquiries file back to the Authorized Officer alongwith his inquiry report, on 05.05.2010 for further necessary action.

The Authorized Officer vide his order-sheet # 4 dated 17.06.2010 after perusal of the inquiry report came to the conclusion which reproduced below :-

“It is admitted fact that both the confessional statements recorded by the then Judicial Magistrate were handed over to the accused official Syed Abdul Ali Shah for proper custody, however, later on he was transferred and he handed over the charge to Muhammad Ayaz, Reader who has categorically stated that no confessional statement was handed over to him.

Though no specific procedure for the custody of the confessional statement is prescribed in the law and procedure, however, in practice it is always handed over to the Reader of the court for safe and proper custody and he produces the same at the time of examination of the Judicial Officer, who recorded the confessional statement. Therefore, the accused official can not be exonerated from the responsibility of the loss/misplacement of the confessional statement which is very material piece of evidence and it has been observed with great concern that judicial record

PK INVESTIGATION  
- 19/05/10  
D-20-6-10

has some time been tempered, which favours the accused. Therefore, I am in agreement with the finding of Inquiry Officer and hold accused-official Abdul Ali Shah responsible for the loss of the confessional statement and recommend the major penalty of compulsory retirement. This report be sent to the Authority".

In light of the above noted circumstances, I, Anwar Hussain, District & Sessions Judge, Mansehra, being Authority after fully satisfaction from the process of inquiry and approved the recommendations of the Authorized Officer concerned, imposed/ declared the accused-official responsible for the misplacement/loss of both the above noted confessional statements in the relevant cases, due to his negligence and under section 4(b)(ii) of the Government Servants (Efficiency & Discipline) Rules, 1973 awarded the major penalty of compulsory retirement to Syed Abdul Ali Shah, Senior Clerk/Reader to the court of Ms. Mahjabeen, Civil Judge-XI/Judge Family Court-I, Mansehra, as recommended by the Authorized Officer, with effect from 30.06.2010 (after-noon).

Copy of this order-sheet be submitted to the learned Registrar and learned Member Inspection Team, august Peshawar High Court, Peshawar for favour of information, where-as copy be also sent to all the concerned Judicial Officers of Mansehra District as well as the District Accounts Officer, Mansehra for information and necessary action.

The Senior Civil Judge, Mansehra is directed to ask his Clerk of Court to make necessary entries in the service record of the official concerned and prepare the pension papers of this official according to relevant Rules, under intimation to this office.

File be sent to English Office of this court, for safe custody.

**Announced.**  
28.06.2010.

4854  
C.D. NO. ....  
Date 22-06-12  
Case No. R-1  
Urgent opt 2  
Total opt 2  
Name of ...  
Date of ...  
Cause of ...

RECEIVED  
P/S  
Signature  
Date 22-06-12

*(Signature)*  
(Anwar Hussain),  
District & Sessions Judge,  
Mansehra/Authority.

23-06-2012

54

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PESHAWAR HIGH COURT, PESHAWAR.	
Receipt No.	12838
Date.	14-7-10
For action.	A.B.
Signature.	

**BEFORE THE WORTHY PESHAWAR HIGH COURT  
PESHAWAR.**

Departmental Appeal No - 17/2010.

Ex -

SYED ABDUL ALI SHAH READER.....APPELLANT.

**VERSUS:**

DISTRICT & SESSIONS JUDGE, MANSEHRA. .... RESPONDENT.

**Annex (1)**

APPEAL AGAINST THE ORDER OF DISTRICT & SESSIONS JUDGE,  
MANSEHRA DATED 28.06.2010 VIDE WHICH PENALTY OF  
COMPULSORY RETIREMENT WAS AWARDED TO APPELLANT.

PRAYER ON ACCEPTANCE OF APPEAL THE IMPUGNED ORDER  
MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY KINDLY BE  
REINSTATED IN SERVICE.

RESPECTFULLY SHEWETH:

1. That the appellant was served with charge-sheet stating therein that while posting as Reader to the court of Mr. Abdul Wahab Qureshi, JMIC Mansehra, the appellant missed/lost the confessional statements in case FIR No.15 dated 09.01.2007 and FIR No.438 dated 12.10.2006 u/s 302/34 PPC Police Station Saddar Mansehra.

Copy of charge-sheet is appended as annexure "A".

2. That the appellant was attached with the court of Mr. Abdul Wahab Qureshi, JMIC. Appellant has served for sufficient time. The appellant was although entrusted the copies of confessional statements which were kept in the safe custody but on his transfer from said court appellant handed over charge to his successor who received all the documents including the confessional statements mentioned above. No doubt no specific procedure or documentation has ever been provided, yet, all the registers, documents and confessional statements were handed over to successor of appellant.

3. It is worth mentioning that in initial inquiry no negligence on the part of appellant was established during the enquiry thus the appellant was also exonerated by the Enquiry Officer with whose findings Authorized Officer also agreed but such findings were not accepted by the Authority i.e. Hon'ble Sessions Judge. Coupled with their different opinions and recommendations has made the whole procedure which is not sufficient for awarding major punishment.
4. It is also worth mentioning in both the cases the secondary evidence relating to confessional statement has been produced and in case of accused Imtiaz he has been convicted to death sentence. The other case is pending adjudication in competent court of law who ordered for a denovo enquiry. The inquiry was accordingly conducted and the appellant was awarded punishment of compulsory retirement. It is worth mentioning that in one enquiry appellant was also exonerated by an Inquiry Officer like Judicial Magistrate whereas in the other inquiry the appellant was connected with the allegation. The appellant has been dealt with harsh manner, although after his transfer his successor is liable and responsible for these documents.
5. The appellant has served the department for about 24/25 years and there is no any stigma going against the appellant.
6. It is therefore, requested that on acceptance of appeal impugned order may kindly be set aside and appellant be reinstated in the service with all sorts of benefits.

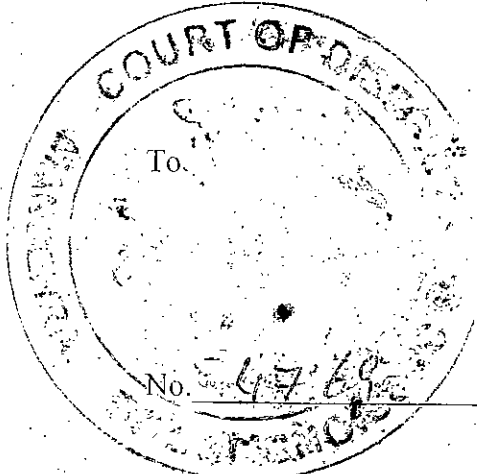
Dated 14/07.2010.

**SYED ABDUL ALI SHAH**  
READER

*[Signature]* PETITIONER

Comments  
13/7  
12/7  
4/0A

From



The District & Sessions Judge,  
Mansehra.

The Registrar,  
Peshawar High Court,  
Peshawar

Dated Mansehra the 03 / 08 / 2010.

SUBJECT:

DEPARTMENTAL APPEAL NO. 17/2010.  
Syed Abdul Ali Shah ... Vs ... D&SJ, Mansehra.

Ann; 'H' 55  
Durrani

Govt (D)

TESTED  
Signature  
Date: 22/8/10



Para No.	Detail of Para	Comments/Reply to Para
1	<p>That the appellant was served with charge-sheet stating therein that while posting as Reader to the court of Mr. Abdul Wahab Qureshi, JMIC Mansehra, the appellant missed/lost the confessional statements in case FIR No. 15 dated 09-01-2007 and FIR No. 438 dated 12-10-2006 u/s 302/34 PPC Police Station Saddar Mansehra.</p> <p><u>Copy of charge-sheet is appended as annexure "A".</u></p>	<p>This Para is correct.</p>
2	<p>That the appellant was attached with the court of Mr. Abdul Wahab Qureshi, JMIC. Appellant has served for sufficient time. The appellant was although entrusted the copies of confessional statements which were kept in the safe custody but on his transfer from said court appellant handed over charge to his successor who received all the documents including the confessional statements mentioned above. No doubt no specific procedure or documentation has ever been provided, yet, all the registers, documents and confessional statements were handed over to successor of appellant.</p> <p style="text-align: center;"><i>PL. RECORDED</i> <i>22.06.11</i></p>	<p>The appellant was posted as a regular Reader in the court of Mr. Abdul Wahab Qureshi, the then Judicial Magistrate, Mansehra and not a attached Reader. It is correct that the requisite confessional statements in both the different cases were entrusted to him by his immediate Judicial Officer for safe custody as admitted by the appellant, but on transfer, as evident from his charge report (available on the record) he has not handed-over the same to his successor. He was duty bound to prepare a complete list of all those cases in which confessional statements were lying with him and after delivering the same to his successor he was also bound to get signature of his successor as a token of proof, where-as his successor has denied in his statement before the Inquiry Officer (also available on the record) to receive any such like confessional statements in both these cases from the appellant.</p>
3.	<p>It is worth mentioning that in initial inquiry no negligence on the part of appellant was established during the enquiry thus the appellant was also exonerated by the Enquiry Officer with whose findings Authorized Officer also agreed but such findings were not accepted by the Authority i.e Hon'ble Sessions Judge, coupled with their different opinions and</p>	<p>This Para is absolutely incorrect because for the first time on the written complaint of Syed Kamal Hussain Shah, the Additional District &amp; Sessions Judge-i, Mansehra vide his letter No. 408 dated 15.07.2009 about the missing of confessional statement in case FIR No. 15 dated 09.01.2007 registered under section 302 PPC with Police Station, Saddar Mansehra, the undersigned vide Office</p>

*[Signature]*

recommendations has made the whole procedure which is not sufficient for awarding major punishment.

Order bearing Endst. No. 3784-86 dated 21.07.2009 (copy available on the record), nominated Mr. Zahid Mehmood, the then Additional District & Sessions Judge-III, Mansehra as an Authorized Officer to probe into the matter and hold a departmental inquiry against the appellant and submit his recommendations alongwith inquiry report, within shortest possible time for further necessary action. The Authorized Officer vide his order sheet No. 1 dated 27.07.2009 appointed Ms. Javeria Sartaj Civil Judge/JMIC, Mansehra as an Inquiry Officer in the matter. The Inquiry Officer after completion of inquiry, submitted her report before the then Authorized Officer concerned, on 20.11.2009 in which legally speaking instead holding the said inquiry, she has passed an order illegally which is absolutely against the relevant Rules and functions of the Inquiry Officer, mentioned as below :-

"In the light of my above findings, accused/official Abdul Ali Shah Reader is Exonerated from the Charges, however, he is warned to be careful in future."

After completing the inquiry report and announcement of final order, the inquiry officer submitted the requisite inquiry file back to the court of Mr. Ishfaq Taj, the then Additional District & Sessions Judge-III, Mansehra/Authorized Officer, who admittedly without going into actual facts and circumstances of the inquiry as well as relevant Law and Rules, passed an wrong order dated 05.01.2010 in which it was transpired that he was agreed with the findings and decision of the Inquiry Officer, hence he also submitted the inquiry file back of this office which was pending before the undersigned for consideration.

In the meanwhile, vide letter No. 23 dated 10.02.2010, Mr. Ishfaq Taj the then Additional

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District & Sessions Judge-III, Mansehra who was appointed earlier as Authorized Officer in the same matter sent another written complaint against the this appellant on the same manner that in case FIR No. 438 dated 12.10.2006 registered under section 302/109/34 PPC with Police Station, Saddar Mansehra the confessional statement(s) of the accused got also found missing. But in this time, this case is belonging to his court, where-as earlier the case was relating to the court of Additional District & Sessions Judge-I, Mansehra. In this complaint the learned Judicial Officer concerned clearly mentioned in the letter under reference that he has given a sufficient time to the present appellant for tracing and production of the confessional statement(s) before his court, but he failed to do so.

At this time, the undersigned deemed it proper to hold an inquiry in both the matters jointly and appointed Mr. Shafique Ahmad Tanoli, Additional District & Sessions Judge-II, Mansehra as an Authorized Officer, vide this office order bearing endorsement No. 1061-67 dated 15.02.2010 and sent both the complaints alongwith past inquiry file already conducted against this appellant for re-inquiry being not agreed with the findings of the Inquiry Officer as well as the Authorized Officer who is now a complainant in another case.

After receipt of new complaint and old inquiry file alongwith order of the undersigned, the learned Authorized Officer appointed Syed Murad Ali Shah, Civil Judge-cum-Judicial Magistrate-III, Mansehra as an Inquiry Officer in the matter and sent all the documents/files to him for doing the needful.

On completion the Inquiry Officer submitted his report alongwith inquiry file back to Authorized Officer concerned. The Concluding Para of the inquiry report is reproduced as below:-

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22-6-11

*[Signature]*

"In the light of the above findings I am of the view that the then learned Judicial Magistrate Abdul Wahab Qureshi recorded the confessional statement of accused Imtiaz and Assad in the above mentioned case and handed-over the original of the same to the accused official Abdul Ali Shah who was the Reader in the said court and the available record suggest that the accused official has lost/misplace the confessional statements as the same were handed-over to the accused official by the then learned Judicial Magistrate and accused official has not handed over the same after his transfer to Reader Muhammad Ayaz who took charge from the accused official. I am of the view that accused official deserver capital punishment."

The learned Authorized Officer, after receipt of this report alongwith inquiry file, vide his Order No. 4 dated 17.06.2010, suggested the recommendations as below:-

"Though no specific procedure for the custody of the confessional statement is prescribed in the law and procedure, however, in practice it is always handed over to the Reader of the court for safe and proper custody and he produces the same at the time of examination of the Judicial Officer who recorded the confessional statement. Therefore, the accused official can not be exonerated from the responsibility and liability of the loss/misplacement of the confessional

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statement which is very material piece of evidence and it has been observed with great concern that judicial record has sometime been tempered, which favours the accused. Therefore, I am in agreement with the finding of Inquiry Officer and hold accused/official Abdul Ali Shah Responsible for the loss of the confessional statement and Recommend the major penalty of compulsory retirement. This report be sent to the Authority."

After perusal of the record of inquiry file, the undersigned being fully satisfied from the process of inquiry, findings of the Inquiry Officer and recommendations of the Authorized Officer, issued final show cause notice vide No. 3726 dated 19.06.2010, to the present appellant, per requirement of relevant Law and Rules. Although the appellant has submitted his reply within time, but was not found satisfactory as a result of which vide order sheet No. 06 dated 28.06.2010, this appellant was not only declared responsible for the misplacement/loss of both the above noted confessional statements in both the relevant cases but also awarded the major penalty of compulsory retirement with effect from 30.06.2010 (after-noon).

RC ATTESTED

Signature

Date

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22.6.14

4.

It is also worth mentioning in both the cases the secondary evidence relating to confessional statement has been produced and in case of accused Imtiaz he has been convicted to death sentence. The other case is pending adjudication in competent court of law who ordered for a

As the actual facts have already been discussed, above, hence need no comments.

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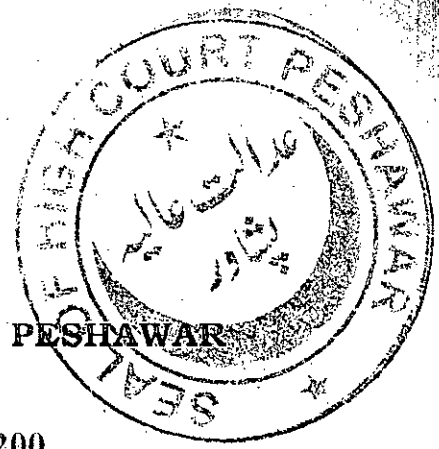
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<p>denovo enquiry. The inquiry was accordingly conducted and the appellant was awarded punishment of compulsory retirement. It is worth mentioning that in one enquiry appellant was also exonerated by an Inquiry Officer like Judicial Magistrate whereas in the other inquiry the appellant was connected with the allegation. The appellant has been dealt with harsh manner, although after his transfer his successor is liable and responsible for these documents.</p>	
<p>5. The appellant has served the department for about 24/25 years and there is no any stigma going against the appellant.</p>	<p>Needs no comments.</p>
<p>6. It is therefore, requested that on acceptance of appeal impugned order may kindly be set aside and appellant be reinstated in the service with all sorts of benefits.</p>	<p>In light of above noted facts and circumstances, it is, therefore, requested that the appeal may very kindly be dismissed, with costs.</p>

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 J.D. No. 22-06-12  
 Date 22-06-12  
 22-06-12  
 23-06-12

*[Signature]*  
 District & Sessions Judge,  
 Mansehra.



JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

D.A. No. 17 of 2010-200

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Anni-62

JUDGMENT

Date of hearing 30-05-2012

Appellant Syed Abdul Ali Shah

Respondent DST, Mansehra.

ATTAULLAH KHAN, J.- Through this Departmental Appeal, appellant Syed Abdul Ali Shah, ex-Reader/Senior Clerk of the Judge Family Court-I, Mansehra, has challenged the order dated 28<sup>th</sup> June, 2010 of learned District & Sessions Judge, Mansehra, whereby by awarding him major penalty under Section 4(b)(ii) of the Government Servants (Efficiency and Discipline) Rules, 1973, he has been compulsory retired from service with

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EXAMINER  
Peshawar High Court.

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effect from 30.6.2010. He has challenged the impugned order on the ground that the findings of the Enquiry Officer as well as the Authorized Officer are not based on cogent and concrete evidence qua involvement of the appellant in the commission of crime attributed to him and as such the conclusion drawn by the Authorized Officer and the agreement of the authority with the resultant findings are not supported by any solid evidence resulting into his impugned compulsory retirement.

2. Facts of the case are that the appellant was posted as Reader to Mr. Abdul Wahab Qureshi, Judicial Magistrate Mansehra when confessional statement in respect of accused Imtiaz son of Khani Zaman in case FIR No.15, dated 9.1.2007 under

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EXAMINED  
Peshawar High Court

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Section 302 PPC of Police station Sadder, Mansehra was recorded by the said learned Judicial Magistrate on 13.1.2007. Through letter dated 15.7.2009, the said judicial Magistrate informed the learned District Judge Mansehra about missing/loss of said confessional statement and requested for conduction of enquiry into the matter for fixing responsibility on the delinquent official. Miss Javeria Sartaj, Civil Judge was appointed as Enquiry Officer while Mr. Zahid Mahmood, Additional District and Sessions Judge was appointed as Authorized Officer. The learned Enquiry Officer instead of submitting enquiry proceedings to the Authorized Officer for determination of guilt by the

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Peshawar High Court

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latter, straightaway exonerated the accused and warned him to be careful in future. However, the enquiry report remained with the Authorized Officer till his transfer. On assuming charge by Mr. Ashfaq Taj Additional District and Sessions Judge-III, Mansehra, he submitted the report to the learned District Judge for approval. In the meantime, Mr. Ashfaq Taj, Addl. District Judge through letter dated 10.2.2010 submitted a report about missing of another original confessional statement alongwith questionnaire in respect of accused Asad Shah son of Zamin Shah in case FIR No.438, dated 12.10.2006 registered under sections 302/109/34 PPC of Police Station sadder, Mansehra which was also recorded by Mr. Abdul Wahab Quureshi,

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EXAMINER  
Peshawar High Court.

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the then Judicial magistrate,  
 Mansehra on 13.1.2007 and was handed  
 over to the present appellant. On  
 receipt of this second report of  
 missing judicial documents, the  
 learned District Judge appointed  
 Mr. Shafique Ahmad Tanoli, Addl.  
 District Judge as an Authorized  
 Officer in both the cases. Syed  
 Murad Ali Shah, Civil Judge was  
 appointed as Enquiry Officer. In  
 the light of enquiry proceedings,  
 the Authorized Officer stated that  
 he is in agreement with the findings  
 of the Enquiry Officer holding the  
 accused official responsible for the  
 loss of the confessional statements  
 and recommend major penalty of  
 compulsory retirement from service  
 and accordingly, the learned  
 District Judge being authority in

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 EXAMINER  
 Peshawar High Court.

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the case, through his order dated 28.6.2010 compulsorily retired him from service, as stated above. Hence this appeal.

3. Contentions of the appellant and representative of the learned Sessions Judge heard and the entire material available on record was thoroughly perused.

4. After going through the entire evidence brought on record against the appellant and hearing the submissions made by the parties, it becomes crystal clear that period in both missing cases is the same. It is also an admitted fact both the confessional statements etc. were found missing during the tenure of accused official but it is also a matter of record that the official who took over charge from him, has

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Peshawar High Court

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not reported the matter qua loss of  
confessional statements soon after  
his taking over the charge. With  
certainty it cannot be said that the  
lapse is on the part of the accused  
official. I have also gone through  
the Annual Confidential Reports. The  
perusal of some of the reports  
reveals that accused official/  
appellant herein is careless in  
performing his duties. Today too he  
swore on Holy Quraan that he has not  
committed the offence. However, in  
one way or the other, very important  
and crucial documents were found  
missing because of slackness and  
lethargic attitude of the appellant  
towards his duty and responsibility.  
The appellant has more than two  
decades service at his credit and  
during that period, no adverse ACR

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EXAMINER  
Peshawar High Court

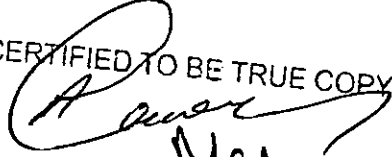
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has been conveyed to him. In this view of the matter, by taking lenient view, this appeal is allowed. The impugned order of the learned District Judge is set aside and the appellant is reinstated in service with no back benefits with a penalty of stoppage of three consecutive increments. It is further directed that the appellant being careless and negligent in the performance of his duties, he should be kept under watch by his superiors and colleagues in order to not only give him chance to improve himself but also to avoid any such mishap in the future.

Announced on  
30th May, 2012.

  
JUDGE

Shah/\*

CERTIFIED TO BE TRUE COPY  
  
May 19/6/12  
Examiner  
Peshawar High Court Peshawar  
Authorised Under Article 87 of  
the Qanun-e-Shahadat Order 1984

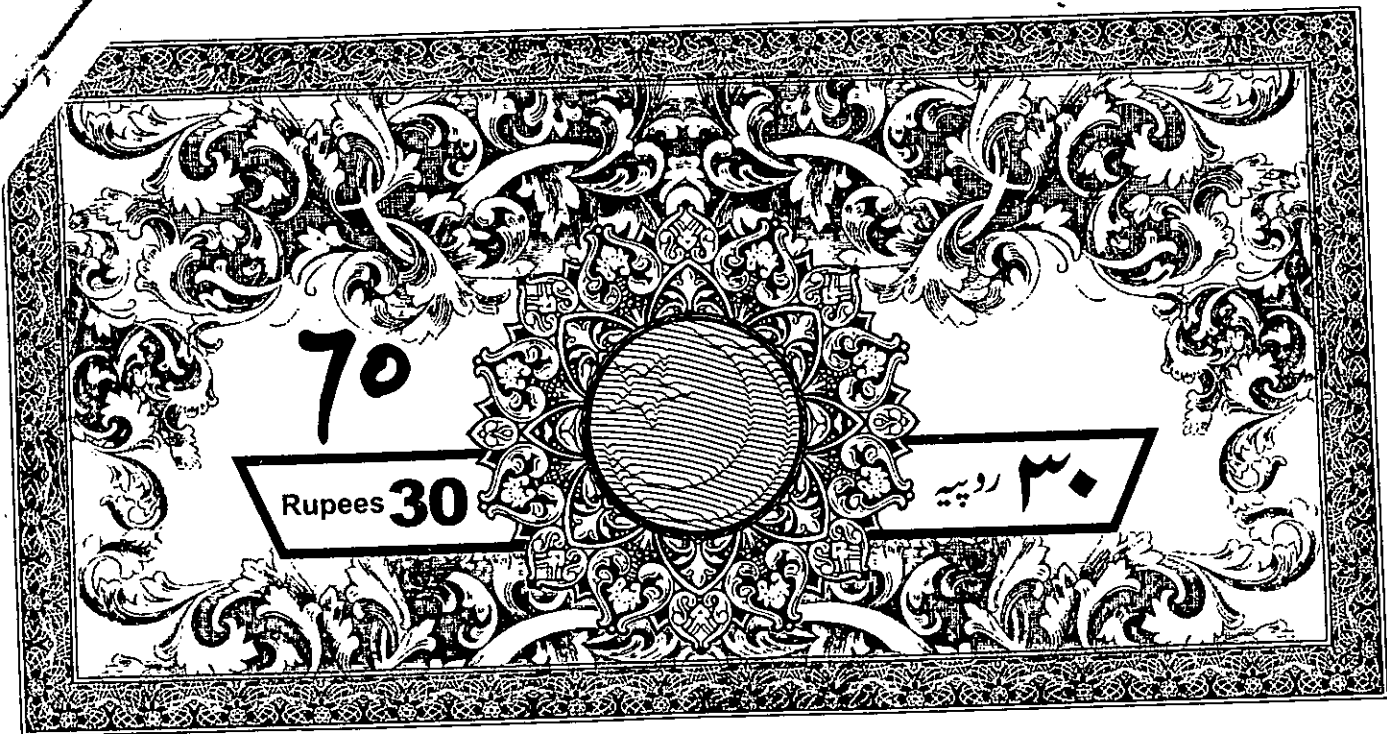
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No. -----  
Date of Presentation of Application 30/5/12  
No of Pages 87  
Copying fee 16  
Exigent Fee -----  
Total 16  
Date of Preparation of Copy 29/6/12  
Date Given for Delivery 29/6/12  
Date of Delivery of Copy 29/6/12  
Received By [Signature]

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بیانِ حلفی / Affidavit

D. A NO: 17/2010

یہ کہ میں عبد العلی شاہ ولد سید سجاد حسین شاہ سکنہ پیراں علاقہ حلاہم سٹیٹ ٹورٹ صانیرہ، یہ کہ مجھے اقبال مرم " صاحبہ سے سٹیٹ ایج صاحب صانیرہ نے مورخہ 28/10 کو چھریا ریٹائر کیا، جبکہ اس وقت تک اس کے پاس چھریا ریٹائرمنٹ کے نوٹس بھی نہیں تھے۔ اسی مقدمہ کے وقت بیان کہ فوٹو گالی مشافہی شدہ ہے۔

Statements Exhibit ہو چکی ہے۔ اور قطعہ ایج صاحب نے لیکٹر آرڈر سے مقدمہ ٹورٹ اقبال بیان، اور بیان عبد الوہاب فرانس، جوڈیشنل وکٹوریٹ کے فیصلہ عدالت شفیق الحدیثی ایج سٹیٹ ڈیپارٹمنٹ ایج صاحب صانیرہ پریشی / کامیوں، اندر میں حالت، صا ایلڈنٹ کو نکال کر علاقہ بنگالیات Back Be دیے جاویں، صاحب صاحبہ نے بیان حلفی لکھ دی ہے تاکہ سند دیے۔

(Signature) 12-5-12

یہ عبد العلی شاہ ولد سید سجاد حسین شاہ  
Deponent

## وکالت نامہ

بعدالت جناب صاحب سر اسٹریٹ لاء کونسل K.P.K. شیوا اور  
عبد العزیز بنام ڈسٹرکٹ جج صاحب محترم  
دعوی یا جرم ریٹیل منجانب

باعث تحریر آئندہ

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی بمقام

### ولد ار احمد خان لغمانی ایڈووکیٹ ہائی کورٹ مانسہرہ

بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہو اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ ساعت ہونے پر یا بروز پکھری کے اوقات کے آگے یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے واسطے کسی معاوضہ ادا کرنے، مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پرداختہ صاحب مشل کرہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعوی اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے، نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرانے کا ہر قسم بیان دینے اور سپرد دہاشی و راضی نامہ و فیصلہ برخلاف کرنے و اقبال دعوی کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا ایگی علیحدہ پیروی مختیار نامہ کرنے کا مجاز ہوگا اور بصورت ضرورت اپیل اور اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے 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 حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختیار نامہ لکھ دیا ہے کہ سند ہے۔

مضمون مختیار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

المرقوم

آل عبد العزیز

سید عبدالعلی شاہ

ATTESTED & ACCEPTED

DILDAR AHMED KHAN LUGHMANI,

Advocate High Court,

Mansehra.

**BEFORE THE HONORABLE CHAIRMAN KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL.**

**APPEAL NO. 832 OF 2012**

**SYED ABDUL ALI SHAH**

**(APPELLANT)**

**Versus**

**DISTRICT & SESSIONS JUDGE MANSEHRA AND OTHERS  
(RESPONDENTS)**

**WRITTEN REPLY ON BEHALF OF RESPONDENTS.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS.**

1. That the appellant has no cause of action to file the instant appeal.
2. That the appellant is estopped to sue due to his own conduct.
3. That the appellant has not come to the court with clean hands, hence the appeal is liable to be dismissed.
4. That the appellant is mis-interpreting the facts deliberately. The honourable administrative judge has already taken lenient view against the appellant and has set aside the order of compulsory retirement of the appellant.
5. That the decision of the authority is correct, hence the appeal is liable to be dismissed.
6. That appeal is hopelessly timed barred.

**PARA WISE REPLIES.**

1. Para No.1 relates to record, however it is submitted that two inquiries were conducted against appellant and both the time he was found involved.
2. Para No. 2 relates to record.
3. Para No.3 is incorrect hence denied, infact the appellant is mis-interpreting the facts deliberately as he failed to prove his innocence before inquiry officer. Similarly both the confessional statements were recorded during tenure of the appellant and in first inquiry, both the Authorized Officers as well as the Inquiry Officer have issued warning to the appellant and silence of appellant on warning shows that he was involved in the matter.
4. Para No. 4 relates to record.
5. Para No. 5 relates to record. The Inquiry Officer issued warning to appellant directly and exonerated him from the charge leveled against him and submitted inquiry report to the Authorize Officer.
6. Para No.6 relates to record.

District & Sessions Judge,  
MANSEHRA

16-3-2015

7. Para no 7 relates to record.

8. Para No. 8 is correct

9. Para no.9 relates to record.

10. Para No.10 relates to record.

11. Para No. 11 relates to record.

12. Para no.12 needs no reply.


**GROUND.**

- i. This Para relates to record. However, the Honourable Administration Judge has already taken lenient view.
  - ii. This Para is relates to record, however it needs to be mentioned that in both the inquiries, the appellant was found involved in the matter. The appellant has failed to prove as to whether he had handed over the charge of all the confessional statements lying with him in his safe custody to his successor, who was posted in his place, after his transfer.
  - iii. This Para also relates to record.
  - iv. This Para also relates to record.
  - v. This Para also relates to record.
  - vi. This Para also relates to record.
  - vii. This Para also relates to record.
  - viii. This Para also relates to record.
  - ix. This Para also relates to record. So far as the exoneration of the applicant is concerned, both the Inquiry Officer and the Authorized Officer had decided the inquiry instead of submission of their recommendation alongwith inquiry report to the Authority for issuance of final order as per the requirement of the law. Therefore, the Authority remanded the inquiry to another Judicial Officer and appointed him as Authorized Officer with the directions to re-conduct the joint inquiry in light of the previous complaint which was furnished by the then Additional District & Sessions Judge, Mansehra (Syed Kamal Hussain Shah) as well as in light of the fresh complaint furnished by the then Additional District & Sessions Judge-III, Mansehra (Mr. Ashfaqe Taj) being the same nature.
  - x. This Para is totally incorrect.
  - xi. Incorrect. Appellant was found guilty in the inquiry.
  - xii. Incorrect because the inquiry report is very much clear on this issue.
  - xiii. This Para relates to record and already discussed above.
  - xiv. This Para relates to record and already discussed above.
- Moreover the appeal is time barred.

District & Session Judge,  
MANSEHRA


Under these circumstances, it is, therefore, humbly prayed that the appeal of the appellant may kindly be dismissed with cost.

Dated 16-03-2015.

  
District & Sessions Judge,  
Mansehra.  
District & Session Judge  
MANSEHRA  
16/3/2015.

Verification

That all the contents of the comments/reply are correct as per record and nothing has been suppressed from this Honorable Tribunal.

  
District & Sessions Judge,  
Mansehra.  
District & Session Judge  
MANSEHRA  
16-3-2015.

**BEFORE THE HONORABLE CHAIRMAN KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL.**

**APPEAL NO.832 OF 2012**

**SYED ABDUL ALI SHAH**

**(APPELLANT)**

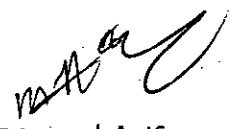
**Versus**

**DISTRICT & SESSIONS JUDGE MANSEHRA AND OTHERS  
(RESPONDENTS)**

**AFFIDAVIT**

We, solemnly affirm and declare on oath that the contents of the foregoing reply are true and correct as per record and nothing has been concealed from this Honorable Tribunal.

**Dated:16.03.2015**

  
Muhammad Asif,  
Assistant / Nazir to  
District & Sessions Judge,  
Mansehra/Representative.

**BEFORE THE HONORABLE CHAIRMAN KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL.**

**APPEAL NO. 832 OF 2012**

**SYED ABDUL ALI SHAH**

**(APPELLANT)**

**Versus**

**DISTRICT & SESSIONS JUDGE MANSEHRA AND OTHERS  
(RESPONDENTS)**

**WRITTEN REPLY ON BEHALF OF RESPONDENTS.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS.**

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2. That the appellant is estopped to sue due to his own conduct.
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5. That the decision of the authority is correct, hence the appeal is liable to be dismissed.
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**PARA WISE REPLIES.**

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4. Para No. 4 relates to record.
5. Para No. 5 relates to record. The Inquiry Officer issued warning to appellant directly and exonerated him from the charge leveled against him and submitted inquiry report to the Authorize Officer.
6. Para No.6 relates to record.

16.03.17  
SUPERINTENDENT  
Distt. & Sessions Judge,  
MANSEHRA.

7. Para no 7 relates to record.
8. Para No. 8 is correct
9. Para no.9 relates to record.
10. Para No.10 relates to record.
11. Para No. 11 relates to record.
12. Para no.12 needs no reply.

**GROUND.**

- i. This Para relates to record. However, the Honourable Administration Judge has already taken lenient view.
- ii. This Para is relates to record, however it needs to be mentioned that in both the inquiries, the appellant was found involved in the matter. The appellant has failed to prove as to whether he had handed over the charge of all the confessional statements lying with him in his safe custody to his successor, who was posted in his place, after his transfer.
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- vi. This Para also relates to record.
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- viii. This Para also relates to record.
- ix. This Para also relates to record. So far as the exoneration of the applicant is concerned, both the Inquiry Officer and the Authorized Officer had decided the inquiry instead of submission of their recommendation alongwith inquiry report to the Authority for issuance of final order as per the requirement of the law. Therefore, the Authority remanded the inquiry to another Judicial Officer and appointed him as Authorized Officer with the directions to re-conduct the joint inquiry in light of the previous complaint which was furnished by the then Additional District & Sessions Judge, Mansehra (Syed Kamal Hussain Shah) as well as in light of the fresh complaint furnished by the then Additional District & Sessions Judge-III, Mansehra (Mr. Ashfaq Taj) being the same nature.
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- xii. Incorrect because the inquiry report is very much clear on this issue.
- xiii. This Para relates to record and already discussed above.
- xiv. This Para relates to record and already discussed above. Moreover the appeal is time barred.



Under these circumstances, it is, therefore, humbly prayed that the appeal of the appellant may kindly be dismissed with cost.

Dated 16-03-2015.

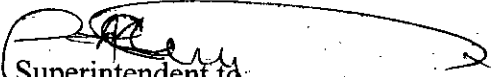
Honourable Administration Judge,  
through representative of the august  
Peshawar High Court, Peshawar

  
Superintendent to  
SUPERINTENDENT  
District & Sessions Judge,  
Distt. & Sessions Judge,  
Mansehra MANSEHRA.

### Verification

That all the contents of the comments/reply are correct as per record and nothing has been suppressed from this Honorable Tribunal.

Honourable Administration Judge,  
through representative of the august  
Peshawar High Court, Peshawar

  
Superintendent to  
District & Sessions Judge,  
SUPERINTENDENT  
Mansehra Distt. & Sessions Judge,  
MANSEHRA.

**BEFORE THE HONORABLE CHAIRMAN KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL.**

**APPEAL NO.832 OF 2012**

**SYED ABDUL ALI SHAH**

**(APPELLANT)**

**Versus**

**DISTRICT & SESSIONS JUDGE MANSEHRA AND OTHERS**


**(RESPONDENTS)**

**AFFIDAVIT**

We, solemnly affirm and declare on oath that the contents of the foregoing reply are true and correct as per record and nothing has been concealed from this Honorable Tribunal.

**Dated:16.03.2015.**

Honourable Administration Judge,  
through representative of the august  
Peshawar High Court, Peshawar

  
Superintendent to  
District & Sessions Judge,  
Mansehra. **SUPERINTENDENT**  
**Distt. & Sessions Judge**  
**MANSEHRA.**

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2305 /ST

Dated 25 / 10 / 2017

To


The District & Sessions Judge,  
Government of Khyber Pakhtunkhwa,  
Mansehra.

Subject: -

JUDGMENT IN APPEAL NO. 832/2012, SYED ABDUL ALI SHAH.

I am directed to forward herewith a certified copy of Judgement dated 17.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.