

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

**SERVICE APPEAL NO. 1165/2016**

Date of institution ... 11.11.2016

Date of judgment ... 22.07.2019

Muhammad Haroon Khan S/o Muhammad Farid Khan  
R/o Village Gidarai, Tehsil and District Battagram,  
Ex-Drawing Master, GMS, Bartoni, Mansehra

... (Appellant)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Secretary, Elementary and Secondary Education, Civil Secretariat Peshawar.
2. The Director, Elementary and Secondary Education, Civil Secretariat Peshawar.
3. The District Education Officer (Male) Mansehra.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 14.10.2016 PASSED BY THE RESPONDENT NO. 2 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED.

Mr. Ayub Amin, Advocate.

... For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Drawing Master. He was involved in a criminal case vide FIR No. 128 dated 14.04.1999 under section 302/324 PPC Police Station Battagram. On conclusion of trial, the appellant was convicted and was sentenced to death under section 302 PPC ten years under section 324 PPC seven years under section 337D PPC vide judgment dated 23.06.2001. The

appellant challenged the judgment of trial court before the worthy High Court and the worthy High Court converted the punishment of death into life imprisonment while the rest of conviction and sentences of the appellant was ordered to remain intact vide judgment dated 19.02.2003. The appellant also challenged the judgment of worthy High Court before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan partially allowed the criminal appeal and sentenced awarded under sections 302 (b), 324 & 337-D PPC was ordered to run concurrently and the remaining sentences shall remain intact vide judgment dated 07.12.2011. After serving sentenced when the appellant released from jail he was already reached the age of superannuation therefore, he filed departmental appeal to the departmental authority for reinstatement for the purpose of retirement and pensionary benefits etc on 12.11.2012 but the same was not responded within the statutory period of 90 days therefore, the appellant filed service appeal before this Tribunal which was disposed of and remitted the case to the respondent-department with the direction to examine the pending departmental appeal of the appellant on its merit strictly in accordance with law and rules and decide the same within a period of 60 days from the receipt of the judgment vide judgment dated 25.05.2016. In pursuance of the aforesaid judgment of this Tribunal, the departmental appeal of the appellant was disposed of by the departmental authority and the same was rejected on the ground that the appellant has been convicted in the aforesaid criminal case by the court of competent jurisdiction and the appellant was held not entitled for reinstatement in service against the post of Drawing Master in the respondent-department vide order dated 14.10.2016. Feeling aggrieved from the order of departmental authority, the appellant challenged the said order through instant service appeal on 11.11.2016.

*M. Anwar*  
22.7.2019

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

4. Learned counsel for the appellant contended that the appellant was serving in Education Department as Drawing Master. It was further contended that the appellant was falsely involved in the aforesaid criminal case. It was further contended that the offence under section 302/324/337-D PPC does not falls under the offence of moral turpitude. It was further contended that when the appellant was released from jail after serving the sentence, the appellant was already reached the age of superannuation therefore, the appellant was entitled for pensionary benefits. It was further contended that after involvement in aforesaid criminal case, the appellant was suspended and was not terminated/removed from service by the competent authority therefore, the appellant was also entitled to be reinstated by the department after his release<sup>m</sup> from jail for the purpose of pensionary benefits. It was further contended that no departmental proceeding was initiated against the appellant therefore, the appellant is entitled for pensionary benefits and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Education Department as Drawing Master. It was further contended that the appellant was involved in the aforesaid criminal case. It was further contended that the appellant was convicted by the trial court for committing murder, attempt to murder and was convicted and sentenced to death by the trial court. It was further contended that the appellant challenged the judgment of the trial court before the worthy High Court and the worthy High Court also maintained the conviction of the appellant but converted the death sentenced into life imprisonment. It was further contended that the august Supreme Court of Pakistan also maintained the conviction and sentenced<sup>m</sup> of the

*M. Amin*  
22-7-2019

appellant. It was further contended that the offence of under section 302/324 PPC is offence of moral turpitude therefore, the appellant is not entitled for pensionary benefits and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Education Department as Drawing Master. He was involved in the aforesaid criminal case. On conclusion of trial, the appellant was convicted and sentenced to death by the trial court. The appellant challenged the said judgment through appeal before the worthy High Court and the worthy High Court maintained the judgment of the trial court however, converted the death sentenced<sup>m</sup> into life imprisonment. The record further reveals that the appellant also challenged the judgment of the worthy High Court before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan also maintained the judgment of worthy High Court. Admittedly, the appellant was convicted and sentenced by the competent court in murder and attempt to murder case and the conviction and sentenced of the appellant was also maintained by the worthy High Court as well as august Supreme Court of Pakistan. It is a well settled law that the offence of murder or attempt to murder falls within the ambit of moral turpitude. In this regard reliance is placed on 2002 SCMR 1691. Therefore, the appellant is not entitled for any pensionary benefits hence, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
22.07.2019



(HUSSAIN SHAH)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

22.07.2019

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

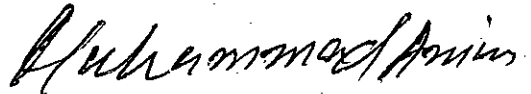
Vide our detailed judgment of today consisting of four pages placed on file, it is a well settled law that the offence of murder or attempt to murder falls within the ambit of moral turpitude. In this regard reliance is placed on 2002 SCMR 1691. Therefore, the appellant is not entitled for any pensionary benefits hence, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

22.07.2019



(HUSSAIN SHAH)  
MEMBER





(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

26.02.2019

Counsel for the appellant and Mr. Muhammad Riaz Paindakhel, Asstt. AG for the respondents present.

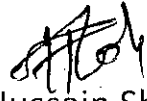
Learned counsel for the appellant states that the appellant could not reach from Batagram today due to rough weather, therefore, requests for adjournment in order to seek fresh instructions. Adjourned to 14.05.2019 before the D.B.

  
Member

  
Chairman

14.05.2019

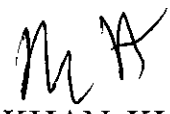
Nemo for the appellant. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Due to leave of the worthy Chairman the case is adjourned. To come up for arguments on 19.07.2019 before D.B.

  
(Hussain Shah)  
Member

19.07.2019

Appellant alongwith his counsel Mr. Ayub Amin, Advocate and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard. To come up for order on 22.07.2019 before D.B.

(HUSSAIN SHAH)  
MEMBER

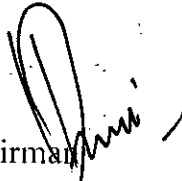
  
(M. AMIN KHAN KUNDI)  
MEMBER

27.11.2018

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned senior counsel for appellant is reported to be busy before the Hon'ble High Court in a number of cases today. A request for adjournment<sup>is</sup> made at the bar. Adjourned to 21.01.2019 for arguments before the D.B.

  
Member

  
Chairman

21.01.2019

Clerk of counsel for the appellant present. Mr. Usman Ghani, District Attorney for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 26.02.2019 for arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

Learned senior counsel for appellant is reported to be busy before the Hon'ble High Court in a number of cases today. A request for adjournment made at the bar. Adjourned to 21.01.2019 for arguments before the D.B.


Member

Chairman

18.04.2018


Counsel for the appellant and Asst. AG for respondents present. Rejoinder submitted. To come up for arguments on 26-6-18 before D.B.


  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

26.06.2018

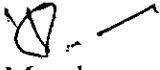
Clerk to counsel for the appellant and Mr. Riaz Paindakheil learned Assistant Advocate General for the respondents present. Clerk to counsel for the appellant seeks adjournment as Learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 13.08.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

13.08.2018

Mr. Muhammad Amin Ayub, Advocate counsel for the appellant present. Mr. Muhammad Jan, DDA for respondents official present. Due to paucity of time arguments could not be heard. Adjourned. To come up for arguments on 11.10.2018 before D.B.


  
Member

  
Chairman

11.10.2018

Appellant in person and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 27.11.2018 before D.B.

  
Member

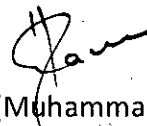
  
Member



10.08.2017


Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for rejoinder and arguments on 29.11.2017 before D.B.


  
(Muhammad Amin Khan Kundi)  
Member (J)

  
(Muhammad Hamid Mughal)  
Member (J)

29.09.2017


None present on behalf of the appellant. Mr. Ziaullah, Deputy District Attorney for the respondents present. Notice be issued to appellant and his counsel for attendance for 07.12.2017 before D.B.

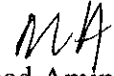
  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

07.12.2017

Clerk of the counsel for appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Clerk of the counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 13.02.2018 before D.B.

  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Amin Khan Kundi)  
Member (J)

13.02.2018

Clerk of the counsel for appellant present. Mr. Riaz Paindakhel, Assistant AG for the respondent present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 18.04.2018 before D.B.

  
Member

  
Chairman

16.02.2017

Clerk to counsel for the appellant and Mr. Hamid Ur Rahman (Litigation) alongwith Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 27.03.2017 before S.B.

(AHMAD HASSAN)  
MEMBER

27.03.2017

Counsel for the appellant and Mr. Hameed Ur Rahman, AD (Litigation) alongwith Addl: AG for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 26.04.2017 before S.B.

(AHMAD HASSAN)  
MEMBER

10.08.2017

Counsel for the appellant and Mr. Sajjad Ahmad (Litigation) alongwith Addl: AG for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 10.08.2017 before D.B.

(Ahmad Hassan)  
Member

1165/2016

05.12.2016

Appellant alongwith his counsel present. Preliminary arguments heard and case file perused. Perusal of the case file reveals that this Tribunal vide judgment dated 25.05.2016 remanded the case to the respondents to decide the departmental appeal of the appellant strictly on merits. Respondents rejected the departmental appeal of the appellant vide order dated 14.10.2016, hence the instant service appeal.

Since the matter requires further consideration of this Tribunal and the instant appeal is also within time, therefore, the appeal is admitted for regular hearing subject to deposit of security and process fees within 10 days. Notices be issued to the respondents for written reply/comments for 19-01-2017 before S.B.

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

19.01.2017

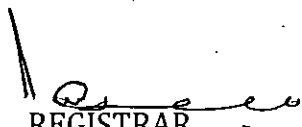

Clerk to counsel for the appellant and Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 16.02.2017 before S.B.

  
ASHFAQ AHMAD  
MEMBER

Form- A  
FORM OF ORDER SHEET

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

Case No. 1165 /2016


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21/11/2016	<p>The appeal of Mr. Muhammad Haroon resubmitted today by Mr. Khale Rehman Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>5-12-16</u></p> <p style="text-align: right;"> MEMBER</p>

The appeal of Mr. Muhammad Haroon Khan son of Muhammad Farid Khan Ex-DM GMS Bartoni Mansehra received today i.e. on 11.11.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copy of judgment of this Tribunal mentioned in para-6 of the memo of appeal (Annexure-G) is not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal may be attested.
- 4- Annexures of the appeal may be flagged.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1891 /S.T,


Dt. 11/11 /2016

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Khaled Rehman Adv. Pesh.

*Sir*

*Resubmitted after completion*



*01/11/2016*

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

Service Appeal No. 1165 /2016

Muhammad Haroon Khan..... **Appellant**

Versus

The Govt, of Khyber Pakhtunkhwa and  
others..... **Respondents**

**I N D E X**

<b>S.No</b>	<b>DESCRIPTION OF DOCUMENTS</b>	<b>ANNEX</b>	<b>PAGES</b>
1.	Memo of Service Appeal		1-6
2.	Extracts from the service Book	A	7-13
3.	F.I.R dated 14.04.1999	B	14
4.	Judgments of the session judge, Battagram dated 23.06.2001	C	15-29
5.	Judgment of the Hon'ble High Court dated 19.02.2003	D	30-47
6.	Judgment of the Supreme Court of Pakistan dated 07.12.2011	E	48-54
7.	Departmental Appeal	F	55-58
8.	Judgment of this Hon'ble Tribunal dated 25.05.2016	G	59-63
9.	Appellate order dated 14.10.2016	H	64
10.	Wakalatnama		65

  
Appellant

Through

  
**Khalid Rehman**  
Advocate, Peshawar

Dated: 11.11.2016

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

**PESHAWAR**

Service Appeal No. 1165/2016

Muhammad Haroon Khan S/o Muhammad Farid Khan R/o  
Village Gidarai, Tehsil and District Battagram. Ex- Drawing  
Master, GMS, Bartoni, Mansehra

Khyber Pakhtunkhwa  
Service Tribunal

..... Appellant, Diary No. 1172

Versus

Dated 11-11-2016

1. The Govt, of Khyber Pakhtunkhwa through Secretary,  
Elementary and Secondary Education, Civil Secretariat  
Peshawar.
2. The Director, Elementary and Secondary Education,  
Civil Secretariat Peshawar
3. The District Education officer (Male) Mansehra

..... Respondents

**SERVICE APPEAL U/S 4 OF THE SERVICES  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED APPELLAT ORDER DATED  
14.10.2016 PASSED BY THE RESPONDENT  
NO.2 WHEREBY THE DEPARTMENTAL APPEAL  
OF THE APPELLANT WAS REJECTED.**

Filed to-day

Registrar

**PRAYER:-**

**On acceptance of the instant appeal the impugned  
appellate order dated 14.10.2016, passed by the  
Respondent No.2 may kindly be set aside and the appellant  
may graciously be reinstated in to service and be  
consequently appellant may be allowed retirement on  
attaining the age of superannuation and the consequent  
Pensionary benefits etc. for the service render by appellant.**

Re-submitted to -day  
and filed.

Registrar

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent and reliable data collection processes to support informed decision-making.

3. The third part of the document focuses on the role of technology in modern data management. It discusses how advanced software solutions can streamline data collection, storage, and analysis, thereby improving efficiency and accuracy.

4. The fourth part of the document addresses the challenges associated with data security and privacy. It stresses the importance of implementing robust security measures to protect sensitive information from unauthorized access and breaches.

5. The fifth part of the document provides a detailed overview of the data analysis process. It describes how statistical and analytical techniques are used to identify trends, patterns, and insights from the collected data.

6. The sixth part of the document discusses the importance of data visualization in communicating complex information. It explains how charts, graphs, and dashboards can be used to present data in a clear and accessible manner, facilitating better understanding and decision-making.

7. The seventh part of the document explores the role of data in strategic planning and performance management. It highlights how data-driven insights can be used to set goals, track progress, and make strategic adjustments to improve organizational performance.

8. The eighth part of the document concludes by summarizing the key findings and recommendations. It emphasizes the need for a data-driven culture and continuous improvement in data management practices to ensure long-term success and growth.



**Respectfully Sheweth:****Facts giving rise to the present appeal are as under:-**

1. That appellant was appointed as Drawing Master on 13.12.1978, and performed his duty regularly and continuously to the entire satisfaction of the superiors and thus at <sup>the moment he has at</sup> his credit long drawn meritorious service. He was lastly serving at GMS Bartoni, Mansehra. (Copy of service Book is attached as Annexure "A").
2. That in the year 1999, appellant was falsely implicated in a murder case vide F.I.R.No.128 dated 14.04.1999 due to family animosity of relatives and was thus arrested in pursuance of the F.I.R. (Annex :B).
3. That after the arrest of the appellant he was suspended w.e.f 26.06.1999 vide order of the even date, which suspension was continued/extended vide orders dated 05.06.2000, 13.09.2000, 07.12.2000 and 05.06.2001, thereafter, the suspension was not extended vide entries at Page No.13 and 15 of the service book ibid.
4. That subsequently the appellant was *Challenged* to the Court of Sessions Judge, Battagram and after conclusion of the Trial he was convicted and sentenced to death vide judgment dated 23.06.2001 (Annex :C). Being aggrieved of the judgment appellant filed criminal appeal before the Peshawar

High Court, Abbotabad Bench, which was partially allowed vide judgment dated 19.02.2003 (Annex:D). And the death sentence was Converted in to life imprisonment. Being further aggrieved, appellant yet prefer<sup>red</sup> another appeal before the Supreme Court of Pakistan, which was also partially allowed and the sentence was further reduced vide judgment dated 07.12.2011. (Annex:E). in Pursuance of the judgment of Hon'ble Apex Court, the Appellant was later on released from captivity after serving the sentence.

5. That the date of birth of the appellant is 01.01.1952 and thereafter, his date of retirement falls on 01.01.2012, on which dated of the appellant was behind the bars.

6. That after the release, appellant preferred department appeal before the appellate authority. (Annexe:F). for reinstatement and consequent retirement and pensionary benefits etc. but the same was not disposed of within the statutory period hence, service appeal was filed before the Hon'ble Tribunal which was decide vide order 25.05.2016 (Annexe:G). and case was remanded to respondent No.2 <sup>for decision on deptt: appeal</sup> but the same was rejected vide impugned appellate order dated 14.10.2016.(Annex:H). hence this appeal inter alia amongst on the following ground.

**G R O U N D S:**

- A. That the respondents have not treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned appellate order and refused to reinstate the appellant and allow other service benefits, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That appellant was innocent and was falsely been implicated in the case due to enmity of the close relatives with deceased party and was convicted on the basis of false evidence adduced by the opposite side. When appellant preferred appeal before the Apex Court, during the pendency of the appeal, almost the sentence of life imprisonment was served out and perhaps due to that reason, the Hon'ble Apex refrained from delving deep in to the merits of the case.
- C. That be that as it may, the offence which the accused was charged with, was not one of moral turpitude and therefore, the same was not falling within the definition of misconduct as per Rule-2 (1)(vii) of the Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore,

appellant is entitled for reinstatement and retirement benefits.

- D. That till date, appellant has not been terminated from his service, therefore, on the date of retirement i.e. on attaining the age of superannuation, appellant was civil servant and therefore, he is entitled for retirement benefits under the rules.
- E. That initially appellant was suspended from service and period of suspension was extended for some time but the same was not further extended and as per Rule-6 of the Government of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011, if the period of suspension is not extended within 30 days of the expiry of the initial period of suspension, then the Govt servant stands reinstated and as per Civil Service Regulations 420 (c) A suspension followed by reinstatement does not entail forfeiture of the past service.
- F. That similarly under the Civil Service Regulations 417-A, if an officer who has been suspended during the inquiry into his conduct, attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of the suspension shall be treated the period spent on duty. Similar references can be made

to Civil Service Regulations 416 and 417. A person is also deemed suspended when he is arrested in pursuance of a criminal offence.

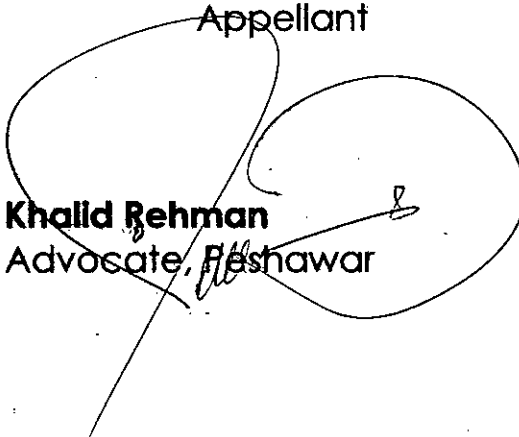
G. That appellant has served the Government, for about 22 years regularly and continuously with meritorious service record and he is entitled for the pensionary benefits under the rules and keeping in view the peculiar facts and circumstances of the case, appellant is entitled on pensionary in the interest of justice and fair-play.

H. That the ground mentioned in the appellate order is misconceived and the detailed grounds in the appeal were not properly appreciated in correct legal prospective. The impugned appellate order is illegal, vide, unlawful hence not maintainable.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of the case not specifically asked for, may also be granted to the appellant.

Through

Appellant  
  
Khalid Rehman  
Advocate, Feshawar

Dated: 11.11.2016

**Better Copy**

7

**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SECY: MANSEHRA**

**SUSPENSION**

In continuation of this office order No.39459-61 dated 26-06-99 the suspension in r/o Muhammad Haroon D.M. Govt: Middle School Bartooni (KD) is hereby extended upto 28-4-2001.

Sd/-  
DISTRICT EDUCATION OFFICER  
(MALE) SECONDARY MANSEHRA

Endst: No. 14141-42 /

Dated 5/6/2001

Copy forwarded for information to:-

1. Director Secondary Education N.W.F.P Peshawar
2. District Account Officer, Mansehra.

Sd/-  
DISTRICT EDUCATION OFFICER  
(MALE) SECONDARY MANSEHRA

**Attested to be  
True Copy**

SUSPENSION.

In continuation of this office order No. 39459-61 dated. 26-06-99 the suspension in r/o Mohamud Haroon D.M Govt: Middle School Bartsoni (KD) is hereby extended upto 28-4-2004.

*ANNEX 173* (circled)

*SJ*  
DISTRICT EDUCATION OFFICER  
(MALE) SECONDARY MANSEHRA.

Endst: No. 14141-42 Dated. 5/8 /2004.

Copy forwarded for information to :-

1. Director Secondary Education N.W.F.P. Dera Ismail Khan
2. District Account Officer Mansehra.

*Phalun*  
DISTRICT EDUCATION OFFICER  
(MALE) SECONDARY MANSEHRA.

Attested to be  
True Copy

8

Office of the Director of Education, B.S.E.

Pass of S.S.C Examination of the B.I.S.-2  
Peshawar Under roll no 11273 Session Annual  
1977 in Grade "D".

*[Signature]*

Sub-Divisional Education Officer  
(Male) Ballagram (Muz.ora)

Received back

*[Large handwritten mark]*

No.	Publications	Date
	Completed two months Short Term Drawing Master Course WEF 27-7-1982 to 26-9-1982 at Govt. College of Elementary Edu. (Male) Kohat.	

*[Signature]*  
Sub-Divisional Education Officer  
(Male) Ballagram (Muz.ora)

Attested to be  
True Copy



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

9

1. Name.. *Mohammad Haroon*

2. Race *Swati*

3. Residence *village Gadri P.O. Gadri Tehsil Baltagram District Mansehra.*


4. Father's name and residence *Mohammad Farid Khan of Gadri*


5. Date of birth by Christian era as *Third August N.H. & Fifty one 3-8-1951*  
*(3.8.1951)*

6. Exact height by measurement *5-6*


7. Personal marks for identification *cut mark on fore head*

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

Little Finger. 

Ring Finger. 

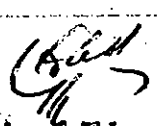
Middle Finger 

Fore Finger. 

Thumb 


9. Signature of Government servant *M. Haroon Khan*

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

  
Sub-Divisional Education Officer  
(Male) Baltagram (Mansehra)

Attest: District Inspector  
Schools Baltagram (Male)  
Baltagram (Mansehra)

Distt: Inspector of Schools  
Mansehra Distt: Mansehra

*prepared by*  
  
**Attested to be True Copy**

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If existing staff— (i) substantive appointment or (ii) whether service counts for pension under Act 371, C. S. R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant
DM (Untrained) GMS			315/- PM fixed				
Postho.	Temp.		315/- PM fixed			16-12-78	M. H. ... Nbc
-do-	-do-	Grade 560/-	560/-	Checked for R. R. ... 8/2/81		1-2-83	M. H. ...
-do-	-do-	Grade 620/- PM fixed	620/-			1-2-83	M. H. ...
DM			620/-			1-2-83	M. H. ...
GMS Biland Kol	Grade 830	38-1590 DM (9)	830/-			1-2-87	M. H. ...
-do-	-do-		830/-			1-2-87	M. H. ...
DM	-do-		830/-			1-12-88	M. H. ...
GHS Biland Kot	-do-		830/-			1-12-89	M. H. ...
-do-	-do-		830/-			1-12-89	M. H. ...
-do-	-do-		830/-			1-12-89	M. H. ...

10

S. D.E. Schools, ~~Battagram~~ 30-6-83

Revision 7/11/83 1983  
**L. E. Officer**  
Battagram

Appointed vide D.E. ~~Refund~~ No 3783-86  
A-15 dt: 13-12-1978.

Distt: Incharge of Schools  
Manshra Distt: Manshra.

Office of the Accounts Officer  
D. O. P. Manshra.  
Pay fixed in Basic Pay Scales 1981  
of No. ~~100~~ B.C.No.  
No. 560/1/1981 D. W.S.J. 1.7.81  
with next increment on 1.12.80

Services verified from 16.12.78  
to 30.11.79 from the Acquittances  
Rolls and other office records.

**L. E. Officer**  
Battagram

**L. E. Officer**  
Battagram

S.D.E.O. (M)  
Battagram

Assst. Accounts Officer  
~~Asst. Accountant General~~  
N.W.F.P.

S.D.E.O. (M)  
Battagram

S.D.E.O. (M)  
Battagram

Revision of Pay S.D.E.O. (M)  
1-7-87 Battagram.

S.D.E.O. (M)  
Battagram

DRAWN No 157/50 1/2 PAY  
on A/c of Calendar  
Year 1983 No. 292  
Dt. 19-2-83

S.D.E.O. (M)  
Battagram

Post-Transfer

Distt. Officer  
Manshra

Head Master  
GHS Biland 200

Auditor

Head Master  
GHS Biland 200

S.D.E.O. (M)  
Battagram

**L. E. Officer**  
Battagram

**L. E. Officer**  
Battagram

1981  
No. 157/50 P. 25 DE 15-81  
dt. 19-2-81

**L. E. Officer**  
Battagram

Service verified from 1-12-79  
to 30-11-80 from the Acq. Roll  
and other Office Records.

Sub Dist. Education Officer,  
(M) Battagram (Manshra)

S.D.E.O. (M) Battagram  
(Manshra)

Attested to be  
True Copy

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating state— (i) substantive appointment or (ii) whether as vice counts for pension under Art. 371, C.S. II.	4 Pay in substantive post	5 Additional pay for officiating	6 Other emoluments falling under the term "Pay"	7 Date of appointment	8 Signature of Government servant
DM  GHS Bilawal	Revised  off/ bus.	BPS-(9)	13000	11851-PM	11/6/91		

Order of the Accountant General  
 H. W. P. Peshawar  
 Pay fixed in the Revised Pay Scale 1991  
 of Rs. 13000-20-1  
 U.S.P. 14-1991  
 11/6/91

11851-3  
 Cutting attested at this page  
 A. J. Khan  
 Govt. High School  
 Bilawal (Muzaffargarh)  
 District Muzaffargarh

Note  
 The following of payment made  
 may be recovered

11851-PM 4 - 16 to 31 5 PM 3456/-  
 91

Also attested

Actual drawn  
 11851-PM  
 No over payment involved  
 Note deleted  
 Accounts Officer  
 A

GO  
 Bilawal



Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating state— (i) substantive appointment or (ii) whether service counts for pension under Art. 372, C. S. R.	Pay to substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant
D.M. GHS Bilandkot	Scale No 9 off/Temp	Rs 1185/-	PM Fixed 1185/-	✓	-	1 <sup>6</sup> / <sub>91</sub>	M. L. H.
" -	do -	-	1605/-	✓	-	1 <sup>6</sup> / <sub>94</sub>	M. L. H.
GMS: Dagai DM	do -	-	1605/-	-	-	3 <sup>1</sup> / <sub>98</sub>	
GMS, Bortoni	Re	-	1605/-	-	-	14 <sup>6</sup> / <sub>98</sub>	
D.M. GMS, Bortoni	Re	-	1605/-	-	-	1 <sup>12</sup> / <sub>98</sub>	

12

Registration and  
attribution of the  
head of the office or  
other attesting  
officer in attestation  
of columns 1 to 8

Reference to any  
recorded punishment  
or censure or  
award or praise  
of the Government  
concern

*A. Parthasarathy*  
Head Master  
Govt. High School  
Biland 1954  
District Ballabgarh

*A. Parthasarathy*  
Head Master  
Govt. High School  
Biland 1954  
District Ballabgarh

Service Verified w.e.f. 1.12.86  
to 30.11.87 from the Acq. Roll  
and other Office Record.

*S. D. E. O. (M) Ballabgarh*  
(Banskhira)

*A. Parthasarathy*  
2 1/2  
13/98  
Transferred  
to 4th  
Day

*W. P. D. D.*  
Head Master  
Govt. High School  
Ballabgarh

*S. D. E. O. (M)*  
Secy Ballabgarh

6  
13/98  
Transferred  
to 4th  
Day

*S. D. E. O. (M)*  
Secy Ballabgarh

*S. D. E. O. (M)*  
Secy Ballabgarh

30 11  
98  
Dunt  
Net  
All India  
Suspension

*S. D. E. O. (M)*  
Secy Ballabgarh

Service verified w.e.f. 1.12.87-21-10-88  
from the Acq. roll and other records  
kept in this office.

*S. D. E. O. (M)*  
Ballabgarh

Service Verified w.e.f. 1.11.88 to  
31-11-88 from the Acq. roll  
and other office record kept  
in this office.

Head Master  
GHS Biland Kot

Service verified w.e.f. 1.12.88-31/1/89  
from the Acq. Roll and other records  
kept in this office.

Head Master  
GHS Biland Kot

Service Verified w.e.f. 2-8-89  
to 30-11-89 from the Acq. roll  
and other office record kept in  
this office.

Head Master  
GHS Biland Kot

Drawn a \$7. on 1/89  
in 31-12-89 vide M. No 95  
of 16.9.90 p. 2521

*S. D. E. O. (M)*  
Ballabgarh

Attested to be  
True Copy

Granted Earned Leave  
Wef 16-4-96 to 24-4-96  
(9 days) on full pay  
w/c DECS, H-300 Div  
At End Endst No. 10111-13  
dt 22/5/97.

*Aflawcehar*  
Head Master  
Govt High School  
Biland Kot  
Distt. Baran

Drawn 1/2 Salary w/c ✓  
16-4-96 to 24-4-96 Rs 6000/-  
Vid. T. 238 dt 16-6-97

*HRIC*  
~~2000~~  
7

10/6

Service verified w/c 1-12-89  
to 30-11-1990 from Acq. Roll  
and other record of the school

*Aflawcehar*  
Head Master  
Govt High School  
Biland Kot, Manschra

Service w/c 1-12-92 to 30-11-93  
Verified from the acq. rolls and  
other record of the school.

*Aflawcehar*  
Head Master  
Govt High School  
Biland Kot, Manschra

Service w/c 1-12-93 to 30-11-94  
Verified from the acq. rolls and  
other record of the school.

*Aflawcehar*  
Head Master  
Govt High School  
Biland Kot, Manschra

Service w/c 1-12-94 to 30-11-95  
Verified from the acq. rolls and  
other record of the school.

*Aflawcehar*  
Head Master  
Govt High School  
Biland Kot, Manschra

Service w/c 1-12-95 to 30-11-96  
Verified from the acq. rolls and  
other record of the school.

*Aflawcehar*  
Head Master  
Govt High School  
Biland Kot, Manschra

Service w/c 30-4-96 to 30-11-96  
Verified from the acq. rolls and  
other record of the school.

*Shiv*  
Head Master  
Govt High School  
Gijbori (Battagra)

Service w/c 1-12-96 to 30-11-97  
Verified from the acq. rolls and  
other record of the school.

*Shiv*  
Head Master  
Govt High School  
Gijbori (Battagra)



Signature and designation of the head of the office or other attesting officer in attestation of certificate A to B	Date of certification of appointment	Name of beneficiary	Signature of the head of the office or other attesting officer	Allocation of pay or leave or other benefit	Signature of the head of the office or other attesting officer
---	--------------------------------------	---------------------	--	---	--

13

Service w.e.f. 1-12-97 to 2-1-98  
 verified from the acq. rolls and other record of the school.

Drawn Rs = 10285/29 w.e.f.  
 1-10-2000 to 31-12-2000 (3 months)  
 vide P.O No. 673 dated 22-2-2001

Service Verified w.e.f. 3-1-98 to 13-6-98  
 from the Acq. roll and other record kept in this office

D.E.O (M) Secy Bhattagram

T-130

Drawn Rs. 8680/5 on A/c of  
 Suspension Allowance w.e.f. 6-1-2001 to 31-3-2001  
 vide T.No. 1130 dt. 8-6-2002

**Suspension**  
 Suspended from duty  
 w.e.f. 26-6-99 vide  
 D.E.O (M/S) Mardina Endstt.  
 No. 39459-61 dated 26-6-99

District Education Officer  
 (Male) Secondary Manager

District Education Officer  
 (Male) Secondary Manager

Dr B. 11574/72 on ch  
 r suspen allow: w.e.f. 1-6-99 to 30/9/99  
 vide T.No 2 dt 14/11

Dr B. 15958/58 on A/c  
 on pay & allow: w.e.f. 1-5-99 to  
 31-10-99 vide T No 707 dt 13/11

Dr B. 20054/01 on A/c  
 r sus: allow: w.e.f. 1-4-1999 to 31-5-1999  
 vide T. No 388 dt 8/10/99

**Extension of Suspension upto**  
 27-7-2000 vide DDO (M/S) Mardina  
 No. 14143-44 dt. 5-6-2000

District Education Officer  
 (Male) Secondary Manager

True Copy

9	10	11	12	13		14	15	
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Leave		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government servant
					Allocation of periods of leave on average pay up to four months for which leave salary is debitab- to another Government	Period		
							<p>Extension of Suspension up to 25-12-2001 vide DEO (M) Secy Manshra No: 2000-1 D/13-9-2001.</p> <p><i>[Signature]</i>            DISTRICT EDUCATION OFFICER            (Male) Secondary Manshra</p>	
							<p>Extension of Suspension up to 24-1-2001 vide DEO (M/S) Manshra Enclt. No: 25164-67/AE-III dt. 7-12-2000.</p> <p><i>[Signature]</i>            DISTRICT EDUCATION OFFICER            (Male) Secondary Manshra</p>	
							<p>Extension of Suspension up to 28-4-2001 vide DEO (M) Secy. Manshra Enclt. No: 4141-42 dt 5/6/2001</p> <p><i>[Signature]</i>            District Officer (ADMIN: &amp; DEV)            Secondary Education Manshra            SECY. EDUCATION MANSHRA</p>	





83

16

.2.

Khan son of Sher Afzal Khan, had come to District Kitchary Batagram in connection with a case. After attending the court proceedings, when they reached near eastren gate of the court, it was abutt 1515 hours, in the mean time, Muhammad Haroon son of Farid, resident of Gaidrri started firing at them, with fire arm, from the front side. As a result of which Nadir Khan was hit and injured on his belly with one bullet while Dildar was hit and got injured on his right side chest with 2nd bullet and both of them fell down on the ground. Accused then decamped from the spot. The occurrence was stated to have been seen by many other people present on the spot besides him.

Motive for the occurrence is previous blood feud. He charged accused Haroon for the commission of the offence. The report of complainant was reduced into writing by Banaris Khan ASI in the shape of Murasila, on the basis of which case vide FIR NO:128, dated 14.4.1999 u/s 302/324 PPC was registered against the accused.

*That Khan*  
*14.4.1999*  
 Batagram

3. After completion of the investigation, local police through prosecution branch submitted challan before Judicial Magistrate, Batagram who after compliance of provisions u/s 190(3) Cr.P.C sent the same to this court for trial.

4. Accused was summoned from jail, who appeared and after compliance of provisions u/s 265C Cr.P.C formal charge was framed and served upon him, to which he pleaded not guilty and claimed trial. Prosecution in support of the charge examined 11 witnesses and closed its evidence. The resume of prosecution evidence is as under:

P. 02  
 Certified true copy of the  
 Q-c-s dated 1999

District  
 Batagram  
 19.07.2012

Attested to be  
 True Copy

84

.3.

17

5. Pw1 Muhammad Afzal IHC:

5. On receipt of Murasila, he incorporated its contents into the FIR, Ex.PA. FIR Ex.PA is in his hand writing and bears his true signature.

Pw2 Abdus Samad F.C 157:

6. This Pw brought the Murasila to police station for the registration of the case. He is also marginal witness to recovery memo Ex.Pw.2/1 vide which I.O took into his possession one blood stained shirt of deceased Dildar white in colour, kind K.T P1, handed over to him by doctor alongwith post mortem report, same were packed and sealed into parcel by the I.O in his presence.

Pw3 is Attaur Rehman son of Muhammad Furqan:

7. This Pw deposed that I.O inspected the spot in his presence and during spot inspection he recovered some blood stained earth from the place of injured Nadir Khan, same was packed and sealed into parcel in his presence. In his presence I.O also recovered one empty shell of 30 bore P2 giving smell of fresh discharge near the place of accused situated inside the gate on the westren side of the stairs and took the same into his possession vide recovery memo Ex.Pw.3/1.

Pw4 Aqil Khan son of Samar Ali Khan:

8. He is marginal witness to recovery memo Ex.Pw.4/1 vide which I.O during the personal search of accused recovered one black belt P3 alongwith Kash P4 30 bore Pistol from the wast of the accused in his presence, and in presence of IHC Amjid Hussain.

Pw5 doctor Fazal Qayum, M.O: DHQ hospital Batagram:

9. On 14.4.99 at 3.30 PM he examined Dildar son of Sher Afzal Khan, aged 29/30 years, caste Swati, resident of Banda Bala, brought by ASI, P.S. Batagram and on external examination he found the following:

*Signature*  
Sessions Judge  
Batagram

P-03  
Certified U/A 37 of 1986  
C-3-3 under 1986  
Examiner  
District & Sessions Judge  
Batagram

13.07.2011

Attested to be  
True Copy

85

18

1. An entry wound of a fire arm on anterior aspect of right chest ~~xx~~ between 8th and 9th inter costal space about  $\frac{1}{2} \times \frac{1}{2}$  " in size, skin ~~xx~~ into muscles and body cavity deep, injured the vital organs. Patient was in shock and blood pressure was unrecordable. Emergency treatment was given.

Probable duration of injury: 15 to 45 minutes.

Weapon of offence: Fire arm injuries.

Nature of injury: Grievous.

He prepared medico legal to this effect which is Ex.Pw.5/1.

On the same day i.e 14.4.99 he examined

Nadir Khan son of Sumandar Khan, aged about 46 years, r/o Banda Bala, brought by ASI, P.S Batagram and examined him at 3.30 PM and found the following:

1. Entry wound of fire arm in epigastrium about  $\frac{1}{2} \times \frac{1}{2}$  " in size. Skin into muscle and body cavity (abdomen) deep.

2. Exit wound on right buttock on the inner part about  $1 \times 1$  " in size with everted margins, there was massive bleeding from the exit wound and patient's blood pressure was not recordable. Emergency treatment was given and patient was referred to Ayub Teaching Complex for further management.

Time between injury :About 15 to 45 minutes

Caused by fire arm and in case of both the injuries the nature of the injuries were grievous. Medico legal report to this effect prepared by him is Ex.Pw.5/2 , same is in his hand writing and bears his true signature.

On the same day i.e 14.4.99 at 4.00 PM he

conducted autopsy on the dead body of Dildar Khan, son of Sher Afzal Khan, aged about 29/30 years, brought by ASI, P.S Batagram, identified by Attaur Rehman son of Furgan, r/o Shagay and Hasham Khan, son of Jahangir Khan, r/o Banda Bala and on external examination he found that the deceased was a young healthy man of about 30 years with good body physique, eyes closed, shaved white colour with shalwar and Qameez.

*[Handwritten signature]*  
 District & Sessions Judge  
 Batagram

P. 04

Certified U/A 37 of the Q-o-order 1984

Examiner  
 District & Sessions Judge  
 Batagram

19.07.2012

Attest to be  
 True COPY

86

19

.5.

1. An entry wound of fire arm on right side of lower chest between 8th and 9th inter costal about 1/2 x 1/2" in size.

INTERNAL EXAMINATION: In thorax region right pleural cavity were found injured, right lung was injured blood vessels were found injured. In abdominal region walls were injured, peritonium was injured and was full of blood, stomach was found injured and was full of brsemi digested material, small intestine was found injured. Large intestine was found injured, liver injured.

OPINION: In my opinion death of the person is due to fire arm injury, causing injuries to the vital organs like liver, stomach, peritonium, lung, colon and vessles. Injuries to these structures resulted into massive internal haemorrhage. The case of death of severe haemorrhage, resulted into shock and death.

Probable time elapsed between injury and death: About 1/2 hour to one hour.

Time between death and post mortem 10 to 15 minutes Post mortem report consisting of five pages including pectorial is Ex.FM.

After post mortem examination he handed over clothing of the deceased duly signed by him to police alongwith P.M documents. On 16.4.99 Investigating Officer made a query from him regarding the bullet, as there was no exit wound and he answered the quarry vide his report dated 25.4.99 which is EX,FM and the same is as follows:

"He searched for the bullet in body cavity but did not recover the bullet"

Pw6 Amjid Hussain ASI:

10. He deposed that on the day of occurrence at about 9.00 AM he alongwith Jamilur Rehman F.C. 85 left for village Chani for the investigation of a criminal case registered u/s 337 PPC and also warrant for the recovery of Wapda dues, issued against persons residents of village Batagram. After service of warrant

*Signature*  
23-6-1999  
Batagram

P-05  
Certified I/A 87 of the  
G-e-s order 1984

EX-1000  
District & Sessions  
18-07-12

Amjid Hussain  
True Copy



87

20

of Wapda recovery dues, he reached Colony Batagram on Shanlai road, he heard report of fire shots and report of hue and cries from the side of court premises and also saw that people were running after a person. He thought that some occurrence might have taken place in the court premises, so he waited for a while and watched the situation of running of a person and its followers. He deposed that he was near the Ara Machine of Malang Khan on the upper side at a shorter distance. He got aside, so that the person running, may not change his direction seeing them in uniform. He saw that the person running a head of the mob was some time looking back to the mob. There was a crying in the mob, calling every body to catch hold of this man as he has killed two persons in the court premises. The person was fully exhausted, coming near us, he (this Pw) stepped a head and arrested him. As the situation was very much tense and he was worried about the security of the person arrested by him, so he made a wireless call to the P.S on which Incharge of police station Batagram namely: Banaris Khan rushed towards ~~the~~ his place and he handed over the accused to him. Banaris Khan inquired the name from the accused and then conducted his personal search and recovered one waistler P3 of Pistal 30 bore from the possession of accused in his presence and in presence of other witness, he took the same into his possession and prepared recovery memo Ex.Pw.4/1. He further deposed that on the arrest of the accused he replied that he has not committed the murder. Thereafter he accompanied Banaris Khan ASI to the place of occurrence and in his presence, during the spot inspection Banaris Khan ASI picked up blood stained earth from the spot and an empty

*[Handwritten signature]*

Sessions Judge  
23/6/84

p. 06  
Certified U/A 87 of  
G.O.S Order 1984

Examined  
District & Sessions  
19.07.12

Accepted to be  
True Copy

*[Handwritten signature]*

21

of Wapda recovery dues , he reached Colony Batagram on Shamlai road, he heard report of fire shots and report of hue and cries from the side of court premises and also saw that people were running after a person. He thought that some occurrence might have taken place in the court premises, so he waited for a while and watched the situation of running of a person and its followers. He deposed that he was near the Ara Machine of Malang Khan on the upper side at a shorter distance. He got aside , so that the person running , may not change his direction . seeing them in uniform. He saw that the person running a head of the mob was some time looking back to the mob. There was a crying in the mob, calling every body to catch hold of this man as he has killed two persons in the court premises. The person was fully exhausted, coming near us , he (this Pw) stepped a head and arrested him. As the situation was very much tense and he was worried about the security of the person arrested by him, so he made a wireless call to the P.S on which Incharge of police station Batagram namely: Banaris Khan rushed towards ~~the~~ his place and he handed over the accused to him. Banaris Khan inquired the name from the accused and then conducted his personal search and recovered one waistler P3 of Pystal 30 bore from the possession of accused in his presence and in presence of other witness, he took the same into his possession and prepared recovery memo Ex.Pw.4/1. He further deposed that on the arrest of the accused he replied that he has not committed the murder. Thereafter he accompanied Banaris Khan ASI to the place of occurrence and in his presence , during the spot inspection Banaris Khan ASI picked up blood stained earth from the spot and an empty

*[Signature]*  
 Sessions Judge  
 23/6/88

p. 06  
 Certified U/A 87 of  
 G.O. order 1988

Extra Duty  
 District & Sessions  
 19.07.12

Attested to be  
 True Copy

of 30 bore Pistol from the spot P2 vide recovery memo Ex.Pw.3/1 and packed and sealed these articles into different parcels in his presence. He was also examined by the I.O u/s 161 Cr.P.C.

Pw7 is Musafar shah (complainant)

11. He is complainant of the case and his statement has already been mentioned in the earlier part of this judgment. He has narrated the story of FIR in his statement.

Pw8 Nadir Khan (injured)

12. He has narrated the same story as deposed by complainant, Musafar shah, during his examination in chief, hence no need for his reproduction.

Pw9 Banaris Khan ASI;

13. On getting information about the present occurrence he went to Civil hospital Batagram, where one Musafar shah son of Chatary resident of Banda Bala lodged report about the occurrence to him, which he reduced the same into writing in the shape of Murasila, Ex.PA/1. After recording the same, he read over it to complainant, who after admitting the same to be correct thusb impressed the same. He sent this Murasila through Abdul Samad F.C to P.S for registration of the case. Thereafter he prepared injury sheet of Dildar deceased then injured which is Ex.Pw.9/1. He also prepared injury sheet of Nadir Khan injured which is Ex.Pw.9/2. He deposed that within a short spain Dildar injured succumbed to the injury and he prepared his inquest report Ex.Pw.9/3 and his dead body was handed over to the doctor for post mortem examination and he also informed Police station about the death of Dildar doceased. He deposed that at this juncture he was informed by Amjid IHC that he has arrested the accused near Batagram village and on this information he (this Pw) went there and formally

*Handwritten signature*

Magistrate Judge 001  
Batagram

P-37  
Certified U/A 87 of 1973  
Q-o-s order 1973

18.07.12

Attested to be  
True Copy

23

arrested the accused and took his personal search. During search of accused he recovered one waistler black colour alongwith a black belt which was attached to the black belt, same is P3 and P4 respectively, same were taken into his possession vide recovery memo Ex.Pw.4/ He also prepared skitch of the place where from he arrested the accused and effected recovery. The skitch is Ex.Pw.9/4. Thereafter he inspected the spot, and during spot inspection he took into his possession one empty of 30 bore Pista P2 and blood stained earth vide recovery memo Ex.Pw.3/1 in presence of the marginal witnesses. He sealed the empty in parcel No: 2 and blood stained earth in parcel No 1. Thereafter he recorded statements of marginal witnesses u/s 161 Cr.P.C. He prepared site plan Ex.PB on the pointation of eye witnesses. He vide his application Ex.Pw.9/5 obtained five days police custody for the accused. On 15.4.99 one shirt blood stained P1 belonging to deceased, Dildar Khan was taken into possession by him vide recovery memo Ex.Pw.2/1 in presence of the marginal witnesses, same was packed and sealed into parcel. He recorded statement of Nadir Khan Pw in Ayub Medical Complex Abbottabad. On 20.4.99 he took into his possession one shirt P5 blood stained having corresponding cut marks belonging to Nadir Khan injured Pw produced before him by Attaur Rehman r/o Kusa Banda, same was taken into possession by him vide recovery memo Ex.Pw.9/6 in presence of the marginal witnesses. He also recorded statements of marginal witnesses. He sent blood stained earth and clothes to Chemical Examiner/Serologist vide his docket Ex.Pw.9/7. He placed on file the result of Chemical Examiner which is Ex.Pw.9/8. Then he handed over

*Handwritten signature*

10.3.1999  
23/3/99

p. 08

Certified U/A 87 of the Investigation of the case to SHO.  
Q-e-s order 1984

Attested to be  
True Copy

Examiner  
District & Sessions Judge  
Batgram

19.07.2012

(24)

Pw10 doctor Ouzair Sabir, Ayub Medical Complex  
Abbottabad:

14. On and before 23rd April, 1999 he was posted as Registrar Surgical " A" Unit Ayub Medical Complex Abbottabad. Nadir Khan son of Sumandar Khan, r/o Batagram was admitted in male Surgical A ward on bed No: 24 under admission No:378/62 as a case of fire arm injury in the abdomen since 14.4.1999. He was operated on the same day. This Pw issued a certificate in respects of Surgery and the time of internal injury. Certificate in this respect is Ex.Pw.10/1, which is in his hand writing and bears his signature.

Pw11 Fida Muhammad Khan Inspector :

15. He deposed that investigation in this case was conducted by N Banaris Khan ASI. He after completion of the investigation submitted complete challan in this case on 5.5.1999. He also interrogated the accused during the period of custody.

16. Thereafter statement of accused was recorded under section 342 Cr.P.C, wherein he denied the allegations and professed innocence. He neither wished to produce oral defence, however he placed on file photo copy of his application and photocopies of affidavits which are Ex.B4 to Ex.D7 and relied on these documents. However he did not wish to be examined on oath.

17. I have heard arguments of learned SPF assisted by counsel for complainant and defence counsel and have gone through the record.

18. The prosecution case mainly hinges upon the eye see account/evidence furnished by Musafar Khan complainant Pw7 and Nadir Khan injured eye witness Pw8, circumstantial evidence in the shape of medical legal reports of Dildar Khan deceased then injured and Nadir Khan Pw, Ex.Pw.5/1 and Ex.Pw.5/2 respectively, prepared by

Attested to be  
True Copy

*Handwritten notes:*  
Judge  
23.16.2001

*Handwritten notes:*  
P. 09  
Certified U/A 87 of the  
Q-e-s order 1999

Examiner  
District & Sessions Judge  
Batgram.  
18.07.12

25

doctor Fazal Qayum I.O, DHQ, hospital Batagram Pw5, post mortem report Ex.FM of Dildar Khan deceased, prepared by the said doctor, who conducted autopsy on the person of deceased Dildar at 4.00 PM after his death in the hospital and medical certificate furnished by Doctor Uzair Sabir Pw10, Registrar of Ayub Medical Complex Abbottabad, who operated Nadir Khan injured Pw for fire arm injury, recovery of blood stained earth from the place of Pw Nadir Khan and recovery of an empty of 30 bore Pista P2 given smell of fresh discharge from the spot vide recovery memo Ex.Pw.3/1 in presence of marginal witnesses namely: Attaur Rehman and Amjid Hussain IHC, taking into possession of blood stained Qameez belonging to Dildar deceased P1 by Banaris Khan ASI Pw9 vide recovery memo Ex.Pw.2/1 in presence of the marginal witnesses namely: Abdul Samad F.C 157 and Gulfrax F.C 166, arrest of the accused by Amjid Hussain IHC soon after the occurrence and recovery of black belt alongwith black Kash of 30 bore Pista from the waist of accused at the time of his personal search after his arrest by Banaris Khan ASI vide recovery memo Ex.Pw.4/1 in presence of marginal witnesses namely: Aqil Khan and Amjid Hussain

*Handwritten signature*  
23.6.2001

P.10

Certified U/A 87 of IHC; statements of marginal witnesses of the recovery Q-c-s order 1984 memos namely: Abdus Samad F.C 157, Attaur Rehman son of Muha mmad Furqan Pw3, Aqil Khan Pw4, Amjid Hussain IHC Pw6, Banaris Khan ASI(I.O) Pw10 and Fida Muhammad Khan SHO, Pw11 and motive.

Examiner  
District & Sessions  
Batgram

18.07.12

19. I would like to appreciate the above mentioned pieces of evidence one by one to see as to whether the prosecution has been able to bring home the charge against the accused beyond reasonable shadow of doubt or not.

20. At the very out set of my discussion I would like to say that it is a broad day light occurrence

Attended to  
True Copy

26

which has taken place at 3.15 PM on 14.4.1999 in the eastern gate of District Kitchary Batagram regarding which report in the shape of Murasila, Ex.PA/1, was made by Musafar shah complainant in DHQ hospital Batagram, before Banaris Khan ASI within a short span of half an hour soon after the occurrence. It is also worth mentioning here that it is a case of single accused, only one person namely: Haroon has been charged for committing the murder of Dildar Khan deceased and for attempting at the life of Nadir Khan Pw effectively, thus, no question for substitution and mistaken identity arises. Ocular account in this case has been furnished by Musafar shah complainant and Nadir Khan injured Pw. Their presence on the spot is established keeping in view their unshattered straight forward eye account and stamp of grievous injury on the person of Pw Nadir Khan. Musafar shah Pw7 and Nadir Khan Pw8 had deposed before this court at the time of their statements that " on the day of occurrence they alongwith Dildar had come to District Kitchary Batagram in connection with a case and after attending the court proceedings when they reached near the eastern gate of the court, it was about 3.15 PM in the mean time Muhammad Haroon, son of Farid resident of Giddri started firing at them with fire arm i.e 30 bore Pystal from the front side. As a result of which Nadir Khan was hit and injured on his belly with one bullet while Dildar was hit and got injured on his right side chest with second bullet, which both of them fell on the ground and then accused decamped from the spot. Both these Pws are though related to each other and the deceased but their ~~testimonies~~ <sup>statements</sup> are worthy of credence, because during the course of lengthy cross examination by defence counsel, the statements of these Pws were not at all shattered and defence failed to bring on record any material

*Musafar Shah*  
 AS JUDGE  
 Batagram  
 23.5.12 01

P-11  
 Certified U/A 87 of the  
 Q-c-s order 1992

Examiner  
 District & Sessions  
 Batagram  
 19.07.12

Attested to be  
 True Copy

27

contradiction in their statements interse to discard their testimony, though there are some slightest omissions and addition in their statements but these are of trivial nature and are not sufficient to brushe/ aside their evidence. Their presence on the spot and witnessing the occurrence is established in toto.

21. Eye seen account of the present occurrence furnished by Musafar shah complainant Pw7 and injured Pw namely: Nadir Khan , Pw8 find fully support from medical evidence. Medico legal reports of Nadir Khan injured Pw, Ex.Pw.5/2 and medico legal report of Dildar Khan deceased then injured, Ex.Pw.5/1 coupled with medical certificate furnished by Doctor Ouzair Khan Sabir Pw10 , who operated upon Nadir Khan injured Pw in Ayub Medical Complex Abbottabad duly testified by Doctor Fazal Qayum Pw5 and Doctor Ouzair Sabir Pw10, whose statements were not at all shattered during cross examination, coupled with post mortem report, Ex.PM of deceased Dildar Khan furnished by Doctor Fazal Qayum fully strengthen and corroborate the eye seen account of Musafar shah complainant and Nadir Khan injured eye witness.

22. Moreover recovery of blood stained earth from the spot and recovery of an empty of 30 bore Pistal from the spot vide recovery memo Ex.Pw.3/1 duly testified by Attaur Rehman , Amjid Hussain IHC, marginal witnesses and Banaris Khan I.O Pw9 further lend support to the prosecution case.

23. Accused Haroon after the occurrence fled away from the spot and was chased by people and was arrested near Ara Machine of Ma lang Khan in Batagram Colony by Amjid Hussain IHC soon after the occurrence and on conducting his personal search one black belt P3

*Sub. Pw 30*  
*23-6-2001*

*P-12*  
certified U/A S7 of the  
Q-e-s order 1988

Examiner  
District & Sessions  
Batagram

*13.07.2012*

Attended to be  
True



alongwith black Kash P4 of 30 bore Pistol was recovered from his waist by Banaris Khan ASI in presence of Aqil Khan and Amjid Hussain IHC vide recovery memo Ex.Pw.4/1. This recovery memo was duly testified by Aqil Khan, Amjid Hussain IHC, Banaris Khan ASI in their statements which were not at all shattered during cross examination. Thus arrest of accused soon after the occurrence while running from the spot and recovery of black belt alongwith black Kash of 30 bore from his possession fully support the prosecution case.

24. Last piece of evidence is motive. It is established from the evidence on file that there is a blood feud enmity between accused and the deceased party and on account of this enmity Haroon accused committed the present occurrence.

25. The upshot of the above discussion is that the prosecution has been able to bring home charge against accused Muhammad Haroon, beyond reasonable shadow of doubt, hence he is liable to be convicted for the offences with which he is charged. Thus upon his conviction he is convicted and sentenced to death for the murder of deceased Dildar Khan under sec:302B PPC. He shall be hanged byneck till he dies subject to the confirmation of his death sentence by worthy Peshawar High Court, Peshawar, circuit bench, Abbottabad. He shall also pay Rs. one lac as compensation to the LRs of deceased Dildar Khan according to their shari shares, under sec:544A Cr.P.C, or in default thereof to undergo six(6) months imprisonment. He is also convicted and sentenced to ten (10) years R.I and a fine of Rs.20,000/- (twenty thousand) for attempt to commit Qatli Amad of Nadir Khan Pw under sec:324 PPC and in default of payment of fine he shall suffer one year R.I under the said section of law. He is also convicted and sentenced for causing

Sessions Judge  
Balochistan  
23/6/2001

P-13  
Certified LIA 27 of the  
D-e-s order 1984

Examiner  
District & Sessions  
Balochistan

18-07-12

Attested to be  
True Copy

Handwritten signatures and initials on the right margin.

28

grievous injury on the belly of Nadir Khan Pw, for  
 a term of seven (7) years R.I and Arsh amounting to  
 Rs. one lac to victim Nadir Khan under section 337D PPC  
 in addition to the punishment given to the convict/  
 accused under section 324 PPC. He shall also pay  
 Rs. 50,000/(fifty thousand) as compensation under sec:  
 544A Cr.P.C to Nadir Khan Pw, or in default thereof  
 to undergo six (6) months imprisonment. Benefit of sec:  
 382B Cr.P.C is given to accused/convict. Accused  
 present in custody and is sent back to jail. He is  
 directed to file an appeal before worthy High Court,  
 circuit bench Abbottabad against his conviction,  
 within seven days. Copy of the judgment be given to  
 accused free of costs. A reference be made to Ex  
 worthy Peshawar High Court, circuit bench, Abbottabad  
 under sec. 394 Cr.P.C. ~~same procedure, be observed~~  
 till period of appeal /revision.

Announced:  
 23.6.2001.

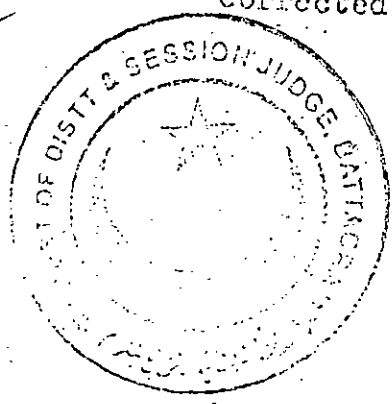
*Shah Jehan Khan*  
 (Shah Jehan Khan)  
 Sessions Judge  
 Batagram's Judge,  
 Batagram.  
 23.6.2001

Certified U/A 87 of the  
 Q-e-s order 1934

Examiner  
 District & Sessions Judge,  
 Batagram. Note:

Certified that this judgment consists of  
 fourteen pages. Each page has been read,  
 corrected wherever necessary and signed by me.

19.07.12



*Shah Jehan Khan*  
 Sessions Judge  
 Batagram.  
 Batagram's Judge,  
 Batagram.  
 23.6.2001

Attorney to be  
 True Copy

C.D. No.	1837-
Date of Presentation	19.07.2012
Amount	Free cost
U.S. State	"
Name	
Place of Birth	India
Date of Birth	19.07.2012
Gender	
Date of Issue	19.07.2012

## Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR. CIRCUIT BENCH,  
 ABBOTTA BAD.

JUDICIAL DEPARTMENT.

Cx. A. No. 47 of 2001 199

## JUDGMENT

Date of hearing 30-10-2002 & 31-10-2002 ANNEX D  
 Appellant (Mohammad Haroon) By M/s Saeed Akhtar Khan  
 Respondent (State) By Mr. M.Y. Mohammed Advocate  
 & Shamsheer Din Advocate for complainant

SHAHZAD AKBAR KHAN, J. =

Muhammad Haroon, the

convict has filed this appeal against the judgment dated 23.6.2001 recorded by the learned Sessions Judge, Batagram, whereby the appellant was convicted under section 302-B of PPC and was sentenced to death and to pay Rs.1,00,000/- (one lac) as compensation in terms of section 544-A Cr.P.C., to the legal heirs of the deceased or in default of payment of compensation amount he was to undergo six months imprisonment. He was also convicted under section 324 PPC for an attempt to commit 'Qatl-e-And' of Nadir Khan PW and was sentenced to 10 years/and a fine of Rs.20,000/-. In default of payment of fine he was to undergo one year further imprisonment. He was also sentenced to seven years imprisonment for causing grievous injury to PW Nadir Khan and 'Arsh' amounting to Rs.1,00,000/- under section 337-D PPC. He was

Attested to be True Copy

31

also ordered to pay Rs.50,000/- as compensation under section 544-A Cr.P.C. to Nadir Khan or to suffer six months imprisonment, for default in payment of the compensation amount. Benefit of section 382-B Cr.P.C. was, however, extended to the appellant.

2. On 14.4.1999 on the report of complainant Musafir Shah PW.7, a 'Murasila' Ex.PA was recorded by Banaras Khan ASI PW.9, which culminated into registration of case FIR No.128 in Police Station, Batagram under section 302/324 PPC. Musafir Shah charged the appellant for causing injuries to Nadir Khan PW.8 and to Dildar Khan by firing at them in the vicinity of courts of Batagram. Dildar Khan subsequently succumbed to the injuries and died.

3. After making report by Musafir Shah, Banaras Khan ASI undertook the investigation of the case. He prepared the injury sheet of Dildar Khan, who was then injured and that of Nadir Khan Ex.PW.9/1 and Ex.PW.9/2 respectively. On the death of Dildar Khan, his inquest report Ex.PW.9/3 was

True Copy

32

prepared and the dead body was sent for post mortem examination. He was informed by Amjad JHC that the appellant was arrested near Batagram village, who went there and arrested the appellant. The personal search of the appellant led to the recovery of one waistler which were and black belt entered into recovery memo Ex.PW.4/1. He prepared the sketch of place of the arrest of the appellant Ex.PW.9/4. The venue of occurrence was inspected wherefrom the I.O. secured one empty of 30 bore pistol P.2 and blood stained earth, vide recovery memo Ex.PW.3/1. The empty and blood stained earth were sealed into parcels. He recorded the statements of witnesses under section 161 Cr.P.C. and the site plan was prepared as Ex.PB. On 15.4.1999 he took into possession one blood stained shirt P.1 belonging to the deceased vide recovery memo Ex.PW.2/1. He also took into possession shirt with corresponding cut marks P.5 belonging to Nadir Khan injured PW. The Chemical Examiner's report regarding blood stained earth and clothes was Ex. PW.3. Further investigation

*Q. Amjad*

*Amjad JHC*

33

was handed over to the SHO.

4. During the course of trial the prosecution examined 11 witnesses in support of its case.

PW.3 Atta-ur-Renman was examined as a marginal witness, in whose presence the blood stained earth and empty of 30 bore giving smell of fresh discharge were taken into possession by the I.O.

Aqil Khan was examined as PW.4 as a marginal witness to the recovery memo Ex.PW.4/1, vide

which the I.O. recovered the black belt and 'Kash' of 30 bore pistol from the accused. PW.5

is Dr.Fazal Qayum, Medical Officer, DHQ hospital,

Batagram, who on 14.4.1999 examined Dildar and

Nadir Khan in injured condition. On examination

of Nadir Khan PW, he found entry wound of fire-arm

in epigastrium about 1/4" x 1/4" and exit wound on

right buttock sizing 1 x 1" with averted margins.

On the same day he examined the dead body of

Dildar Khan deceased and found the following:-

- "1.An entry wound of fire arm on right  
the  
side of/lower chest between 8th and  
space  
9th inter costal/about 1/2" x 1/2" in size.

INTERNAL EXAMINATION:-

In thorax region right pleural cavity

Attested to be True Copy

34

were found injured, right lung was injured blood vessels were found injured. In abdominal region walls were injured, peritonium was injured and was full of blood, stomach was found injured and was found full of semi digested material, small intestine was found injured, large intestine was found injured, liver injured.

OPINION:- In my opinion death of the person is due to fire arm injury, causing injuries to the vital organs like liver, stomach, peritonium, lung, colon and vessels. Injuries to these structures resulted into massive internal haemorrhage. The cause of death of severe haemorrhage, resulted into shock and death. Probable time elapsed between injury and death: About 1/2 hour to one hour. Time between death and P.M: 10 to 15 minutes.



The post mortem report consisting of five pages including pictorial is Ex.PM and is prepared by me and is in my hand writing and bears my signature.

After the post mortem examination I handed over clothing of the deceased duly signed by me to the Police alongwith PM documents. On 16.4.99 Investigating Officer made a query from me regarding the bullet, as there was no exit wound and I answered the query vide my report dated 25.4.99 which is available as Ex.PM and the same is as follows:

"I searched for the bullet in body cavity but did not recover the bullet".

-Attested to be True Copy



5. Amjad Hussain ASI was examined as PW.6, who had arrested the appellant while he was being chased by a mob and gave wireless call to the Police Station which attracted Banaras-khan to the place of arrest and the appellant was handed over to him. He was also a witness and signatory to the recovery memo Ex.PW.4/1. He also deposed that the I.O. picked up blood stained earth and empty of 30 bore pistol from the spot and packed the same into different parcels. He acknowledged the correctness of his signature on the recovery memos. Musafir-Shah complainant was examined as PW.7. He deposed that he is the tenant of Nadir Khan PW. On the day of occurrence he, Nadir Khan and Dildar Khan were in premises of court in connection of a case in the court of Assistant Commissioner, Batagram. After the adjournment of the case, they started towards eastern gate of the court of the SDM, when Nadir Khan was followed by Dildar Khan and him respectively. When they were stepping the stairs, he saw Muhammad Haroon armed with 30 bore pistol, who

*G. S. Mulla*

*C*  
MULLA  
1953

36

started firing at Nadir Khan and Dildar Khan, with which both were hit and fell on the ground. The appellant sped away from the spot, running in a narrow street, duly armed with a pistol. Both the injured were taken to the hospital. He reported the matter to the 'Thanidar'. He admitted the correctness of the 'Murasila' and his thumb impressession thereon. He deposed that Dildar Khan died soon after the occurrence in the hospital. He accompanied the I.O. to the spot, who prepared the site plan at his instance. An empty of 30 bore and blood stained earth were recovered by the I.O. in his presence, which were sealed into parcels. The motive for the occurrence was disclosed by this PW as blood feud between the appellant and the deceased party.

6. Nadir Khan, the injured PW was examined as P.W. 8 who stated that on the day of occurrence he alongwith his nephew Dildar (deceased) and Musafir Shah complainant had gone to the court of SDM Batagram to attend to a case. After its

Attested to be True Copy

37

adjournment they all the three left for their house and when reached the eastern gate of the court premises, he was going ahead followed by Dildar and Musafir Shah consecutively. When they reached the top stair he saw the appellant standing having 30 bore pistol who fired at him and received a bullet injury in his belly. The appellant fired a second shot which hit Dildar-Khan on his chest. Resultantly they fell on the ground and the appellant ran away from the spot. The occurrence was witnessed by Musafir Shah besides him and many other people. The motive for the offence was stated as blood feud between him and the appellant. He remained admitted in the hospital for about twenty days. Banaras Khan ASI was examined as PW.9. He stated that during the days of occurrence he was posted as ASI P.S. Batagram. On receiving information he went to Civil Hospital Batagram where Musafir Shah lodged the report to him. It was reduced into writing as a 'Murasila' and was thumb impressed by the complainant acknowledging its correctness. The 'Murasila' is Ex.PA/1. He started investigating

*G. S. ...*

Attested to be  
True Copy

the case and prepared the injury sheets of Dildar deceased then injured Ex.PW.9/1 and of Nadir Khan as Ex.PW.9/2. Shortly thereafter Dildar succumbed to the injury and he prepared the inquest report Ex.PW.9/3. He was informed by Amjad IHC that he had arrested the accused near Batagram village. He therefore reached there and arrested the accused. He recovered from the possession of the accused one waistler P.4 and black belt P.3. The relevant recovery memo is Ex.PW.4/1. The sketch of the place of arrest of the appellant was prepared as Ex.PW.9/4. During the inspection of venue of occurrence he secured an empty of 30 bore pistol P.2 and blood stained earth vide recovery memo Ex.PW.3/1. The empty was sealed in a parcel. The statements of the marginal witnesses were recorded under section 161 Cr.P.C. The site plan was prepared as Ex.PB. The shirt of the deceased P.1 and was received by him on 15.4.1999/ entered the same into recovery memo Ex.PW.2/1. Statement of Nadir-Khan injured PW was recorded in Ayub Medical Complex and his blood stained shirt P.5 having corresponding cut marks was also taken into possession vide

*[Handwritten signature]*

*[Handwritten signature]*  
2000  
15/4/99

39

recovery memo Ex.PW.9/6. The blood stained earth and clothes were sent to Serologist/ Chemical Examiner whose report was on file as Ex.PW.9/8. Dr.Ouzair is PW.10 who testified his certificate Ex.PW.10/1. Fida Muhammad-khan Inspector was examined as PW.11 who submitted complete challan in the court. The appellant was examined under section 342 Cr.P.C. who denied the allegations and pleaded innocence. He neither recorded his statement on oath nor any defence was produced.

7. The learned counsel appearing for the appellant argued that the medical report is not conformable to the prosecution version as no spent bullet was recovered from the body of Dildar deceased and the doctor stated that the injury could be caused with bullet or pellet. He further stated that the sizes of injuries on the body of Dildar deceased and Nadir Khan injured PW are different therefore the offence does not appear to be the act of one man. He further argued that complainant Musafir Shah was third in the line and at the time of the firing

Attested to be True Copy

40

He being on the ground and not on the step of the stair was not in a position to see the assailant/s being on a higher level which renders his testimony unworthy of credence. He further argued that the empty recovered from the place of occurrence was not sent to FSL for its examination. He next argued that the manner of the arrest of the accused as per story of the prosecution is not believable as Amjad IHC who statedly arrested the accused neither produced the FIR of the case nor warrant of arrest for the execution of which he claimed himself to be present in the area. On this point he further argued that no body from the mob statedly chasing the appellant was examined. Elaborating his view point on the arrest of the appellant he urged that the appellant was shown arrested at the distance of 3/4 furlongs from the place of occurrence which does not appear to be possible as the accused could not <sup>be</sup> expected to run for such a distance after commission of the offence. He further argued that the pistol was not recovered from the appellant and there is no explanation from prosecution side as to where and

*Handwritten signature*

Attested to be True Copy

41

when the pistol was thrown by the appellant. He also argued that the complainant side had a number of enmities in the area and it was possible that the offence was committed by any other enemy of the complainant party. As a last resort the learned counsel for the appellant submitted that at least the defence has succeeded in creating inconsistencies in the evidence of the eye-witnesses which though not fatal in character but can be considered as extenuating circumstance for the lesser punishment of life imprisonment and relied on the judgment of the august Supreme Court captioned as Falak Sher..Vs..The State reported as NLR 2000 Criminal 138. He also relied on 1993 SCMR 1660 and 1980 SCMR 859.

*Q. S. M. M. M.*

8. On the other side the learned counsel engaged by the injured PW Nadir Khan and the learned counsel for the State have defended the impugned conviction and sentence of the appellant by arguing that this is a broad-day-light occurrence. The FIR was lodged with reasonable promptitude and the ocular account by Musafir-Shah complainant and injured PW Nadir Khan having

Attended to be  
T. S. M. M. M.

92

gone un-shattered by the prosecution and is supported by the medical evidence, recovery of blood stained earth, the empty of 30 bore and the which motive for the occurrence inspire confidence has validly been made as basis for conviction of the appellant by the trial court.

9. We have heard the arguments of the learned counsel for the parties and have extensively gone through the record. With regard to the first argument of the learned counsel we observe that there is no discordance between the medical report and the version of the prosecution. According to the eye-witnesses the appellant fired with a pistol of 30 bore. The doctor has not excluded the injury caused with the bullet. He has simply stated that the injury could be caused with the bullet or pellet which is merely an opinion and has not the effect of out-weighting the testimony of the eye-witnesses who are found truthful and trust worthy. We have thoroughly examined the testimony of Musafir Shah complainant and the injured eye-witness Nadir Khan in the light of the arguments of the learned counsel for the appellant.

Attested to be True Copy



43

They successfully stood the test of cross-examination as their testimony could not be shattered through a searching cross-examination. They remained consistent on all the material aspects of the case. PW Nadir Khan received injury in the incident which establishes his presence on the spot and nothing could be highlighted to show that this PW had not spoken the truth. Similarly the quick lodging of the FIR by PW Musafir Shah also eloquently speaks about his presence with the deceased and the injured PW at the time of occurrence. We have no reason to dis-believe the testimony of either of the two. The size of injuries depends upon the location of body i.e. softness or hardness of tissues. The different sizes of wounds would not speak, invariably, about the variety of weapons. The second argument of the learned counsel that Musafir Shah complainant being on the ground level was not in a position to see the assailant/s has also not impressed us as there are only two steps near the exit gate where the occurrence has taken place and the complainant was so close to the deceased and the injured P.W. that his view could not be obstructed for the purpose of identifying the culprits. He was second to Nadir Khan P.W. who had received the injury at the

Attorney to Be  
 [Illegible text]

44

hand of the appellant. The third argument of the learned counsel that the empty was not sent to the Forensic Science Laboratory for examination is insignificant as the crime weapon was not recovered. Moreover the charge is against one man only. Therefore, the non-sending of the empty to the Laboratory would not be of any help to the appellant. On the point of arrest we may observe that the non-production of the FIR or the warrant by Amjad Hussain, is wholly immaterial and the arresting official would not make any difference. The presence of Amjad Hussain PW.6 for the purpose of arrest of the appellant cannot be doubted on such consideration. Nothing has been brought on the record to establish that the presence of PW.6 on the spot was impossible. We also feel that the non-examination of any witness from the chasing mob about the arrest of the appellant is inconsequential. Nothing could be brought on the record to establish that the accused was arrested from some other place or that he had appeared before the police voluntarily. The next argument of the learned counsel was that the crime pistol was not recovered from the possession of the

*Q. SULTAN*

Attorney to be True Copy

45

appellant and the prosecution has not given any explanation about the said pistol. The appellant after commission of the offence started running from the place of occurrence who covered about 3/4 furlongs distance and it is just possible that during such run he had the opportunity of throwing away the pistol having gone un-noticed by any of the chasers. This feature of the case cannot produce any fatal effect upon the case of the prosecution. We also cannot receive with any favour the argument of the learned counsel for the appellant that the offence might be committed by some other enemy of the complainant party as they had numerous enmities in the area. This is a day-light occurrence and no reasons are forthcoming to believe that the appellant was substituted for the real culprits as substitution, in our country, is a rare phenomena.



10. Since we have expressed our belief in the truthfulness and trust-worthiness of the ocular account furnished by PW Musafir Shah and the injured PW Nadir Khan having been supported by circumstantial



Attested to be  
True Copy

46

evidence such as recovery of empty, blood stained earth from the venue of occurrence and also by the medical report supported by a very strong motive of blood feud between the appellant and the complainant party, therefore, we uphold the conviction of the appellant recorded by the learned trial court.

On the quantum of punishment we feel persuaded by the submission of the learned counsel for the appellant. We conceive that in the instant case when the appellant and the deceased or for that matter Nadir Khan PW being involved in bloody strife when confronted with each other, the possibility of exchange of some harsh words could not be excluded which feature of the case appears to have been concealed by the prosecution. As per site plan the appellant and the victims were within a talking distance. Thus keeping the overall circumstances of the case and the judgment of the august Supreme Court referred above, we feel that the punishment of life imprisonment would be sufficient to serve the purpose of justice. Consequently we alter the death punishment of the appellant into life imprisonment. The amount of compensation of Rs.1,00,000/- payable

Attested to be True Copy

47

to the legal heirs of the deceased in terms of section 544-A Cr.P.C. and the rest of the conviction and sentences of the appellant shall remain in tact. The Murder Reference sent by the learned trial court under section 374 Cr.P.C. is answered in the negative. Benefit of section 382-B is extended to the appellant.

Announced on  
19 / 2 / 2003.

~~Handwritten signature~~  
~~Handwritten signature~~

JUDGE

*Handwritten signature*  
19/2

\*M.GUL\*

Office  
20/2/

*Handwritten mark*

Attested to be  
True *py*

48

ANN & E

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE TASSADUQ HUSSAIN JILLANI  
MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE EJAZ AFZAL KHAN

**CRIMINAL APPEAL NOS. 532 & 533 OF 2006**

(On appeal from the judgment 19.2.2003 passed by  
Peshawar High Court, Circuit Bench, Abbottabad in  
Cr.A. 47/2001)

- |    |                 |                   |
|----|-----------------|-------------------|
| 1. | Nadir Khan      | (In Cr.A. 532/06) |
| 2. | Muhammad Haroon | (In Cr.A. 533/06) |
|    |                 | ... Appellants    |

**VERSUS**

- |    |                             |                   |
|----|-----------------------------|-------------------|
| 1. | Muhammad Haroon and others. | (In Cr.A. 532/06) |
| 2. | The State                   | (In Cr.A. 533/06) |
|    |                             | ... Respondents   |

For the Appellants: Mr. Tahir Hussain Lughmani, ASC  
(In Cr.A. 532/2006)

For the Appellants: Mr. Saeed Akhtar Khan, Sr. ASC  
(In Cr.A. 533/2006)

For the Respondents: Mr. Saeed Akhtar Khan, Sr. ASC  
(In Cr.A. 532/2006)

For the State: Mr. M. Aslam Ghumman, ASC  
For AG KPK.

Date of Hearing: 07.12.2011

**ORDER**

**TASSADUQ HUSSAIN JILLANI, J.**- This judgment shall dispose of Criminal Appeal No. 533/2006 filed by Muhammad Haroon convict and Criminal Appeal No. 532/2006 filed by Nadir Khan complainant as they are directed against the same judgment dated 19.2.2003 passed by a learned Division Bench of the Peshawar High Court vide which the appeal of the convict Muhammad Haroon was

ATTESTED

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

Attested to be  
True Copy

48

partly allowed and while maintaining his conviction under Section 302(b) PPC for the murder of Dildar Khan and for causing injuries to Nadir Khan PW his sentence of death was converted into life imprisonment. The other sentences and quantum of compensation and the sentences in default whereof were however maintained (i.e. conviction under Section 324 PPC for an attempt to commit Qatl-e-Amd for 10 years and a fine of Rs. 20,000/- in default whereof to undergo one year further imprisonment; under Section 337-D PPC for seven years with 'Arsh' amounting to Rs. 100,000/- and also a fine of Rs. 50,000/- as compensation under Section 544-A Cr.P.C to Nadir Khan or to suffer six months imprisonment for default in payment of the compensation amount).

2. Learned counsel for the appellant / complainant in Cr.A. 532/2006 submitted that the respondent - convict Muhammad Haroon had caused the murder in a broad daylight and that too in the premises of the District Courts where Dildar deceased had come for court hearing; that there was a blood feud between the parties; that the respondent had come with criminal intent to cause the murder; that he repeated the shots and no case for lesser sentence was made out. He further contended that the finding of the learned High Court that some altercation may have preceded the occurrence is rather conjectural and is not supported by anything on record.

ATTESTED

Supplement  
Supreme Court of Pakistan  
ISLAMABAD

Attested to be  
True Copy

(50)

3. Learned counsel for the respondent - convict Muhammad Haroon submitted that so far as the alteration of sentence from death to life is concerned, the same does not call for interference because there is nothing in evidence to indicate that he had come with a plan to cause the death of Dildar; that he did not repeat the fire; that there is only single injury on the person of the deceased and that the respondent has already served out the altered sentence of life imprisonment; that he is about to be released and is being detained only because his sentence of 10 years awarded under Section 324 PPC and 7 years under Section 337-D PPC which were to run consecutively has yet to be served out. Assailing the direction that the sentences should run consecutively, learned counsel contended that the two courts below have not correctly appreciated the import of Section 35 Cr.P.C and the law laid down by this Court in Shah Hussain Vs. State (PLD 2009 SC 460) as also previous judgment reported at Javed Shaikh Vs. State (1985 SCMR 153).

4. Learned counsel for the State adopted the arguments of learned counsel for the appellant in Cr.A. 532/2006 and submitted that the learned High Court fell in error in holding that there was possibility of some altercation having taken place prior to the occurrence and therefore, the judgment to the said extent merits interference. Even on question of the running of sentences, learned counsel

ATTESTED

Superintendent  
Supreme Court of Pakistan  
ISLAMABADAttested to be  
True Copy



(51)

supported the concurrent findings of the courts below that the sentences awarded should run consecutively.

5. Having heard learned counsel for the parties as also for the State and having gone through the impugned judgment, we find that while altering the sentence of respondent Muhammad Haroon from death to life, the learned Division Bench was persuaded by the fact that the parties had a history of blood feud and when on the date of hearing of a case, they ran into each other, some altercation / exchange of harsh words may have preceded the occurrence and therefore, it was a mitigating circumstance calling for a lesser sentence. The Court found as follows: -

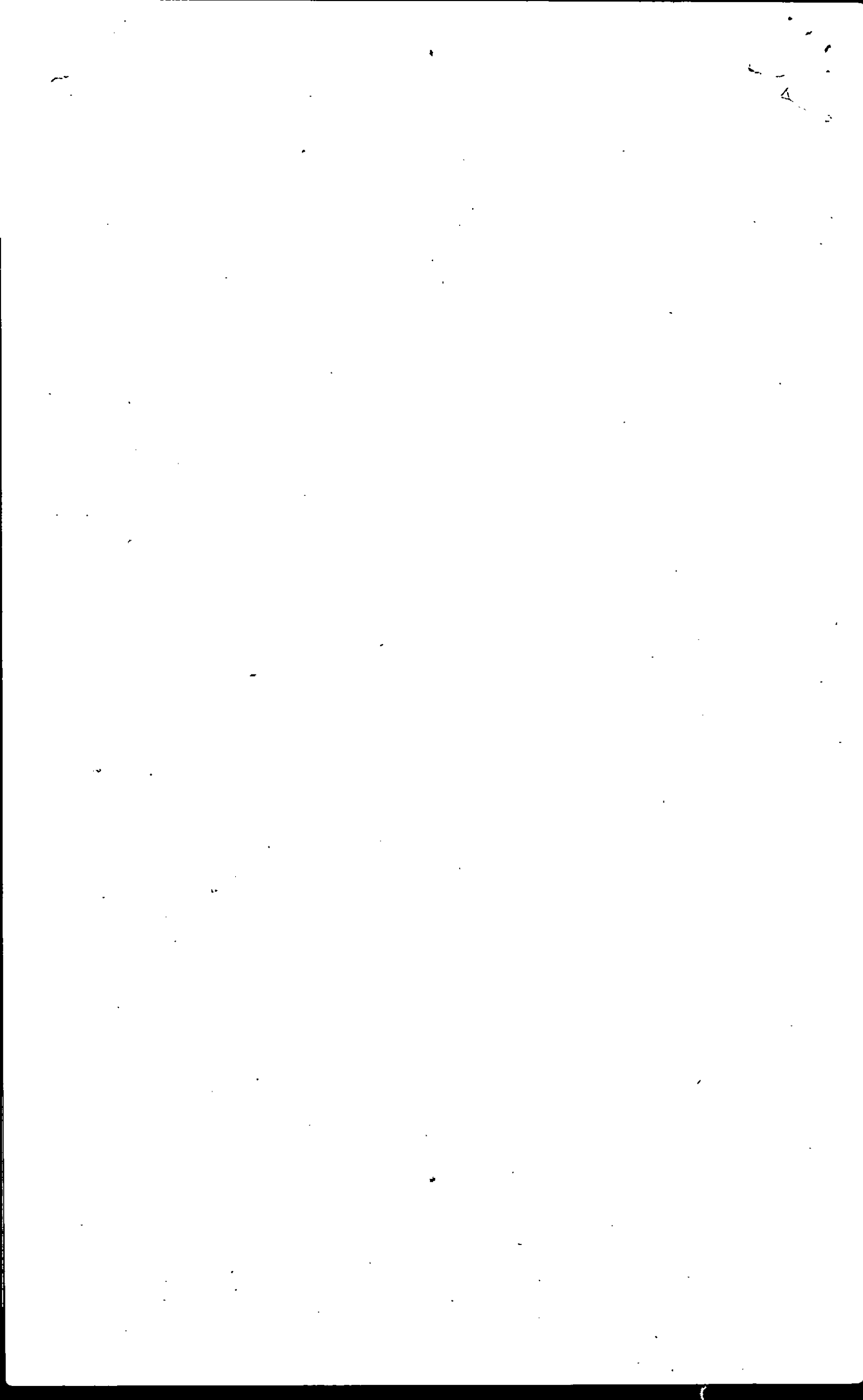
*"On the quantum of punishment we feel persuaded by the submission of the learned counsel for the appellant. We conceive that in the instant case when the appellant and the deceased or for that matter Nadir Khan PW being involved in bloody strife when confronted with each other, the possibility of exchange of some harsh words could not be excluded which feature of the case appears to have been concealed by the prosecution. As per site plan the appellant and the victims were within a talking distance. Thus keeping the overall circumstances of the case and the judgment of the august Supreme Court referred above, we feel that the punishment of life imprisonment would be sufficient to serve the purpose of justice."*

6. We confronted learned counsel for the appellant Nadir Khan / complainant as to whether there was any direct enmity between respondent - convict Muhammad Haroon and

ATTESTED

Supplemental  
Supreme Court of Pakistan  
KARACHI

Attested to be  
True Copy



(52)

deceased Dildar and whether is there any evidence of some immediate cause / motive for the occurrence and reply was in the negative. In the afore-referred circumstances, the finding of the learned High Court that there was possibility of exchange of harsh words preceding the occurrence is neither arbitrary nor conjectural particularly when the entire evidence and the background of blood feuds are kept in view. Even otherwise, Section 302(b) PPC provides for two legal sentences i.e. either death or life; both are tenable and it is for the Court seized of a case to exercise the discretion judicially in awarding either of the two sentences. The exercise of discretion in this regard by the learned High Court is reasoned and is not against the law declared by this Court. This brings us to the other issue raised by learned counsel for the respondent - convict Muhammad Haroon i.e. that the learned Trial Court could not have directed the sentences to run consecutively as in the said event, the sentences would go beyond the maximum term of punishment provided in terms of Section 35 proviso 'a' Cr.P.C. The said provision reads as follows: -

*"35. Sentence in cases of conviction of several offences at one trial. (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Pakistan Penal code sentence him, for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments, when consisting of imprisonment to commence the one after the*

ATTESTED/

Supreme Court  
Islamabad

Attested to be  
True Copy

53

expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:

(a) Maximum term of punishment. In no case shall such person be sentenced to imprisonment for a longer period than twenty five years;

(b) if the case is tried by a Magistrate the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of conviction for several offences at one trial shall be deemed to be a single sentence."

7. A bare perusal of proviso 'a' referred to above would show that the learned Trial Court could not have awarded the consecutive sentences which had the effect of making the total period of sentences more than 25 years. This is in line with the law laid down by this Court in two judgments to which reference has been made by respondent - convict's learned counsel.

8. For what has been discussed above, Criminal Appeal No. 532/2006 filed by the complainant Nadir Khan for enhancement of sentence of Muhammad Haroon is dismissed

ATTESTED

Secretary  
Supreme Court of Pakistan  
ISLAMABAD

Attested to be  
True Copy

54

and Criminal Appeal No. 533/2006 filed by Muhammad

Haroon - convict is partly allowed i.e. it is directed that the

sentences awarded under Sections 302(b), 324 & 337-D PPC

shall run concurrently and the remaining sentences shall

remain intact.

Sd/- Tasaddiq Hussain Gilani, J

Sd/- Mian Saqib Arisad, J

Sd/- Ajaz Azal Khan, J

Certified to be true Copy

*[Signature]*  
Superintendent,  
Supreme Court of Pakistan  
ISLAMABAD

Islamabad, the

07th December, 2011.

Not Approved For Reporting

**Khuram**

10.12.11



Attested to be  
True Copy

*[Signature]*

To

The District Coordination Officer,  
District Manshara.

**Subject:** Departmental appeal for reinstatement for the purpose of retirement and Pensionary benefits etc.

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That appellant was appointed as Drawing Master on 13.12.1978 and performed his duty regularly and continuously to the entire satisfaction of his superiors and thus has at his credit long drawn meritorious service. He was lastly serving at GMS Bartoni, Manshara. (Copy of Service Book *Annex:-A*)
2. That in the year 1999, appellant was falsely implicated in a murder case vide F.I.R. No.128 dated 14.04.1999 due to family animosity of relatives and was thus arrested in pursuance of the F.I.R. (*Annex:-B*).
3. That after the arrest of the appellant he was suspended w.e.f. 26.06.1999 vide order of the even date, which suspension was continued/extended vide orders dated 05.06.2000, 13.09.2000, 07.12.2000 and 05.06.2001 but thereafter, the suspension was not extended vide entries at Page 13 & 15 of the Service Book *ibid*.
4. That subsequently appellant was challaned to the Court of Session Judge, Battagram and after conclusion of the trial he was convicted in sentence to death vide Judgment dated 23.06.2001 (*Annex:-C*). Being aggrieved of the Judgment, appellant filed Criminal Appeal before the Peshawar High Court, Abbottabad Bench, which was partially allowed vide Judgment dated 19.02.2003 (*Annex:-D*) and the death sentence was converted into life imprisonment. Being further aggrieved, appellant yet preferred another appeal before the Supreme Court of Pakistan, which was also partially allowed and the Sentence was further reduced vide Judgment dated 07.12.2011 (*Annex:-E*). In pursuance of the Judgment of the Hon'ble Apex Court, the appellant was later on released from captivity after serving the sentence.
5. That the date of birth of the appellant is 01.01.1952 and therefore his date of retirement falls on 01.01.2012, therefore, appellant prefers this departmental appeal before your good self for reinstatement and consequent retirement and pensionary benefits etc. on the following amongst other grounds:-

Attested to be  
the copy

Q

155

Annex F

Grounds:-

56

- A. That appellant was innocent and was falsely implicated in the case due to enmity of his close relatives with the deceased party and was convicted on the basis of false evidence adduced by the opposite side. When appellant preferred appeal before the Apex Court, during the pendency of the appeal, almost the sentence of life imprisonment was served out and perhaps due to that reason, the Hon'ble Apex Court refrained from delving deep into the merits of the case.
- B. That be that as it may, the offence which the accused was charged with, was not one of moral turpitude and therefore, the same was not falling within the definition of misconduct as per Rule-2(1)(1)(vii) of the Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore, appellant is entitled for reinstatement and retirement benefits.
- C. That till date, appellant has not been terminated from his service, therefore, on the date of retirement i.e. on attaining the age of superannuation, appellant was civil servant and therefore, he is entitled for retirement benefits under the rules.
- D. That initially appellant was suspended from service and the period of suspension was extended for sometime but the same was not further extended and as per Rule-6 of the Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, if the period of suspension is not extended within 30 days of the expiry of initial period of suspension, then the Govt. servant stands reinstated and as per Civil Service Regulations 420(c) A suspension followed by reinstatement does not entail forfeiture of past service.
- E. That similarly under Civil Service Regulations 417-A, if an officer who has been suspended during enquiry into his conduct, attains the age of superannuation before the completion of the enquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated the period spent on duty. Similar references can be made to Civil Service Regulations 416 & 417. A person is also deemed suspended when he is arrested in pursuance of a criminal offence.
- F. That appellant has served the Govt. for about 22 years regularly and continuously with meritorious service record and is entitled for the Pensionary benefits under the rules and keeping in view the peculiar facts and circumstances of the case, appellant is entitled for pensionary benefits in the interest of justice and fair-play.

It is, therefore, humbly requested that, on acceptance of this departmental appeal, appellant may graciously be reinstated into service and

Attested to be  
True Copy

J

57

consequently be allowed retirement on attaining the age of superannuation and the consequent pensionary benefits etc. or any other relief/benefit to which he is entitled may also be allowed to him.

Yours faithfully

*Muhammad Haroon Khan*

Muhammad Haroon Khan  
S/o Muhammad Farid Khan  
R/o Village Gidarai,  
Tehsil and District Battagram,  
Ex-Drawing Master,  
GMS Bartoni, Mansehra

Dated: 12/11/2012

9

Attested to be  
True Copy



58

\*

**DISTRICT GOVERNMENT MANSEHRA**  
**OFFICE OF THE DISTRICT COORDINATION OFFICER**

NO.A-I/\_\_\_\_\_/AE  
Dated 31/12/2012

To

The Executive District Officer,  
(E & SE) Manshira.

Subject: **Departmental appeal for reinstatement for the purpose of retirement and pensionary benefits etc.**

I am directed to enclose herewith self contained an application dated 12.11.2012 (in original) submitted by Mr.Muhammad Haroon Khan S/O Muhammad Farid Khan R/O Village Gidarai, Tehsil & District Battagram (Ex-Drawing Master, GMS Bartoni) along with its enclosures, for disposal under the rules at your end please.

Encl (4)

No. 28338 /AE.

Human Resource Dev: Officer,  
Manshra

Copy to Mr.Muhammad Haroon Khan S/O Muhammad Farid Khan R/O Village Gidarai, Tehsil & District Battagram for information with reference to his appeal dated 12.11.2012.

Human Resource Dev: Officer,  
Manshra

Attested to be  
True Copy

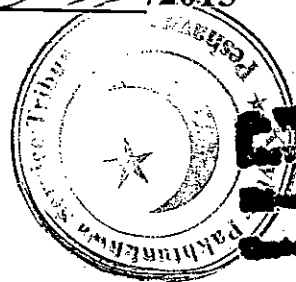
59

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 353 /2013

ANNEX 9

Muhammad Haroon Khan  
S/o Muhammad Farid Khan  
R/o Village Gidarai,  
Tehsil and District Battagram.  
Ex-Drawing Master,  
GMS Bartoni, Mansehra.....Appellant.



381  
04-2-13

Versus

DM

Vide order  
sheet dated  
28-10-2014.  
The right of  
written reply of  
respondents is  
forfeited.

1. The Govt. of Khyber Pakhtunkhwa through Secretary, Elementary and Secondary Education, Civil Secretariat, Peshawar.
2. The Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Coordination Officer now Deputy Commissioner, Mansehra.....Respondents
4. DISTRICT Education Officer Mansehra.

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR REINSTATEMENT OF THE APPELLANT INTO SERVICE AND FOR ALLOWING HIM THE CONSEQUENT RETIREMENT AND PENSIONARY BENEFITS ETC. ON ATTAINING THE AGE OF SUPERANNUATION FOR WHICH APPELLANT FILED DEPARTMENTAL APPEAL BEFORE THE APPELLATE AUTHORITY BUT THE SAME HAS NOT YET BEEN DECIDED.

As submitted to the  
and filed.

9/2/13

PRAYER:

On acceptance of the instant appeal, the appellant may graciously be reinstated into service and be

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.



SERVICE APPEAL NO. 353/2013

Date of institution ... 05.01.2015  
Date of judgment ... 25.05.2016

Muhammad Haroon Khan  
S/o Muhammad Farid Khan  
R/o Village Gidarai, Tehsil and District Battagram.  
Ex-Drawing Master, GMS Bartoni, Mansehra.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. The District Coordination Officer now Deputy Commissioner, Mansehra.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR REINSTATEMENT OF THE APPELLANT INTO SERVICE AND FOR ALLOWING HIM THE CONSEQUENT RETIREMENT AND PENSIONARY BENEFITS ETC ON ATTAINING THE AGE OF SUPERANNUATION FOR WHICH APPELLANT FILED DEPARTMENTAL APPEAL BEFORE THE APPELLATE AUTHORITY BUT THE SAME HAS NOT YET BEEN DECIDED.

Mr. Khaled Rahman, Advocate.  
Mr. Usman Ghani, Senior Government Pleader.

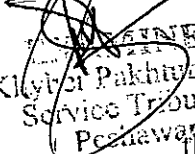
.. For appellant.  
.. For respondents.

MR. ABDUL LATIF  
MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)  
.. MEMBER (JUDICIAL)

**ATTESTED**

JUDGMENT

  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeal are that

the appellant was appointed as Drawing Master on 13.12.1978. That in the year 1999, appellant was falsely implicated in a murder case vide FIR No. 128 dated 14.04.1999 due to family animosity of relatives and was thus arrested in pursuance of the FIR. That after

the arrest of the appellant he was suspended w.e.f. 26.06.1999 vide order of the even date, which suspension was continued/extended vide orders dated 05.06.2000, 13.09.2000, 07.12.2000 and 05.06.2001 abut thereafter, the suspension was not extended vide entries at page 13 & 15 of the Service Book ibid. That subsequently appellant was challan to the Court of Session Judge, Battagram and after conclusion of the trial he was convicted and sentenced to death vide judgment dated 23.06.2001. Being aggrieved of the judgment, appellant filed Criminal Appeal before the Peshawar High Court, Abbottabad Bench, which was partially allowed vide judgment dated 19.02.2003 and the death sentence was converted into life imprisonment. Being further aggrieved, appellant yet preferred another appeal before the Supreme Court of Pakistan, which was also partially allowed and the sentence was further reduced vide judgment dated 07.12.2001. In pursuance of the judgment of the Hon'ble Apex Court, the appellant was later on released from captivity after serving the sentence. That the date of birth of the appellant is 01.01.1952 and therefore his date of retirement falls on 01.01.2012, on which date the appellant was behind the bars. That after the release, appellant preferred department appeal before the appellate authority for reinstatement and consequent retirement and pensionary benefits etc. but the same has not yet been decided, hence this appeal with a prayer that on acceptance of the instant appeal, the appellant may graciously be reinstated into service and be consequently allowed retirement on attaining the age of superannuation and the consequent pensionary benefits etc for the service appellant rendered.

2. The learned counsel for the appellant argued that respondents had not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article-4 of the Constitution of Islamic Republic of Pakistan. He further argued that appellant had at his credit 22 years regular, continuous and meritorious service record and was entitled for pensionary benefits under the rules keeping in view the peculiar facts and circumstances of the case. He further argued that appellant was first suspended from service which was not extended hence as per rule-6 of the E & D Rules 2011 stand reinstated in service. He further argued that the appellant had not been terminated from his service therefore on the date of retirement on attaining the age of superannuation, the

ATTESTED

ATTESTED  
 PESHAWAR  
 SERVICE TRIBUNAL  
 PESHAWAR

appellant was a civil servant and stood entitled for retirement benefits under the rules adding further that the offence which the appellant was charged with was not one of moral turpitude and therefore the same did not fall within the definition of misconduct as per rule-2 (1) (vii) of the E & D Rules 2011 therefore was entitled for reinstatement and retirement benefits. He prayed that on acceptance of the instant appeal the appellant may be reinstated in service and may consequently be allowed retirement on attaining the age of superannuation and to consequent pensionary benefits for the services he rendered.

3. The learned Senior Government Pleader resisted the appeal and argued that the appellant had been convicted by the competent court of law which was modified by the Hon'ble High Court to that of life imprisonment. He further argued that the appeal before august Supreme Court of Pakistan also met with the same fate and the conviction remained intact. The learned Senior Government Pleader contended that the departmental appeal before the appellate authority was barred by time hence the appeal before the Service Tribunal is automatically time barred particularly when there is no application for condonation of delay. The learned Senior Government Pleader further contended that the appellant reached to the age of superannuation on 01.01.2012 the date on which the appellant was behind the bar and instituted the instant service appeal after his superannuation. The learned Senior Government Pleader requested that the appeal may be dismissed as all codal formalities have been fulfilled and the impugned order is commensurate with the gravity of misconduct committed by the appellant.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that the appellant was appointed as Drawing Master in 1978 and was criminally proceeded in case FIR No. 128 dated 14.04.1999 which culminated into death sentence and on appeal there-against the same was converted into life imprisonment by the Peshawar High Court. The said sentence was reduced by the Supreme Court of Pakistan vide judgment dated 07.12.2011. The appellant while undergoing imprisonment superannuated on 01.01.2012 and thereafter released from jail after serving the imprisonment. He approached the departmental authority for reinstatement and consequent retirement and pensionary benefits which were not decided hence his resort to

ATTESTED

KHAYAT KHAN  
 Senior Examiner  
 Service Tribunal,  
 Peshawar

the Tribunal. From perusal of the record the Tribunal is of the view that the appellant was criminally proceeded for his involvement in a murder case for which he was punished by the competent courts of law. In so far as conduct of departmental proceedings are concerned, he was initially suspended from service which was not further pursued by the departmental authority as the record is silent in this regard. The claim of the appellant to have got retired as a civil servant and his claim for formal retirement on superannuation and payment of pensionary benefits requires to be looked into by the departmental authority in light of relevant law/rules. In the circumstances, we deem it appropriate to remit the case to the respondent-department with direction to examine the pending departmental appeal of the appellant on its merits strictly in accordance with law and rules and decide the same within a period of 60 days after the receipt of this judgment. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
25.05.2016

*Sd/- Abdul Latif, Member*

*Sd/- Pir Bakhtish Shah, Member*

Certified to be true copy  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

Date of Presentation of Application 16-11-2016  
 Number of Words 2000  
 Copying Fee 12  
 Urgent 2  
 Total 14  
 Name of Copyist [Signature]  
 Date of Completion of Copy 16-11-2016  
 Date of Delivery of Copy 16-11-2016

DIRECTORATE OF E&SE DEPARTMENT KHYBER PAKHTUNKHWA, PESHAWAR.

64

NOTIFICATION

ANNEX H

- 1 WHEREAS, the appellant namely-Muhammad Haroon Khan-Ex-DM GMS Bartoni District Mansehra was appointed against the DM post on 13/12/1978 & was charged in a criminal case vide FIR No: 128 dated 14/4/1999, due to the family animosity & was arrested by the local Police in the said case.
- 2 AND WHEREAS, consequent upon the registration of the above mentioned FIR, the appellant was suspended from service against the said post vide suspension order dated 26/6/1999 by the competent authority, which was extended in accordance with relevant provision of law by the Respondent Department.
- 3 And Whereas, the appellant was awarded death Sentence vide judgment dated 23/6/2001 by the Learned Session Judge, Batgram in the noted FIR, where against the appellant while aggrieved from the said conviction, has preferred a criminal appeal before the Honorable Peshawar High Court, Peshawar Abbott Abad Bench. Which was partially allowed vide judgment dated 19/2/2003 & his death Sentence was converted in to life imprisonment.
- 4 And Whereas, aggrieved from the judgment dated 19/2/2003, the appellant preferred & other appeal before the August Supreme Court of Pakistan decided vide judgment 07/12/2011 vide which his life imprisonment was further reduced and was released from Jail after serving the Sentence.
- 5 And Whereas, the appellant has filed a Departmental Appeal dated 12/11/2012 to the appellate authority for the re-instatement in service against the DM post which was not decided within the prescribed period. Hence the instant Service Appeal No: 353/2013 tiled Muhammad Haroon VS Govt: decided on 25/5/2016 by the Honorable Service Tribunal with the directions to decide the pending Departmental Appeal of the appellant, hence this Notification.

NOW, therefore, in compliance of the Judgment dated 25/5/2016, passed by the Honorable Khyber Pakhtunkhwa, Service Tribunal, Peshawar and in Exercise of the Powers conferred upon the undersigned of being an appellate authority under U/S-21 of General Clauses Act 1897, the Departmental Appeal of the appellant dated 12/11/2012 is hereby rejected on the grounds that the appellant has been convicted in the said FIR by the Courts of competent jurisdictions & the appellant is not entitled for the re-instatement in service against the DM post in the Respondent Department in view of the above made provisions of law, rules & policy.

5883-89

Director  
(E&SE) Department Khyber  
Pakhtunkhwa, Peshawar.

Endst: No: /AD(Lit: II)M Haroon Ex-DM/Mansehra

Dated Peshawar the 14-10/2016

Copy forwarded for information & n/action to the:-

- 1 Registrar Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
- 2 Addl Advocate General KPK Service Tribunal, Peshawar.
- 3 Section Officer (Lit: II) E&SE Department, KPK Peshawar.
- 4 District Education Officer (M) Mansehra.
- 5 Muhammad Haroon S/O Fareed Khan r/o-Village Gidarai, District Batgram.
- 6 PA to Director local office.

Attested to be  
True Copy  
Director (E&SE)  
KPK Peshawar.

Deputy Director (Establishment)  
(E&SE) Department, Khyber  
Pakhtunkhwa, Peshawar.

WAKALAT NAMA

IN THE COURT OF

K-Pk - Bench Tribunal

Muhammad Haroon

Appellant(s)/Petitioner(s)

Govtel

VERSUS

Respondent(s)

I/We \_\_\_\_\_ do hereby appoint  
**Mr. Khaled Rehman, Advocate** Supreme Court of Pakistan in the above  
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by

Khaled Rehman,  
Advocate,  
Supreme Court of Pakistan

3-D, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458

9  
Muhammad Amir Ayub  
Advocate, Pk

Muhammad Haroon  
Signature of Executants



**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No: 1165/2016**

**Muhammad Haroon Khan Ex-DM GMS Bartoni District Mansehra. ....Appellant.**

**VERSUS**

**Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar & others. ....Respondents**

**JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-3.**

**Respectfully Sheweth :-**

The Respondents submit as under:-

**PRELIMINARY OBJECTIONS.**

- 1 That the Appellant has got no cause of action /locus standi .
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal.
- 4 That the instant Service Appeal is based on mala fide intentions.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief, he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on mala fide intentions just to put extra pressure on the Respondents.
- 9 That the Appeal is not maintainable in its present form.
- 10 That the Appeal is bad for mis-joinder & non joinder of the necessary parties.
- 11 That the instant Service Appeal is barred by law.
- 12 That the Appellant is not competent to file the instant appeal against the Respondents.
- 13 That the Appellant is estopped by his own conduct to file the instant Appeal.
- 14 That the impugned Notification dated 14/10/2016 is legally competent & is liable to be maintained in favour of the Respondent Department.

**ON FACTS**

- 1 That Para-1 needs no comments being pertains to the service record of the appellant against the Ex-DM Post.

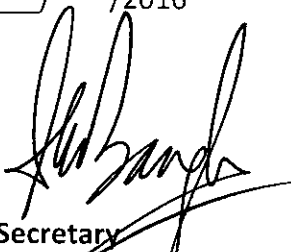
- .87
- 2 That Para-2 is correct to the extent that the appellant was implicated in a murder case vide FIR No; 128 dated 14/4/1999 registered U/S 302/324 PPC at police Station Batgram wherein, the appellant has been convicted to Death sentences vide judgment dated 23/ 6/ 2001 by the then District & Session Judge Batgram (Copies of the said FIR & judgment dated 23/6/2001 are already attached with the judicial file).
  - 3 That Para-3, is correct to the extent that in view of aforesaid criminal FIR No: 128 dated 14/4/1999, the appellant was suspended from service from the date of the said FIR by the Respondent Department. Which was Renewed from time to time in view of the relevant provisions of law by the Respondent Department. However, with regard to the no entry of his suspension in his Service Book, it is submitted that the said Service Book was in custody of the appellant till the conviction of the appellant. Hence the plea of the appellant is not sustainable in the eyes of law.
  - 4 That Para-4 correct to the extent that the appellant was convicted to Death Sentence vide judgment dated 23/6/2001 by the District & Session Judge Batgram alongwith a fine as mentioned in the concluding Para of the said judgment. The sentence of the appellant was converted to life imprisonment by the August Peshawar High Court Bench vide his judgment dated 19/2/2003 Passed by the August Peshawar High Court, Peshawar Abbot Abad Bench, which was further reduced by the August Supreme Court of Pakistan vide judgment dated 07/12/2011 by maintaining his conviction. Hence, he has served the sentence in the said FIR.
  - 5 That Para-5 is incorrect that as per entry in the Service Book of the appellant, his date of birth has been written as 03/8/1951 instead of 11/01/1952. Hence the plea of the appellant is misleading. However, it is further submitted the appellant was behind Bars in view of the said FIR & judgments. Therefore, the Respondent Department under the relevant provision of law has been pleased to remove him from service in view of the concurrent judgments of the superior courts of law.
  - 6 That Para-6 is correct that the Departmental Appeal of the appellant in view of the judgment dated 25/5/2016, passed by this Honorable Tribunal rendered in Service Appeal No: 353/2013 has been rejected by the Appellate Authority vide the impugned Notification dated 14/10/2016 on the grounds of his conviction in the above said FIR by the competent authority which is not only legally competent but is liable to be maintained in the interest of justice. Hence the plea of the appellant is liable to be dismissed on the following grounds inter alia :-


#### ON GRONDS.

- A Incorrect not admitted. The act of the Respondent Department is within, legal sphere having no question of violation of the mandatory provisions of Article-4 of 1973 constitution of Islamic Republic of Pakistan. Hence, the impugned Notification dated 14/ 10/2016 of the Respondent is legally competent & is liable to be maintained in favour of the Respondents in the interest of justice.
- B Incorrect & not admitted. The appellant has been convicted by the August Supreme Court of Pakistan in murder case in view of the concurrent judgment of both the High Court & Trial Court after appreciating all the materials available on record. Hence, the plea of the appellant regarding his false implication in the said FIR is not only baseless but is also liable to be dismissed in favour of the Respondent Department (Copy of the impugned Notification is Annexure-A).
- C Incorrect & not admitted. The crime of the appellant falls within the ambit of heinous crime & even is a crime against the society. Therefore, the appellant has rightly been convicted by the superior Courts of Law in the said FIR. Therefore, his dismissal/ removal from service in view of the concurrent judgments is an evident proof regarding his direct involvement & connection in the said case/ crime.

- D Incorrect & misleading. The appellant was convicted by the Trial Court & that the conviction was upheld up to Supreme Court of Pakistan with the partial modification. Hence, the stand of the appellant also deserves to be rejected by declaring the appellant not entitled for Pension service benefits under the relevant provision of Law.
- E Incorrect & not admitted. The plea of the appellant is against the facts & circumstances of the case as the date on which the appellant is considering himself retired from service during his conviction period duly upheld by the Supreme Court of Pakistan. Therefore, the mandatory provision of Article-420 ( C ) of CSR is not applicable upon an already convicted / accused person. Hence liable to be rejected.
- F Incorrect & misleading. Detailed reply of this Para has already been given in the foregoing Paras. Hence, needs no further comments. Nor the said provision /Articles are applicable upon the case of the appellant.
- G Incorrect & not admitted. The appellant has been found guilty of murder by the Trial as well as superior Court of law vide judgments as mentioned above. Therefore, the appellant being a convicted person is not entitled for the relief he has sought from this Tribunal.
- H Incorrect & denied. The impugned Notification dated 14/10/2016 is within legal sphere & is liable to be maintained in favour of the Respondent Department in the interest of equity & justice.
- I The Respondents seek leave of this Honorable Tribunal to submit additional grounds & case law at the time arguments on main appeal.

**In view of the above made submissions, it is most humbly Prayed that on the acceptance of this reply/Comments this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal & maintained the impugned Notification dated 14/10/2016, in the interest of justice.**

Dated \_\_\_ / \_\_\_ /2016  
  
 Secretary  
 E&SE Department Khyber  
 Pakhtunkhwa, Peshawar  
 (Respondent No: 1)

  
 17/3/2017  
 Director  
 E&SE Department Khyber  
 Pakhtunkhwa, Peshawar.  
 (Respondents No: 2&3).

**AFFADIVIT**

I, Hameed Ur Rehman Asstt: Director (Lit: II) E&SE Department Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm & declare on oath that the contents of the instant Parawise Comments are true & correct to the best of my knowledge.

  
 Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1165 /2016

Muhammad Haroon.....Appellant

Versus

Secretary E&SE Department, KPK..... Respondents

---

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE  
TO REPLY FILED BY RESPONDENTS.**

---

Respectfully Sheweth,

**Preliminary Objections:**

Preliminary objections raised by answering respondents are erroneous and frivolous. The appeal is maintainable under the law. The appellant has got cause of action and locus standi to file the instant appeal. The claim of the appellant is bonafide. All necessary parties are arrayed as Respondents and nothing has been concealed from the Hon'ble Tribunal. Estoppels never run against the law. That the impugned Notification dated 14.10.2016 is illegal, incompetent, not maintainable and against the policy on the subject.

**Facts:**

1. Para No.1 of the appeal has been admitted correct by Respondents.
2. Para No.2 of the Reply is incorrect the appellant was falsely been implicated in the instant case. That initially the appellant was convicted by Session court but said sentence was further reduced on the appeal of the appellant before the High Court

and August Supreme Court of Pakistan vide Judgment dated 19.02.2003 and 07.02.2011 respectively and the appellant was later on released from the captivity.

3. Para No. 3 of the reply is incorrect. The entry of the suspension was not extended beyond 05.06.2001 as per record of the service book.
4. Para No. 4 of the reply is incorrect the appellant was falsely been implicated in the instant case. That initially the appellant was convicted by Session court but said sentence was further reduced on the appeal of the appellant before the High Court and August Supreme Court of Pakistan vide Judgment dated 19.02.2003 and 07.02.2011 respectively and the appellant was later on released from the captivity.
5. Incorrect. The appellant date of birth is 01.01.1952. Moreover, the appellant has not yet been removed from service. The appellant was only suspended from the service up till 05.06.2001.
6. Incorrect. The rejection of the departmental appeal by the appellate authority is not in accordance with law. The appellate authority has not forwarded/ mentioned any legal justification and reasons in the impugned order.

**Grounds:**

- A. Incorrect. The appellant has not been treated in accordance with law/rules and policy on the subject. The impugned Notification dated 14.10.2016 suffer from various legal and factual errors hence not competent and also not maintainable.

- B. Incorrect. The appellant initial<sup>sentence</sup> was reduced by the High Court and august Supreme Court of Pakistan respectively upon the appeal of the appellant. It is also fact the appellant was falsely implicated in the said FIR and case of the appellant also lies in the ambit of double jeopardy.
- C. Incorrect. The offence with which the appellant was charged was not of moral turpitude and same was also not falling within the definition of misconduct as per rule-2 (1) (vii) of the Government of Khyber Pakhtunkhwa, Government servant (efficiency and Discipline Rule 2011). Moreover, the appellant has not been removed from service.
- D. Incorrect. As the appellant is still in service, therefore, eligible for all pensionary and other retirement benefits on attaining the age of superannuation.
- E. Incorrect. The plea of the appellant is based on facts and circumstance of the case and therefore, Article 420(c) of CSR is applicable upon the case of the appellant.
- F. Incorrect. No clear answer has been provided by the Respondents in replies of the above paras.
- G. Incorrect. The appellant is entitle for all the pensionary and other retirement benefits as a consequence of long meritorious service.
- H. Incorrect. The impugned Notification dated 14.10.2016 suffer from various factual and legal errors, therefore, liable to be set aside.

I. That appellant will raised some other ground during the course of arguments.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

*benmusa J tomm*  
 Appellant  
 Through  
*Khaled Rahman*  
 Advocate, Peshawar

Dated: 16 / 04 / 2019

*Affidavit*

I, , do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

*benmusa J tomm*  
 Deponent