

FORM OF ORDER SHEET

Appeal No. 437/2024

Order under other proceedings with signature of judge

3

22/03/2024

The appeal of Mr. Musharaf Khan resubmitted today by Naila Jan Advocate. It is fixed for preliminary hearing before touring Single Bench at Bannu on Pareha Peshi given to the counsel for the appellant.

By the order of Chairman


REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

SCANNED
KPST
Peshawar

Khyber Pakhtunkhwa
Service Tribunal

Musharaf Khan

VERSUS

Police

Diary No. 218

Dated 22/03/2024

APPLICATION FOR REQUISITION OF
DOCUMENTS I.E. DEPARTMENTAL APPEAL &
REVISION PETITION.

Appeal be
fixed before
the bench
22/3/24

Respectfully Sheweth:

Applicant submits as under:-

1. That the above title service appeal has been filed in the Hon'ble KP Service Tribunal Peshawar, however, no date of hearing is fixed so far.
2. That appeal mention above had been return to the appellant for completion of documents, but the appellant is failed to produce the documents and the respondents being custodian of the record, may kindly be requisite from the department.

It is, therefore, requested that appeal may kindly be fix for hearing before SB and the documents mentioned above may kindly be requisite from the department being custodian of the record.

Applicant

Through

Naila Jan
sec

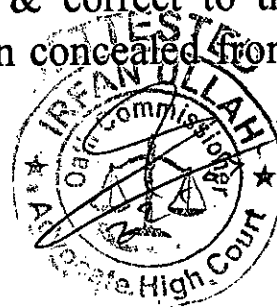
Naila Jan Advocate

Supreme Court of Pakistan

Dated: 22-3-2024

Affidavit:

I, (Naila Jan Advocate) do hereby solemnly affirm & declare on oath that all contents instant application are true & correct to the best of my knowledge & belief and nothing has been concealed from this Hon'ble Tribunal.



Naila Jan
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

SCANNED
KPST
Peshawar

Musharaf Khan VERSUS Police

**APPLICATION FOR REQUISITION OF
DOCUMENTS I.E. DEPARTMENTAL APPEAL &
REVISION PETITION.**

Respectfully Sheweth:

Applicant submits as under:-

1. That the above title service appeal has been filed in the Hon'ble KP Service Tribunal Peshawar, however, no date of hearing is fixed so far.
2. That appeal mention above had been return to the appellant for completion of documents, but the appellant is failed to produce the documents and the respondents being custodian of the record, may kindly be requisite from the department.

It is, therefore, requested that appeal may kindly be fix for hearing before SB and the documents mentioned above may kindly be requisite from the department being custodian of the record.

Applicant

Through

Naila Jan
Naila Jan Advocate

Supreme Court of Pakistan

Dated: 22-3-202

Affidavit:

I, (Naila Jan Advocate) do hereby solemnly affirm & declare on oath that all contents instant application are true & correct to the best of my knowledge & belief and nothing has been concealed from this Hon'ble Tribunal.

Naila Jan
ADVOCATE

Respected Sir,

It is submitted that the present appeal was received on 26.01.2024, which was returned to the counsel for the appellant for removing objection (Flag-A). Today i.e. 13.02.2024 the learned counsel re-filed the appeal without removing the objection No.1.

The appeal is now submitted to your honor under rules 7 (c) of the Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.


REGISTRAR

Worthy Chairman

to be removed
19/2/24

No.379

19-2-24

*Resubmitted by counsel
of the appellant objection
not made - may kindly
be request from
departments.*

26/02/2024

The appeal of Mr. Musharaf-Khan received today i.e. on 26.01.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal and revision petition mentioned in the memo of appeal is not attached with the appeal be placed on it.
- 2- Annexure-C of the appeal is illegible be replaced by legible/better one.

No. 200 /S.T.

Dt. 30/1 /2024.



30/1/24

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Adv.
High Court at Peshawar.

Resubmitted by
counsel of the appellant and
renewed objection No. 2, while
and revision petition is copy of DIA
no revision petition that is
may kindly be re-arranged the appellant
the department.

Naila Jan Adv.
ABC
13/02/2024

2

TO FC FOR TWO YEARS AND THE INTERVENING PERIOD WAS TREATED AS LEAVE WITHOUT PAY AND FINAL ORDER OF RESPONDENT NO 02 DATED 22/12/2023 COMMUNICATED ON 28/12/2023, WHEREBY REVISION PETITION UNDER 11 A OF THE KHYBER PAKHTUNKHWA POLICE RULES 1975 HAS BEEN REJECTED FOR NO GOOD GROUNDS IN UTTER VIOLATION OF THE LAW, RULES AND PRINCIPLES OF NATURAL JUSTICE .

Prayer in appeal:

On acceptance of the instant appeal the impugned orders dated 05/07/2017, 07/07/2017, 23/11/2020 and final order dated 29/12/2020 may kindly be declared illegal void ab-initio, set aside and the appellant may be reinstated into service with all back benefits.

Respectfully Sheweth:-

- 1. That the appellant was enlisted in the police department and since his appointment the appellant performed his duty with great zeal, zest and to the entire satisfaction of the High ups.*
- 2. That the appellant while serving as such was malafidely involved in F.I.R No. 364 dated 16/11/2017 Under Section 409/ 467/ 468/201 PPC PS Township & F.I.R No. 183 dated 05/07/2017 Under Section 409/ 467/ 468/ 201 PPC PS Kaki Bannu and was arrested on the same day i.e. 05/07/2017.*

3. *That on the basis of some baseless allegations two different inquiries on the same charges were initiated at the back of appellant and consequently the appellant without providing opportunity of defense and issuing charge sheet alongwith statement of allegation and issuance of Show Cause Notice the appellant was awarded major penalties of dismissals vide separate orders dated 05/07/2017 by respondent No. 04 and 07/07/2017 by respondent No. 05. (Copies of inquiry reports and impugned orders dated 05/07/2017 are annexures A to C)*

4. *That the appellant was honorably acquitted by the trial court of Additional Session Judge Bannu vide separate Judgments dated 19/06/2019 from the same charges on which the appellant was proceeded departmentally and was dismissed from service. (Copies of the court Judgment dated 19/06/2019 as Annexure-D)*

5. *That after acquittal by the honorable trial court, the appellant submitted a departmental appeal before the respondent No. 03 however on failure of respondent No. 03 to decide the departmental appeal of the appellant, after expiry of 90 days the appellant filed a service appeal No. 1425/2019 before the honorable Tribunal which was decided vide judgment dated 20/01/2021 with the direction to the department for decision on the departmental appeal of the*

4

appellant. **(Copy of the Service Tribunal Judgment is Annexure – E)**

6. That respondent No. 03 vide Appellate order dated 24/05/2021 converted the major penalty from dismissal to Reduction in time scale to FC for two years and the intervening period was treated as leave without pay through a non speaking order in violation of police rule 1975. **(Copy of the appellate order dated 24/05/2021 is annexure-F)**
7. That thereafter the appellant filed a revision petition under rule 11-A of the police rules 1975 before respondent NO. 02 however the respondent no. 02 vide final order dated 22/12/2023 communicated on 28/12/2023 rejected the revision petition, under 11 A of the Khyber Pakhtunkhwa Police Rules 1975 for no good grounds in utter violation of the law, rules and principles of natural justice **(Copy of the final order 22/12/2023 is Annexure G)**.
8. That feeling aggrieved from the impugned orders dated 05/07/2017, 07/07/2017, 23/11/2020 and final order dated 29/12/2020 the appellant has no other adequate remedy hence filing the instant appeal within the statutory period on the following grounds:-

5

Grounds:-

- A. *That the impugned orders are against law rules principles of natural justice, void ab-initio hence liable to be set aside.*
- B. *That no charge sheet along with statement of allegation has been served/issued before conducting the so called ex-party inquiry in violation of the Khyber Pakhtunkhwa Police Rules 1975.*
- C. *That no opportunity of personal hearing/defense has been provided to the appellant at any stage of the disciplinary proceedings.*
- D. *That no statement of any witness has been recorded nor did the appellant have been confronted with anything and the inquiry officer failed to bring any iota of evidence against the appellant.*
- E. *That the appellant has not been treated in accordance with Art 4 and 25 of the Constitution of Pakistan 1973.*
- F. *That the inquiry officer was either to prove the charges or should have recommend the competent authority to wait for the outcome of criminal case however without proving the charges and waiting for the outcome of the criminal case the*

6

appellant was subjected to major penalty in violation of laws and rules:

- G. That the appellant has been preceded for involvement in a criminal case however the court of law honorable acquitted the appellant from the charges.
- II. That the Apex Court has held in 2023 PLC CS 267 SC that acquittal of the petitioner by the High Court in criminal case was a subsequent development that ought to be considered by the departmental authority whilst considering disciplinary action against the petitioner.
 - I. That no regular inquiries has been conducted in accordance with Khyber Pakhtunkhwa Police Rules 1975 as no opportunity of defense has been provided or nor did associated the appellant with proceedings.
 - J. That the inquiry officers failed to bring any iota of evidence against the appellant.
 - K. That right of FAIR Trial has not been provided to the appellant as guaranteed by Article 10 A of the Constitution.

7

- l.. That no statement of any witness has been recorded nor did opportunity of cross examination have been provided to the appellant.
- M. That the appellant seeks permission of this honorable court to adduce other grounds during final hearing.

It is, therefore, on acceptance of the instant appeal, on acceptance of the instant appeal the impugned orders dated 05/07/2017, 07/07/2017, 23/11/2020 and final order dated 29/12/2020 may kindly be declared illegal void ab-initio, set aside and the appellant may be reinstated into service with all back benefits.

Any other relief not specifically prayed for may kindly be awarded in favor of the appellant.

Dated:- 25/01/2024

Through:-

Appellant

Naila Jan
Advocate High Court

Certificate:-

It is certify that no such like Service Appeal has earlier been filed by the Appellant in this Honourable Tribunal.

Advocate

Naila Jan



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal No:- _____/2024

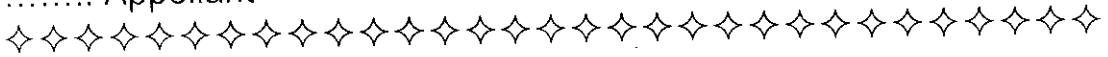
Musharaf Khan

Versus

IGP & others

..... Appellant

..... Respondents



AFFIDAVIT

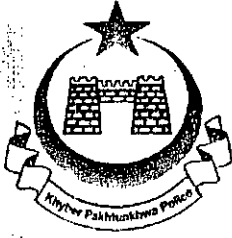
1. Musharaf Khan (FC No 114) Of District Police District

Bannu, (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Identified by

Naila Jan,
Advocate High Court

DEPONENT
CNIC No:-
Cell No:-



(4)

Annex "A"

10

**OFFICE OF THE
DY. SUPERINTENDENT OF POLICE,
HQRS. BANNU.**

Phone No: 0928-9270078.

Fax No: 0928-9270045

To: The Superintendent Police,
Investigation, Bannu.

No. 610-HQ/Dated 30.06.2017.

DEPARTMENTAL ENQUIRY

Reference. Charge sheet 1913-14/inv. dated 2.6.2017.

Accused. Constable Musharaf No.114/inv Police Line, Bannu.

Allegations. That Constable Musharaf No.114 were deputed/detailed for depositing case property at FSL Peshawar for legal analysis vides Case FIR No.566 dated 4.11.2016 u/s 337H PS Township. In spite of depositing the case property at FSL Peshawar, he returned the parcel and kept in cold storage without bringing in the notice of the competent authority or police station staff. After lapse of five months, he placed the pistol (case property) and despite another pistol covered in parcel at FSL Peshawar . His this attitude of embezzlement and delay in the FSL Peshawar result as well as submission of fake pistol instead of real pistol not only spoiled the case but speaks his efficiency , gross misconduct and disloyalty.

Order Sheet. Order Sheet maintained.

Statements. Statements of the following officials recorded :-

a. **Constable Musharaf No.114/Inv.**

Constable Musharaf No.114/inv stated that the complainant of case FIR No.566 dated 4.11.2016 u/s 337H PPC PS township had submitted an application to the Worthy DIG Bannu against him, which was marked by the said officer to Worthy D.P.O Bannu and SP Investigation, Bannu. He appeared before the Worthy D.P.O Bannu, the DPO told that he should get agree the complainant Balqiaz and hand over pistol to the complainant.

ED

The same order was passed by the SP Investigation and he handed over a pistol to the complainant Balqiaz before the SP Investigation. He again appeared before the DPO, Bannu and told about the pistol, he ordered to return the pistol to the complainant, he agreed and signed the documents.

11

QUESTIONS / ANSWERS.

Q No.1...E.O. Have you ask any question on I.O./HC Inayat Ali Shah?

Ans.1 Const.Musharaf-114. He has no question to ask from I.O HC Inayat Ali Shah.

b. **Statement of HC Inayat Ali Shah-11.**

He stated that he has investigated the case FIR No.566 dated 4.11.2016 u/s 337H PS Township, during investigation he sealed 30 bore pistol No.M 04700 ^ 1942 and a empty shell of 30 bore and handed over it to Moharrer Zain Ullah HC of Investigation staff PS Township. he has no more knowledge about it and the W.DPO Bannu has filed a charge sheet No. 1917-18/Inv dated 2.6.2017 vide O.B. No. 529 dated 21.6.2017.

QUESTIONS / ANSWERS.

Ans No.1. I.O. Inayat Ali Shah HC- 11.

He replied that 30 bore pistol No. M 04700 Δ 1942 and a empty shell of 30 bore have sealed by him in separate parcel and affixed three seals on each named "MZ".

Ans No.2. I.O. Inayat Ali Shah HC- 11.

He replied that he did not do examination of the said pistol from armourer lines.

Ans No.3. I.O. Inayat Ali Shah HC- 11.

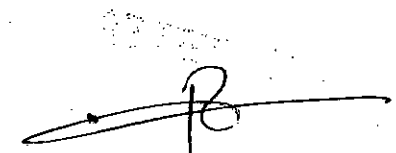
He replied that the pistol was taken into possession from the Balqiaz complainant of the case.

Ans No.4. I.O. Inayat Ali Shah HC- 11.

He replied that the pistol in question was original as per the saying of complainant.

AS

E.O.



Ans No.5. I.O. Inayat Ali Shah HC- 11.

He replied that after registration of the case, he took into possession the said pistol and seized it and handed over to MHC Zain Ullah of Investigation staff.

Ans No.6. I.O. Inayat Ali Shah HC- 11.

He replied that the result came late and negative, and he came to know that the pistol had been changed by Constable Musharaf No.114/Inv .

Q by..E.O.

Have you ask any question on I.O./HC Inayat Ali Shah?

Ans.1 Const.
Musharaf-114.

He has no question to ask from I.O HC Inayat Ali Shah.

c.

Statement of complainant of the case Balqiaz Khan

Complainant Balqiaz Khan s/o Gul Sher Khan r/o Madina Township stated that his son was hit and injured due to fire by his pistol Russian made No. M 04700 ^ 1942 , which was taken into possession by I.O. Inayat Ali Shah No.11 as weapon of offence. He got the superdari order of the pistol on 10..01.2017. he had been used to go to police Malkhana but the Incharge Malkhana was telling that he is unaware about the pistol. At last the Incharge Malkhana asked from FSL Peshawar official and the reply was coming in negative. He told it into the notice of I.Os, they told that the pistol was deposited by Constable Musharaf -114/inv in the FSL Peshawar and also showed the road certificate. At last, the I.Os did contact with the official of the FSL Peshawar, but no reply was received. On this disappointment, he submitted application to the DIG, Bannu, from where it was marked to DPO Bannu. During investigation HC Inayat Ali Shah and Balqiaz complainant of the case were appeared before the DPO Bannu, where constable Musharaf-114/inv admitted that he has sold the pistol 30 bore in question and he has purchased a Russian made pistol on payment Rs.40,000/- and handed over pistol to him through DPO Bannu.

Note :-

Constable Musharaf-114/inv stated that complainant Balqiaz has told true story and he has no question to ask from Balqiaz and he had sold pistol 30 bore No. M 04700 ^ 1942 to an IDP (unknown).

Statement of Constable Tariq Khan No.76/inv PS Township.

Constable Tariq No.76/inv stated that he has no information about the case property and neither it was handed over to him and also he do not

know about the departure and return in the daily diary as on 18.11.2016, he was present in the morning report and on 19.11.2016, he was on duty with ASI sardar Ali and on 20.11.2016, he was also present in the morning report and on the same day he was on duty with Rtd SI Muzamel Khan and he had produced accused to Civil Judge No.ii, Bannu and it would be better that the enquiry officer may check the DD himself.

13

DD Report.

DD report No.32 dated 20.11.2016 PS Township, Bannu.

This DD report shows the interrogation of accused Wali Sardar s/o Abdullah r/o Dogger Umerzai carried out by ASI Sardar Ali of investigation staff but at the end the name of constable Tariq-76 was added and shown his return from FSL Peshawar and date of proceedings to peshawar has been shown giving the reference of DD No.11 dated 17.11.2016.

Note :-

The DD No.32 above has been found false because constable Tariq -76 had not been proceeded to peshawar FSL and constable Musharaf -114 has played this dirty role. ASI Sardar Ali was contacted on his cell phone No.0333-9748490, he replied that he has interrogated accused Wali Sardar only and do not know about the return of Constable Tariq No.76/inv.

Conclusion:-

1. Constable Musharaf No.114/inv has admitted that he has sold case property 30 bore pistol No. M 04700 ^ 1942 made in Russian to one unknown IDP.
2. He purchased a new Russian made 30 bore pistol on payment of Rs.40,000/- and handed over it to the complainant Balqiaz for his satisfaction.
3. The allegations conveyed to him by the Superintendent of Police, Investigation, Bannu vide No. 1913-14 dated 02.06.2017 are fully proved against the Constable Musharaf-114/inv.
4. Constable Musharaf-114/inv has become debtor, as another charge sheet for this has been issued to him by the District Police Officer, Bannu vide No.164-65/SRC dated 16.5.2017, therefore his intention of selling the 30 bore pistol (Case property) was for gaining money.

[Handwritten signature]

[Handwritten signature]

Keeping in view the above discussion, the statements and the attached documents, the constable Musharaf-114/inv has been found guilty of the charges above, therefore he is recommended for major punishment please.

Encl: (29)

19

12/3

8

Dy. Superintendent of Police,
HQrs, Bannu.

P

AS

(14)
Annex (B)
ORDER.

My this order is passed on the departmental proceedings initiated against **Constable Musharaf No.114** the following misconduct within the meaning of disciplinary rules 1975(amended vide Notification No. 3859/Legal dated 27.08.2014) Government of Khyber Pakhtunkhwa, Police Department.

Charge sheet was issued on the allegation that Constable Musharaf No.114 were deputed / detailed for depositing case property at FSL Peshawar for legal analysis vides in case FIR No.566 dated 04.11.2016 U/S 337 (H) PS Town ship. In spite of depositing the case property at FSL Peshawar, you returned the parcel and kept in cold storage without bringing in the notice of the competent authority or Police Station Staff. After lapse of five (5) months you replaced the pistol (case property) and deposit another pistol covered in parcel at FSL Peshawar. Your this attitude of embezzlement and delay in the FSL Peshawar result as well as submission of fake pistol instead of real pistol not only spoiled the case but speak your inefficiency, gross misconduct and disloyalty."

DSP HQR, Bannu was appointed as enquiry officer. The Enquiry Officer reported that the allegation leveled against the accused official have been proved and recommended him for major punishment.


Final Show Cause Notice was issued and properly served upon him. In response of the Final Show Cause Notice, the accused constable advance reply wherein he confessed the allegation leveled against him.

Keeping in view the position explained above, recommendation of the enquiry officer, perusal of record and confession of the official in reply of Final Show Cause Notice, **I Abdul Hayee, Superintendent of Police, Investigation, Bannu**, in exercise of the power vested in me under police Rules (amended vide Notification No. 3859/Legal dated 27.08.2014) Government of Khyber Pakhtunkhwa, Police Department, hereby awarded Major punishment of Dismissal from service with immediate effect.

Announced.

OB No 125

Dated. 05/07/2017.

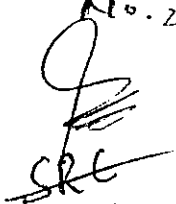

Superintendent of Police
Investigation, Bannu.

OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION BANNU.

No. 2235-36 Dated. 5/7/2017

Copy of above is submitted for favour of information to:

1. The Regional Police Officer, Bannu Region, Bannu.
2. The District Police Officer Bannu.


SRC
OHC




ORDER:

(10)

C Annex

This order of the undersigned will dispose of the departmental proceeding, initiated against accused FC Musharaf Khan No. 114/BBI under general proceeding of police rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014) for committing the following commissions/omissions:-

➤ That on the written complaint of the inhabitants of the area of Domel, Constable Musharaf Khan No.114/BBI Staff Bannu is involved in extra-departmental activities of taking debt from the complainants. Different amount taken from the complainants on the undertaking that he will pay the amount in question within the stipulated period of 04 months, despite the fact that on the completion of period, he avoiding from payment with lame excuses and the amount is still outstanding against him.

Charge sheet and statement of allegation were issued to him. DSP HQs: Bannu was appointed as Enquiry Officer to scrutinize the conduct of the defaulter official. The Enquiry officer submitted finding report and reported that the Official is still defaulter of the amount outstanding against him. The allegations leveled against him have been proved. He is found guilty and recommended him for award of major punishment, place on file.

On 03.07.2017, the accused official called for appearance in orderly room dated 04.07.2017 but he did not appear and then issued Final Show Cause Notice vide No.164-65/SRC, dated 05.07.2017.

in the meantime, major punishment of dismissal from service has been awarded to the defaulter official by the SP Investigation Wing, Bannu in another departmental enquiry of embezzlement of pistol (case property) vide OB No. 125, dated 05.07.2017 placed on file.

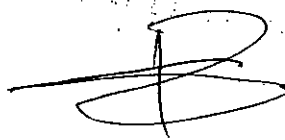
Record perused. In the light of the departmental enquiry proceeding, recommendation of Enquiry Officer and found guilty of the charges as well as SP Investigation, Bannu order of dismissal from service, I, Saadiq Hussain, District Police Officer, Bannu in exercise of the power vested in me under Police Rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014) hereby awarded Major punishment of Dismissal from Service in the instant enquiry with immediate effect.

OB No. 164-65/SRC
Dated: 05.07.2017.

(S) SAADIQ HUSSAIN, SP
District Police Officer
Bannu.

No. 164-65/SRC dated Bannu, dt. 07/17/2017
Copy of above is submitted for favour of information to:

1. The Regional Police Officer, Bannu Region, Bannu.
2. The Superintendent of Police, Investigation, Bannu.
3. Pay Officer, SRG, Bannu.
4. Fauji Missal Clerk along with enquiry file for placing it in the Fauji Missal of the concerned ASI.





ORDER:

This order of the undersigned will dispose of the departmental, proceeding, initiated against accused FC Musharaf Khan No.11/BBI under general proceeding of police rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014) for committing the following commissions/omissions:-

That on the written complaint of the inhabitants of the area of Domel, Constable Musharaf Khan No.114/BBI Staff Bannu is involved in extra-departmental activities of taking debt from the complainants. Different amount taken from the complainants on the undertaking that he will pay the amount in question within the stipulated period of 04 months, despite the fact that on the completion of period, he avoiding from payment with lame excuses and the amount is still outstanding against him.

Charge sheet and statement of allegation were issued to him. DSP HQrs: Bannu was appointed as Enquiry Officer to scrutinize the conduct of the defaulter officials. The Enquiry officer submitted finding report and reported that the officials is still defaulter of the amount outstanding against him. The allegation leveled against him have been proved. He is found guilty and recommended him for award if major punishment, place on file.

On 03.07.2017, the accused official called for appearance in orderly record dated 04.07.2017 but he did not appear and then issued Final Show Cause Notice vide No.164-65/SRC, dated 05.07.2017.

In the meantime, major punishment of dismissal from service has be awarded to the defaulter official by the SP Investigation Wing, Bannu in another departmental enquiry of embezzlement of pistol (case property) vide OB No.125, dated 05.07.2017 placed on file.

Record persued. In the light of the departmental enquiry proceeding recommendation of Enquiry Officer and found guilty of the charges as well as Investigation, Bannu order of dismissal from services, I, Sadiq Hussain, District Police Officer, Bannu in exercise of the power vested in me under Police Rule 1975 has hereby awarded Major Punishment of District from Service in the instant energy was immediate effect.

OB No. _____
Dated 01/07/2017.

(Sadiq Hussain) SP
Director Police Officer

~~17~~
17

Amir "D"

IN THE COURT OF ARBAB MUHAMMAD KASHIF
ADDITIONAL SESSIONS JUDGE-V, BANNU

Sessions Case No: 207/SC of 2018
Date of Institution: 08/01/2018
Date of Decision: 19/06/2019

Place: Bannu
FIR No. 364
Dated: 05/07/2017
Under sections: 409/467/468/201 PPC
Police Station: Township District, Bannu

The State.....

VERSUS

Muhammad Musharraf Khan (aged about 34/35 years) S/O Mir Wa i
Khan R/O Qamar Kalla Tehsil Domel & District Bannu (Accused)

State represented by:-

Mr. Kamran Aamir
Assistant Public Prosecutor

Counsel for accused:-

Mr. Akbar Ali Khan Wazir
Advocate

JUDGMENT:

Accused named above, faced criminal trial in case FIR #
364, dated 05-07-2017, U/Ss 409/467/468/201 PPC registered at
Police Station Township, Bannu.

ATTESTED
Copy to
District & Sessions

(Signature)

19

Sessions Case # 207 of 2018
Titled "State VS Muhammad Musharraf Khan"

2. Briefly stated the facts of prosecution case as unfolded in FIR are that case properties i.e., one Kalashnikov Folding Butt bearing No.6115544 alongwith empty magazine sealed in Parcel No.1 of case FIR No.594 dated 10-11-2016 U/S 15 AA Police Station Township Bannu, one Kalashnikov Folding Butt No.16213990 alongwith empty magazine sealed in Parcel No.1 of case FIR No.105 dated 13-11-2016 U/S 15 AA Police Station Township, blood stained earth sealed in Parcel No.1 and blood stained Qameez sealed in Parcel No.2 of case FIR No.569 dated 04-11-2016 U/Ss 324/34 PPC Police Station Township, blood stained cotton sealed in parcel No.1 and one .30 bore bearing No.04700___1942 alongwith empty magazine sealed in Parcel No.2, one empty shell of .30 bore pistol sealed in Parcel No.3 and one Sikka Goli sealed in Parcel No.4 of case FIR No.566 dated 04-11-2016 U/Ss 337-II PPC/15 AA alongwith application to Arms Expert FSL Peshawar was handed over to Constable Tariq Khan No.765 through Road Receipt No.787/21. The constable Tariq Khan No.765 handed over the above mentioned case properties to Constable Musharraf No.114 (accused facing trial), who was posted as constable in Investigation Staff of Police Station Basia Khel, for taking the same to FSL Peshawar but Constable Musharraf Khan No.114 (accused facing trial) from the case properties one .30 bore pistol of case FIR No.566 dated 04-11-2016 U/Ss 337 (II)/15 AA.

Kul
Arbit
Additional

AP

ATTESTED

27/11/19

18

19

Police Station Township not deposit in FSL while sold the same on private person and one local made pistol was sealed into parcel. The accused facing trial has affixed counterfeit stamp and signature on receipt of Rahdari. After receipt of inquiry report, which was conducted by S.P Investigation alongwith relevant documents, the instant FIR was registered against the accused facing trial.

3. Investigation was carried out and after completion of investigation, complete challan was submitted against the accused facing trial Muhammad Musharraf Khan. Accused was summoned, on his appearance, provision of section 265-C Cr.PC complied with. Charge U/Ss 409/467/468/201 PPC was framed against the accused facing trial to which he pleaded not guilty and claimed trial.

4. Prosecution in order to prove its case produced as many as Six (06) witnesses. The brief resume of Prosecution evidence is as under:-

(PW-1) was Nasir Ud Din Khan SHO, who on the receipt of inquiry sent by the S.P Investigation alongwith relevant documents, he registered the instant case vide case FIR No.36-I dated 05-07-2017 U/Ss 409/467/468/201 PPC. After that he handed over the FIR to the BBI staff for onward investigation. On 06-07-2017, he has arrested accused facing trial Musharraf and issued his card of arrest vide EX:PW-1/1, similarly on 08-07-2017 he took into his possession one pistol of .30 bore alongwith fit magazine recovered from the residential room of the accused facing trial and to this effect prepared

Arbab Muhammad Kashif
Additional Sessions Judge - V

R
R

49 20

recovery memo EX:PW-1/2 in the presence of 02 marginal witnesses which was further handed over to the Investigating officer who prepared a separate recovery memo vide EX:PW-1/3 in his presence in the presence of co-marginal witness Habib Ullah Khan and was sealed into a parcel. He was examined by the I.O U/S 161 Cr.PC. After completion of investigation, he has submitted challan against the accused on dated 12-07-2017. Today he have seen the above referred documents which correctly bear his signature.

(PW-2) was Abdul Shakoor No.889/FC, who on 08-07-2017 was present with SHO Nasir-ud-Din Khan at the time of raid on the house of accused facing trial Musharraf Khan. The accused Musharraf Khan led the police party to his house and on his pointation the SHO recovered and took into possession one pistol .30 bore bearing No.MO4700 1942 alongwith fitted magazine which was lying on the Charpai under the "Sarhana" inside the residential room of the house of accused. The pointation memo already exhibited as EX:PW-1/2 is correct and correctly bears his signature. His statement was recorded by the I.O U/S 161 Cr.PC.

(PW-3) Balqiaz Khan is marginal witness to the recovery memo EX:PC vide which the I.O took into possession one pistol (case property) produced by him at PS and the I.O packed and sealed the same into parcel No.1 in his presence. The recovery memo EX:PC is correct and bears his signature correctly. The details of the above mentioned pistol have been given by the I.O in the said recovery memo EX:PC. During course of investigation, he disclosed before the I.O that on 04-11-2016 his son Muhammad Bilal Khan was busy in cleaning of his licensed pistol bearing No.MO4700 1942, in the meanwhile inadvertently fired opened from the pistol and his son Muhammad Bilal got hit and injured. In this respect, he reported the

Handwritten signature
Arbab M...
Additional...


Handwritten signature

Handwritten signature

24

matter in hospital and case FIR No.566/16 at PS Township registered. His foreign made pistol took into possession by the I.O for which he submitted superdari application, which was accepted and he visited PS Township, Bannu but his pistol was not available at PS Township. There he was informed that Musharraf (accused facing trial) had taken away the pistol to FSL for examination to Peshawar. When he received his pistol from District Mal-Khana, Bannu, he examined it and it was local made and was not the same of which he was the owner. He has submitted one application to the S.P investigation Bannu and he was called upon by the S.P for inquiry. Constable Musharraf was also summoned by the high-ups of the police. As his pistol was replaced, therefore, constable Musharraf promised him to buy a new .30 bore pistol and he did it accordingly. He took his pistol alongwith license to the Aslaha Dealer Tanchi Bazar Bannu and asked him to replace the old number M04700 1942 with new number 906 1949/52MO. His statement was recorded by the I.O and on 06-07-2017, he was produced by the police for recording his statement before the court of Judicial Magistrate and he voluntarily recorded his statement before the court of Judicial Magistrate-II, Bannu which is EXPW-3/1 consists of 02 pages which is correct and bears his signature correctly.

(PW-4) Inayat Ali Shah IHC was investigation officer in case FIR No.566 dated 04-11-2016 registered U/S 337-H/15AA of PS Township, Bannu in which he has taken into possession one pistol 30 bore bearing No.MO4700 1942 alongwith fitted magazine (weapon of offence) and one empty shell of 30 bore from the spot. He packed and sealed the pistol into separate parcel and handed over the same to Muharrir investigation alongwith other case property and application


Arbab Mirza
Additional Magistrate-V



ATTESTED
Constable
District & Sessions
Bannu

27

Sessions Case # 207 of 2018
Titled "State VS Muhammad Musharraf Khan"

for FSL. His statement in the instant case was recorded by the I.O U/S 161 Cr.PC on 05-07-2017.

(PW-5) was Zain Ullah Khan, who during those days was MHC/Inv: in PS Township Bannu. During those days the case property dispatching to FSL was deputed to one Tariq No.76/I.C. resultantly he entered the road receipt No.787/21 in the name of above named constable. He handed over the case property to above mentioned constable Tariq Khan and the details of parcels are already present in the above mentioned receipt. When he handed over the case property to said Tariq constable then he told him that one Musharraf Constable No.114 of PS Basia Khel is coming and he also took the case property to FSL of his police station i.e. Basia Khel and the case property of PS Township on receipt No.787 was handed over by the Tariq constable to accused constable Musharraf in PS Township, Bannu in his presence. On the same date i.e. 16-11-2016, the said constable Musharraf contacted him on his mobile cell that he have deposited the case property of your PS in FSL Peshawar. On 20-11-2016 accused constable Musharraf came back to Bannu, he handed over to him the photocopy of said receipt Rahdari. Today he have seen the said receipt which is EXPW-5/1 (original seen and returned). In the meanwhile one Balqiaz submitted an application before competent court for returned of one .30 bore pistol which was also mentioned in the above mentioned case property in parcel No.2 of receipt Rahdari, the court ordered to returned the case property i.e. 30 bore pistol to the owner Balqiaz. Resultantly the Superdar Balqiaz produced the Superdari order of the court to the SHO. The SHO told and directed the Superdar Balqiaz that the case property in question is not available in PS Mall Khana so you approached the Incharge of District Mall Khana and collect the same from the Incharge of

Handwritten signature
Arbab Muhammad Waris
Additional Magistrate

Handwritten initials

Handwritten signature
27-11-2016

23

District Mall Khana. When he approached the Incharge of PS Mall Khana, the case property i.e. Pistol in question was not collected by the Incharge District Mall Khana. Thereafter the said Superdar contacted the accused who told to Superdar that he would give the pistol in question. On 06-01-2017 the accused changed the pistol and local made pistol was then deposited in FSL instead of original pistol i.e. case property. The said accused made factitious entry on the back of EXPW-5/1 which is EXPW-5/2. After examination of pistol in question in FSL it was found that the deposited pistol was local made and the original pistol was kept by the accused Musharraf in his personal capacity. Thereafter, when the case property i.e. pistol in question was sent back by the FSL to District Mall Khana Bannu, thereafter the Superdar again approached the District Mall Khana Incharge and was giving the case property/pistol in question to the Superdar when he checked, the pistol was not that one which was taken into possession by the local police from his possession and told to the Incharge that this pistol is not the original one and the said pistol was found local made. The Superdar when received the local made pistol from Incharge District Mall Khana then he contacted accused Musharraf on his mobile cell, the accused told to Superdar Balqiaz that your original pistol was sold by him to one IDP and he will purchase another foreign made pistol for you. In the meanwhile the accused refused to do so, resultantly Superdar Balqiaz submitted written application to RPO, Bannu for taking legal action against Musharraf and recovery of his pistol from him. Thereafter the RPO, Bannu authorized S.P Investigation to patch-up the matter in between the Superdar and accused. During personal hearing of both the party the accused Musharraf admitted his guilt before S.P Investigation that he had changed the said pistol. Thereafter it was decided in between

Wah

Muhammad Musharraf
Additional Accused - V

[Signature]

[Signature]

24

accused as well as Superdar in presence of S.P investigation that accused Musharraf will purchase a foreign made pistol for Superdar and accordingly the accused Musharraf purchased a foreign made pistol to Superdar as well as the local made pistol was also given to Superdar by the Incharge Mall Khana. The RPO has also initiated a departmental inquiry against accused Musharraf in the instant case as well as the present case was also registered against the accused after conclusion of departmental inquiry in which he was found guilty by the competent authority. After registration of case his statement U/S 161 Cr.PC was also recorded by the I.O in the instant case.

(PW-6) was Ibniaz Khan S.I, who after registration of the case, copy of FIR was received by him for investigation. He proceeded to the spot and prepared site plan on the pointation of Muharrir Zaimullah and Constable Tariq No.76 which is correct with all it foot notes and is EXPB. He took into possession one pistol .30 bore alongwith magazine. The case property of FIR No.566 dated 04-11-2016 U/S 337H/15AA which was entrusted for FSL to the accused. The pistol was required from complainant Balqiaz Khan and was sealed into parcel No.1 in the instant case. Memo in this respect is already EXPC while case property is EXP1. He got recorded the statement of Balqiaz Khan son of Gul Sher Khan U/S 164 Cr.PC vide his application EXPW-6/1. He took into possession the pistol No.MO4700-1942 which was recovered by the SHO Nasir-ud-Din Khan on the pointation of accused and was handed over to him which he sealed into parcel EXP2 vide recovery memo already EXPW-1/3. He recorded statement of PWs U/S 161 Cr.PC. The above mentioned pistol was sent to FSL for Expert Opinion. The FSL report received and is EXPW-6/2 which is placed on file. He also annexed the papers of the departmental inquiry carried out against the accused facing

Muhammad
Additional Sessions Judge

[Signature]

[Signature]

ATTESTED
Copyist
District & Sessions Judge
27

Sessions Case # 207 of 2018
Titled "State VS Muhammad Musharraf Khan"

(Handwritten signature in a circle)
(Handwritten number 25 in a circle)

trial. He also annexed the copy of the Raladari No.787/21 on which the case property of different cases was sent to FSL. The same is already EXPW-5/1 and EXPW-5/2. He also placed on file the license copy in respect of the pistol No.MO4700-1942 and the accused stocked the same and made entry of another No.OR9061949. The license copy is EXPW-6/3. He also prepared the sketch of the recovery of pistol from the accused house on the pointation of SHO concerned and the same is EXPW-6/4 which is correctly bears his signature. He also produced the accused for physical remand vide application EXPW-6/5 and one day custody was granted. Thereafter accused was remanded to judicial lockup. He also placed on file the photocopy of the FSL report of FIR No.566 of 2016 U/S 337H/15AA PS Township. He annexed copy of the daily diary No.16 dated 17-11-2016 showing his departure and returned there from investigation in connection with the instant case and the same is EXPW-6/6. On completion of investigation, he handed over the case file to SHO for submission of challan.

(Handwritten signature)
(Handwritten signature)
Additional Commissioner

5. Thereafter, prosecution closed its evidence while abandoned rest of PWs mentioned in the list of witnesses. Statement of accused was recorded U/S 342 Cr.PC, who professed his innocence and false implication. He termed all PWs highly interested and procured; however, he did not wish to be examined on oath U/S 340 (2) Cr.PC or to produce defence evidence.

2. Learned Mr. Kamran Aamir APP for the state argued that accused facing trial is directly charged by the complainant for the

(Handwritten signature)

(Handwritten signature)
27/11/16

26

commission of offence; that all PWs remained consistent and coherent in their deposition made regarding the occurrence; that no major or minor contradiction could be extracted from their mouths. It was finally argued that prosecution has successfully proved its case against accused facing trial beyond shadow of doubt and prayed for conviction of the accused.

3. Conversely, learned defense counsel Mr. Muhammad Rashid Khan Dirma Khel Advocate argued that accused facing trial is innocent and has falsely been charged in the instant case; that all the PWs are highly interested, procured witnesses and they never remained consistent and coherent in their deposition against the accused and their statement is suffering from major discrepancies and contradictions; so prosecution has failed to prove charge against accused facing trial beyond any shadow of doubt and prayed for acquittal of the accused.

Ush
Arbab Muhammad Rashid
Additional Advocate General - V

4. I have heard the arguments and record perused.

5. The prosecution version in the instant case as per FIR EX:PA is that the complainant of the instant case Nasir ud Din Khan SHO registered FIR against the accused facing trial on the ground that on the basis of inquiry he registered FIR. As per the contents of FIR case property of FIR No.549 dated 10-11-2016 U/S 15 AA Police Station Township and case property of FIR No.569 dated 04-11-2016


[Signature]

[Signature]
27-6-18

Session: Case # 207 of 2018
Titled "State VS Muhammad Musharraf Khan"

26 27

U/S 324/34 PPC Police Station Township and case property of FIR No.566 U/S 337-H PPC/15 AA dated 04-11-2016 Police Station Township was handed over to Constable Tariq Khan No.76 for onwards transmission to FSL Peshawar. According to prosecution version the Constable Tariq handed over the case properties for delivery to FSL Peshawar to accused facing trial, who was then posted at Police Station Basia Khel but instated of delivering the said property to FSL Peshawar accused facing trial misappropriated the said properties and prepared counterfeit receipts of FSL Peshawar. The complainant although in his examination in chief stated that on receipt of inquiry sent by the SP Investigation alongwith relevant documents he registered the FIR in the instant case on the basis of inquiry but at the very outset of his cross examination he stated that the final report of the inquiry is not available on the judicial file. He also admitted that the case property of the instant case belong to Police Station Kakki, Police Station Township. During his cross examination he also admitted that as per record the case property were handed over to constable Tariq and not to accused facing trial. He also admitted that the extract of the relevant register and Receipt Rahdari are not available on judicial file. He also admitted that nothing is available on judicial file about the deputation of the accused for taking the case properties to FSL. He also admitted in his cross examination


Arbab Muhammad
Additional Sessions Judge - V



AT
District & Sessions Judge
27

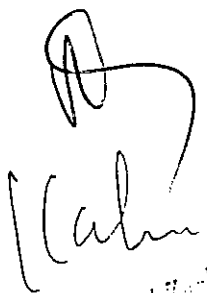
28

Sessions Case # 207 of 2018
Titled "State VS Muhammad Musharraf Khan"

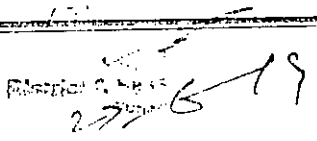
that in criminal cases after the investigation of the case, the case properties is handed over to the Muharrir of the Police Station and when any case property is taken for FSL then concerned police constable sign the relevant documents before the Muharrir of the Police Station as a token of receipt. He also admitted that no receipt/sign of the accused facing trial is available on judicial file, which could show that the accused facing trial had signed relevant documents in respect of the referred case property.

6. It was alleged by the prosecution that as a result of inquiry accused facing trial was nominated in the instant case but neither the final report of the inquiry nor the statements of witnesses and other proceedings of the inquiry was brought on file. The basis of the instant case is the alleged inquiry but strangely the facts and circumstances including final report were not brought on file for the reasons based known to the prosecution.

7. The most important witness of the prosecution was constable Tariq, who alleged to have hand over parcel containing case property to accused facing trial but he was not produced; hence, presumption under Article 129 (g) of the Qanoon-e-Shahadat Order is attracted against the prosecution. As per available record neither any oral nor any documentary evidence was produced to the effect that constable Tariq delivered parcel containing case property to the


Muhammad Musharraf Khan
Additional Sessions Judge - V




2-7-19

Sessions Case # 207 of 2018
Titled "State VS Muhammad Musharraf Khan"

28 29

accused facing trial. It seems from the record that the prosecution malafidely with ulterior motive set free the real culprit and implicate accused facing trial.

8. Neither any law or rules were brought on file which could justified the act of constable Tariq Khan for handing over parcels containing case properties to the accused facing trial. It was duty of Constable Tariq to deliver parcel to FSL to whom it was entrusted for delivery by his concerned police station. The fact remain in mystery that under what law or authority constable Tariq handed over parcel to accused facing trial who was not employed at the relevant time in Police Station Township nor was nominated officially for taking case properties of different Police Station to FSL. Even otherwise the fact of handing over case properties to the accused facing trial by the Constable Tariq is not proved by the prosecution.

9. In the present case the prosecution neither produced the inquiry officer nor the inquiry report nor the statement of witnesses during inquiry was brought on file, on the basis of which the present FIR was lodged. The extract of Receipt Rahdari and the relevant register wherein it was mentioned that the constable Tariq was handed over the parcel to the accused facing trial was not produced. There is no written order for deputation of accused facing trial to took parcels to FSL as admitted by PW-1.

Arbab Muhammad Hashif
Additional

Sessions Case # 207 of 2018
Titled "State VS Muhammad Musharraf Khan"

29 30

10. PW-5 who was Muharrir in Police Station Township during the days of occurrence stated that as per his record the case property parcel was handed over to constable Tariq and he was authorized to deliver case property to FSL Peshawar in those days and was responsible for the safe custody and safe transmission of the case property to the FSL Peshawar. PW-5 also admitted that there is no signature of accused facing trial about receiving parcel containing case property mentioned in receipt No.787/21. PW-5 stated that prior to registration of the instant case his statement was not recorded, this fact also flashes the stance of prosecution about the alleged inquiry. PW-5 also admitted that the case property is mentioned in Road receipt No.787/21 was received by District Mall Khana from FSL Peshawar. Incharge of District Mall Khana who was an important witness was not produced

Kahn
Arbab Muhammad Hashif
Additional

Q

R

11. The stance of the prosecution in the present case is that accused facing trial replaced the original pistol .30 bore foreign made with .30 bore pistol local made and during house search on 08-07-2017 the original pistol was recovered from residential room of the accused facing trial. As per record after registration of FIR house search of the accused facing trial was conducted by the Investigation Officer but nothing was recovered from the house of accused facing trial but later on, on 08-07-2017 by violating the mandatory provision

AT
Case
District

Sessions Case # 207 of 2018
Titled "State VS Muhammad Musharraf Khan"

314

of law instead of Investigation Officer the complainant allegedly recovered a pistol on pointation of accused facing trial from his residential room. Provision of Section 103 Cr.PC which are mandatory in nature were also not complied and interestingly in another case No.206/SC in case FIR, No.183 dated 19-04-2017 U/S: 409, 467, 468, 201 PPC Police Station Kakki the local police allegedly recovered some other case properties during house search on the pointation of accused facing trial a day before house search in the present case, but except the case properties of that case the case property involved in the present case was not recovered. PW-2 the recovery witness stated that the pistol was not sealed on the spot by the complainant. This fact also badly damaged the prosecution case because possibility of manipulation could not be ruled out. The said pistol in clear violation of law was sent to FSL after one month of its seizure without any explanation in this respect; hence, report of FSL in such circumstances could not be relied. As observed above that pistol was recovered by the complainant after registration of FIR which is the job of the Investigation Officer. The complainant by becoming Investigation Officer in the present case not only violates the procedural law but this conduct of the police official speaks volume.

Kakki

Arbab Muhammad
19/04/2017

P

ATTE

District


27/6/17

32

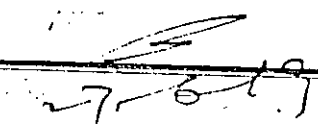
12. PW-6 Investigation Officer stated that after registration of FIR copy of FIR was received by him which means that on 05-07-2017 copy was delivered to the Investigation Officer for investigation, then under what law the complainant took the charge of Investigation Officer and allegedly raided house of accused facing trial on 08-07-2017 for recovery of pistol.

13. The Investigation Officer PW-6 at the very outset of his cross examination stated that he even did not know that on what grounds the instant case was registered against the accused facing trial. He negates not only his own version taken in his examination in chief but also the whole prosecution case. Investigation Officer admitted that Receipt Rahdari No.787 was issued in the name of Constable Tariq and Constable Tariq was responsible for taking case property to FSL. He also admitted that there is no written proof regarding involvement of the accused facing trial in the present case.

14. From what has been discussed above a conclusion irresistible could be made that neither the prosecution is able to prove by production of documentary or oral evidence that the case properties which were handed over to constable Tariq for onward transmission to FSL Peshawar was handed over to accused facing trial. The inquiry report on the basis of which the present FIR was lodged was not produced before the court and the main prosecution witness who


Arbab Muhammad Hashif
Additional Sessions Judge



33 33

alleged to have handed over case properties to accused facing trial was not produced. No rules or law or any order was brought on file which could justify the stance of prosecution that the case properties involved in different cases was legally handed over to the accused facing trial by constable Tariq. From the facts and circumstance of the present case it could also be suggest that the prosecution let the real culprit i.e., Constable Tariq on malafides for ulterior motive and the accused facing trial was made as scapegoat. There is a considerable delay in lodging the FIR which had not explained by the prosecution in the present case. Although the prosecution alleged that an inquiry was conducted and on the basis of said inquiry FIR was lodged against the accused facing trial but neither any complaint for initiating inquiry against the accused facing trial was brought on file nor the final inquiry report was produced before the court.

1/Carh

Arbab Muhammad Ali
Additional Sessions Judge - V
15.

It is prime duty of prosecution to prove its case beyond any shadow of doubt and a single dent in the prosecution case is sufficient for extending the benefit of doubt to the accused. In the instant case there are material contradictions and lacuna, which are fatal for prosecution case and it led me to the conclusion that prosecution failed to bring home the guilt of accused beyond shadow of doubt and benefit of doubt is extended to the accused.


ATTESTED
Copyist
District & Sessions Judge
27/10/2018

33 34

16. The prosecution has to prove its case beyond shadow of doubt and any single doubt arose during the trial would be beneficial for the accused. The prosecution has not proved its case beyond shadow of doubt. So this court left with no option but to extend benefit of doubt to accused facing trial; therefore, under the principle of benefit of doubt, accused facing trial accused Musharraf Khan is hereby acquitted of the charges leveled against him. Accused facing trial is in custody, he be released forthwith if not required in any other case.


17. Case property be disposed of in accordance with law after expiry of period of appeal/revision. File be consigned to record room after necessary completion and compliance while requisitioned record returned to quarter concerned.

Announced
19-06-2019


(Arbab Muhammad Kashif)
Additional Sessions Judge-V,
Bannu

CERTIFICATE

It is hereby certified that this judgment consists of Eighteen (18) pages, each page read corrected and signed by me.


(Arbab Muhammad Kashif)
Additional Sessions Judge-V
Bannu

1- Registration Fee	6137
2- Date of Presentation of Application	26/6/19
3- Date of Receipt of the file	27/6/19
4- Date of preparation of copy	27/6/19
5- Date of delivery of copy	27/6/19
6- Date of signing of copy	27/6/19
7- Ordinary Fee	1876/19
8- Urgent Fee	
9- Total Fee	
10- Signature of Clerk	

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR

Appeal No. 1425 / 2019.



Musharaf Khan S/O Mir Wail Khan R/O Qamar Kala, Tehsil & District Bannu, ex. Constable (114), District Police, Bannu.

Appellant.

VERSUS

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1510

Date: 25/10/2019

- 1) District Police Officer, DPO Bannu.
- 2) Superintendent of police, Investigation, Police Headquarters, Bannu.
- 3) Deputy Superintendent of police, Headquarters, Bannu.
- 4) Deputy Inspector General of Police Bannu, Region Bannu.
- 5) Regional Police Officer, Bannu Region, Bannu.

Respondents.

APPEAL U/S 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED:05/07/2017 of respondent
No.02 and 06/07/2017, of respondent No.01, WHEREBY
THE APPELLANT WAS TERMINATED FROM HIS SERVICE.

PRAYER

On acceptance of the appeal the both the order dated: 05/07/2017 & 06/07/2017, may graciously be set aside, and the appellant may graciously be reinstated in service with all back benefits etc, and any other orders deem proper may also be passed in the matter.

Filed to-day
25/10/19

Respectfully Sheweth:-

1. That the appellant was appointed as Constable (BPS-05), in the police department vide office order dated:25-05-2016, and during his entire service he has got no adverse remarks or any other charge and as such having an excellent record and spot less service.

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

1425/2019

20.01.2021

Musharraf Khan VS Govt



Counsel for the appellant and Mr. Asif Masood, DDA

the respondents present.

2. Learned counsel for the appellant argued the matter at some length and then came up with the suggestion that as the departmental appeal of appellant dated 03.07.2019 was not decided by the respondent No. 4 till now, instant matter may be remitted to the said respondent for deciding the departmental appeal(s) in accordance with law.
3. It is observed that the appellant preferred departmental appeal(s) before the competent authority on 03.07.2019 and after observing the statutory period for the purpose, instant appeal was preferred on 25.10.2019. It appears to be within time. The departmental appellate authority was supposed to decide the appeal, however, it was not done for which the respondent No. 4 may have valid reasons. The appellant had been, in the said manner, deprived of one tier for redressal of his grievance. The contention of learned counsel appears to be reasonable in the circumstances of the case. The respondent No. 4/Competent Authority is, therefore, required to decide the departmental appeal in accordance with law/rules, preferably within a period of two months. Needless to note that the appellant shall be entitled to seek remedy after the decision of departmental appeal, if need be, in accordance with law.
4. The appeal in hand is disposed of in view of the above.
5. Office shall send certified copies of instant order to the respondents as early as possible but not later than one week, where-after the appeal in hand shall be consigned to the record.

SD/ (Mian Muhammad)
Member(E)

SD/ Chairman

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ANNOUNCED Date of Presentation of Application 26/01/2021
20.01.2021 Number of Words 800
Copying Fee 10.00
Urgent 4.00
Total 14.00
Name of Copyist
Date of Completion of Copy 26/01/2021
Date of Delivery of Copy 26/01/2021

37

F. A. Khan

ORDER

By this order will dispose off departmental appeal, preferred by Ex-Constable Musharaf Khan No.114, wherein, he has requested for setting aside the punishments of dismissal from service, vide SP Investigation OB No. 125 dated 05.07.2017 and DPO Office OB No. 608 dated 6.7.2017, in the light of decision of KP Service tribunal dated 20.01.2021 as well as Additional Session Judge-V Bannu judgments dated 19-06-2019.

Service record, inquiry file of the appellant and comments received from DPO Bannu were perused which depict that the appellant has served in Police force for about 09 years and during this period, he has not been awarded any major or minor punishments. Inquiry file also reveals that the appellant was charge sheeted by SP/Inv: Bannu on the allegations that he was handed over case property of case FIR No.566 dated 04.11.2016 u/s 337(H) PS Township for depositing it in FSL but he kept the same in cold storage without bringing into the notice of competent authority and after 05 months, replaced the said property (pistol) and deposited another pistol covered in parcel at FSL Peshawar. After conducting inquiry into the allegations by Mr. Aqiq Hussain, the then DSP HQr: Circle Bannu, competent authority (the then SP Investigation Bannu) imposed upon him major punishment of dismissal from service vide OB No.125 dated 05.07.2017. At the same time, DPO Bannu also proceeded the appellant departmentally owing to his extra departmental activities as well as taking loan from the complainants (co-villagers) The said allegations were also inquired into by DSP HQr: Circle Bannu, who held him guilty of the charges and recommended the appellant for major punishment and thereafter, dismissal by SP Bannu vide OB No. 608 dated 06.07.2017.

After going through the above, the undersigned has reached to the conclusion that due regard has not been paid to the length of service of the appellant as stipulated in PR 16-02. The appellant previous 09 years service record is also spotless and likewise the dismissal order of DPO Bannu, after dismissal of the appellant by SP Investigation Bannu, is also in contrary to the norms of law because dismissed officials person could not be re-dismissed.

Keeping in view the long service of the appellant, the undersigned is of the view to interfere in the impugned orders quoted above. Therefore, I, Sajid Ali Khan, Regional Police Officer, Bannu Region Bannu, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules, 1975 (with amendments 2014) hereby reinstate the appellant into service by modifying the impugned punishments of dismissal, vide OB No.125 dated 05.07.2017 and OB No.608 dated 06.07.2017 into major punishment of reduction to time scale constable for two years and the out of service period is treated as without pay.

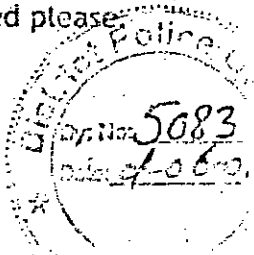
ORDER ANNOUNCED

(SAJID ALI KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

No. 1857 /EC, dated Bannu the 24/05/2021
Copy to District Police Officer, Bannu along with Service Record including complete inquiry file is sent herewith for record in office which may be acknowledged please.

SRE/OHC
200 n/a

(SAJID ALI KHAN) PSP
Regional Police Officer





38

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR

G
Amir

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by FC Musharraf Khan No. 114. The petitioner was dismissed from service by SP Investigation vide OB No. 125, dated 05.07.2017, on the allegations that he was handed over case property of FIR No. 566, dated 04.11.2016 w/s 337(H) PS Township for depositing it in PSL but kept the same in cold storage without bringing into the notice of the competent authority. He replaced the said property (pistol) & deposited another pistol covered in Parcel in PSL, Peshawar.

The Appellate Authority i.e. RPO Bannu reinstated him into service & awarded him reduction in time scale to FC for two years & the out of service period was treated as leave without pay vide Order Endst: No. 1857/EC, dated 24.05.2021.

Meeting of Appellate Board was held on 12.12.2023 wherein petitioner was heard in person. Petitioner contended that he was acquitted from the charges.

Perusal of enquiry papers revealed that the allegations leveled against the petitioner has been proved. The petitioner failed to submit any cogent reason in his self-defense. The Board sees no ground and reasons for acceptance of his petition, therefore, his petition is hereby rejected.

Sd/-

AWAL KHAN, PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. SI 2945-50/23, dated Peshawar, the 22-12-2023.




Copy of the above is forwarded to the:

- ✓ Regional Police Officer, Bannu. One Service Roll and one Fauji Missal of the above named FC received vide your office Memo: No. 4474/EC, dated 15.11.2022 is returned herewith for your office record.
2. District Police Officer, Bannu.
3. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.

Amir
(MUHAMMAD AZHAR) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

امیر
20/12/2023

39

قیمت 50 روپے	28916	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: <u>Naila Jan</u>	بار کونسل ایسوسی ایشن نمبر: <u>B-13-4172</u>	  
رابطہ نمبر: <u>0312 9215471</u>		

بعدالت جناب: سر مس گلشن احمد KP

مخاطب: <u>ایسٹریٹ</u>	دعویٰ: <u>سر مس اسٹریٹ</u>
مشرفی خان	علت نمبر: _____
بنام	مورخہ: _____
لویس	جرم: _____
	تھانہ: _____

بابت تحریر آنکہ

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

آن مقام لنڈا اور کیلے مسٹر خان کو وکیل مقرر

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری ٹیکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگہبانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی ہوگا اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائے التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



المرقوم: 25/01/2024

الع بد واہ شد الع بد

مقام لنڈا اور کیلے کے لیے منظور ہے۔

Attested

Accepted by

Naila Jan