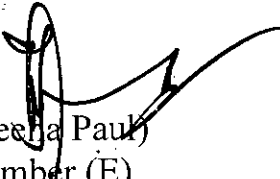



That the appellant want to withdraw this appeal to approach proper forum for redressal of his grievances. uzma

16.04.2024 1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Qaisro Khan, Inspector (Legal) for the respondents present.

2. Learned counsel for the appellant requested for withdrawal of the instant service appeal to approach proper forum. As a token of admission of his submission, he signed the margin of order sheet. In view of the above, the appeal is dismissed as withdrawn. Consign.

3. *Pronounced in open Court in Peshawar given under our hands and seal of the Tribunal on this 16th day of April, 2024.*


(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

19.12.2023 1. Learned counsel for the appellant present. Mr. Asif Ali Shah learned Deputy District Attorney alongwith Mohammad Raziq, HC for the respondents present.

2. Learned counsel for the appellant requested for adjourned on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 16.04.2024 before D.B. P.P given to the parties.

SCANNED
KFST
Peshawar

*KaleemUllah


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

19.12.2023
1. Appellant along with his counsel present. Mr. Asif Ali Shah learned Deputy District Attorney alongwith Mohammad Raziq, HC for the respondents present.
2. Appellant requested for adjourned on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 16.04.2024 before D.B. P.P given to the parties.

1. Appellant along with his counsel present. Mr. Asif Ali Shah learned Deputy District Attorney alongwith Mohammad Raziq, HC for the respondents present.


2. Appellant requested for adjourned on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 16.04.2024 before D.B. P.P given to the parties.

(Rashida Bano)
Member (J)

29th May, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.
2. Learned counsel for the appellant present and requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 23.08.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

*Kaleem Ullah

23rd August, 2023

1. Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.
2. Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Adjourned. To come up for arguments on 19.12.2023 before the D.B. Parcha Peshi given to the parties


(Salah-ud-Din)
Member (Judicial)



(Kalim Arshad Khan)
Chairman


Naeem Amin

08th Dec. 2022 Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

SCANNED
KPST
Peshawar

Learned counsel for the appellant seeks adjournment on the ground that she has not prepared the case. Last opportunity granted to the learned counsel for the appellant to argue the case on the next date positively. To come up for arguments on 13.03.2023 before the D.B. P.P is given to the parties.



(Fareeha Paul)
Member(Executive)



(Kalim Arshad Khan)
Chairman

13th March, 2023 Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

SCANNED
KPST
Peshawar

Learned counsel for the appellant requested for further time for preparation of arguments. Adjourned. To come up for arguments on 29.05.2023 before the D.B. Parcha Peshi given to the parties.


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

14th September, 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Asstt. AG alongwith Muhammad Raziq, HC for the respondents present.

Learned AAG requested for further time to submit reply/comments. Last chance is given. To come up for written reply/comments on 26.10.2022 before S.B.



(Kalim Arshad Khan)
Chairman

26th Oct., 2022

Lawyers are on strike today. Mr. Naseerud Din Shah, Assistant Advocate General alongwith Muhammad Raziq, H.C for the respondents present.

Respondents have submitted reply/comments, which are placed on file. To come up for rejoinder/arguments on 08.12.2022 before the D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.



(Fareeha Paul)
Member(E)

~~03rd Dec 2023~~

~~Appellant in person present. Mr. Muhammad Riaz /
(Khan Faridkhan) Asst. PG for respondents present.~~


~~Learned counsel for the appellant seeks adjournment
on the ground that she has not prepared the case. Last
opportunity granted to the learned counsel for the
appellant to argue the case on the merits positively. She
could not for arguments on 13.12.2023 before Mr. Justice
Munir (alone) p. 13.~~

~~(Faridkhan)
Munir (alone) p. 13~~

~~(Khan Faridkhan)
Munir (alone)~~

20.05.2022

Learned counsel for the appellant present and requested for adjournment in order to further prepare the brief. Adjourned. To come up for preliminary hearing on 20.06.2022 before S.B.


(Mian Muhammad)
Member (E)

20.06.2022


Learned counsel for the appellant present.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of reply/comments. To come up for written reply/comments on 01.08.2022 before S.B.

Rs 400/
Appellant Deposited
Security & Process Fee

A. Jaffar
12/6/22


SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)

01.08.2022

Clerk of counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present.

Learned Additional Advocate General sought time for submission of written reply/comments. To come up for written reply/comments on 14.09.2022 before S.B.

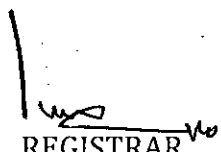



(Fareeha Paul)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 192/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/02/2022	<p>The appeal of Mr. Wisal Muhammad resubmitted today by Uzma Syed Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>04-04-2022</u></p> <p> CHAIRMAN</p>
	04.04.2022	<p>Counsel for the appellant present.</p> <p>Learned counsel for the appellant seeks adjournment. Adjourned. To come up for preliminary hearing on 20.05.2022 before S.B.</p> <p> (MIAN MUHAMMAD) MEMBER(E)</p>

The appeal of Mr. Wisal Muhammad Ex-Constable P.S Pishtakhara received today i.e. on 20.12.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- ✓ Check list is not attached with the appeal.
- 2- ✓ Memorandum of appeal may be got signed by the appellant.
- 3- ✓ Annexures of the appeal may be attested.
- 4- ✓ Appeal has not been flagged/marked with annexures marks.
- 5- ✓ Copy of impugned struck off from service order mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 6- ✓ Copy of acquittal order of the appellant mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 7- ✓ In the memo of appeal many places have been left blank which may be filled up.
- 8- ✓ Annexures are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 9- ✓ Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2518 /S.T,


Dt. 21/12 /2021

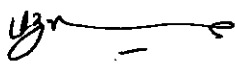

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Uzma Syed Adv. Pesh.


need some time for completion of appeal.

15 days time further extended.


15/2/2022.


15-2-2022

Sir, all objections (1 to 9) were removed & resubmitted
the case/appeal


syed Noman Ali Shah
15-2-2022

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

Case Title: Misad Muhammad vs Police Deptt

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Syed Noman Adil Shah</u>		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	✓	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Syed Noman Adil Shah

Signature:

[Signature]

Dated:

20-12-2021

BEFORE THE KPK SERICE TRIBUNAL PESHAWAR

Appeal no. 192/2022

Wisal Muhammad Ex-Constable, (ESM/No. 57) Police Station Pishtakhara
Peshawar.

(appellant)

**SCANNED
KPST
Peshawar**

1. Capital City Police Officer Peshawar.
2. SP Headquarter Peshawar.

Index

S.No.	Description of documents	Annexure	Pages
1.	Memo of service appeal		1-5
2.	_____		5
3.	copy of impugned order dated 23-10-2014	"A"	6
4.	Copy of acquittal order	"B"	7-11
5.	Copy of department appeal	"C"	12-15
	Wakalat Nama		16

Dated 20/12/2021

Appellant
Through *[Signature]*
Syed Noman Ali Bukhari
Advocate
High Court, Peshawar

②

BEFORE THE KPK SERICE TRIBUNAL PESHAWAR

Appeal no. 192/2022

Wisal Muhammad Ex-Constable, (ESM/No. 57) Police Station Pishtakhara
Peshawar.

(appellant)

Case No. *8055*

Filed No. *8055*

Dated *20-12-2021*

3. Capital City Police Officer Peshawar.
4. SP Headquarter Peshawar.

**APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL ACT 1974, AGAINST THE OFFICE
ORDER DATED 23/10/2014 OF RESPONDENT NO. 2, WHEREBY
APPELLANT WAS STRUCK OFF FROM SERVICE AGAINST
WHICH APPELLANT WAS FILED DEPARTMENTAL APPEAL
ON 20/08/2021 WHICH WAS NOT DECIDED.**

PRAYER:

That On the acceptance of this appeal the impugned order dated 23-10-2014 may very kindly be set aside and the appellant be reinstated in to service with all back benefits. Any other remedy which this august tribunal deems fit that may also be in favor of the appellant.

Facts giving rise to the present Service Appeal are as under:-

- 1) That the appellant was appointed as Constable in Police and the appellant was performed his duties with entire satisfaction of his superiors.
- 2) That the appellant was falsely involved in a criminal case F.I.R No. 748 u/s 302/324//449/34/ dated 07/10/2013 was registered against the appellant and appellant was arrested and put behind the bar.
- 3) That, thereafter, the appellant was Departmentally proceeded, without serving any charge sheet, statement of allegation, regular inquiry and even without serving show cause notice, on the basis of absentia the impugned order dated 23-10-2014 was passed against the appellant whereby the appellant was

Filed to-day

Registrar

20/12/2021

**Re-submitted to -day
and filed.**

Registrar

16/12/2022

on the basis of absentia the impugned order dated 23-10-2014 was passed against the appellant whereby the appellant was discharge from service without following proper procedure. (Copy of impugned order is attached as Annexure-A)

- 4) That thereafter appellant was acquitted in FIR by the appellate court Peshawar High Court Peshawar vide Judgment dated 19/12/2018 received by the appellant on 09/11/2019 after acquittal appellant filed Departmental appeal, which was not decided. After stipulated period appellant filed Service Appeal on the following grounds amongst others.

GROUNDS

- A) That the impugned orders dated 23-10-2014. are against the law, facts, norms of justice and void-ab-initio, material on record therefore not tenable and liable to be set aside.
- B) That the appellant was discharge from service which is not provided in the list of penalty, so the impugned order is defect in the eye of law and void. It is further held in Service Tribunal Judgment Hazrat Ali Vs Police Dept and Faiz Muhammad vs Judiciary deptt. It is pertinent to mentioned here that, the limitation does not run against the void order. So, the limitation may be conducted and the appeal of the appellant may be heard on merit.
- C) That according to Supreme Court Judgment cited as 2010 PLD sc 695, the appeal after acquittal in criminal case is good step and shall be treated in time.
- D) That there is no order in black and white form to dispense with the regular inquiry which is violation of law and rules and without charge sheet, statement of allegation and proper inquiry was discharge from the service vide order dated 23-10-

23-10-2014 without given personal hearing which is necessary and mandatory in law and rules before imposing penalty. So the whole procedure conducted has nullity in the eye of law. So the impugned order is liable to be set aside.

- E) That according to the Judgments of the superior court if the case was not yet finalized against the appellant, the appellant cannot be penalized for the case and consider him innocent till the finalization of the case.
- F) That the appellant has been condemned unheard in violation of Article-A of the Constitution of Islamic Republic of Pakistan and in violation of maxim "Audi Alterum Patrum" and has not been treated according to law and rules. That according to reported Judgment cited as **2019 CLC 1950** stated that Audi Alterum Partum" shall be read as part and parcel of the every statute. The same principle held in the Superior Court Judgments cited **2016 SCMR 943, 910 SCMR 1554 AND 2020 PLC (cs) 67,** wherein clearly stated that the penalty awarded in violation of maxim "Audi Alterum Partum" is not sustainable in the eye of law.
- G) That according to Federal Shariyat court Judgment cited as **PLD 1989 FSC 39** the show cause notice is against the injunction of Islam. Hence the impugned order is liable to be set-aside.
- H) That the show cause notice is the demand of natural justice before taking adverse action, also necessary for fair trial and also necessary in light of injunction of Quran and Sunnah but show cause notice was not served to the appellant which is malafide on the part of the deptt. So, fair trial denied to the appellant which is also violation of Article 10-A of the constitution. Further it is added that according to report Judgment cited as **1997 PLD page 617** stated that every action

against natural justice treated to be void and unlawfully order. Hence impugned order is liable to be set-aside. The natural justice should be considered as part and parcel according to superior court Judgment cited as 2017 PLD 173 and 1990 PLC cs 727.

- I) That impugned order was based on willful absence, so, for the willful absence procedure is provided in **Rule 9 of the E&D rule 2011**, which is so much crystal clear. The authority before imposing major penalty also violates the procedure of Rule-9. So the impugned order is defected in the eye of law.
- J) That the penalty order was not under issued under proper law so the penalty order is illegal, void-a-initio, defective and nullity in the eyes of law.
- K) That nothing has been proved against the appellant in Departmental proceeding the proceedings was taken on the basis absentia but the absentia of the appellant was beyond the control of appellant due to criminal case and appellant was behind the bar. That all the actions taken against the appellant is before the finalization of the criminal case which is the violation of CSR 194 and without any proof, hence the appellant is eligible for the reinstatement.
- L) That no proper procedure has been followed before passing the impugned order and even there is no show cause notice and statement of allegation was served upon the appellant.
- M) That under CSR 194/194-A the appellant was suspended till the order of the competent court but the appellant was removed from the service which is against the law and rules.
- N) That the appellant has been condemn unheard and has not been treated according to law and rules.

8

- O) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on the score alone.
- P) That neither the appellant was associated with the inquiry proceeding nor has any statement of witnesses been recorded in the presence of appellant even a chance of cross examination was also not provided to the appellant which is violation of norms of justice.
- Q) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted and the appellant may be reinstated into service with all back benefits.

Appellant
Wisal Muhammad
Wisal Muhammad
Through
Noman Ali Bukhari
Syed Noman Ali Bukhari
& *Uzma Syed*
Uzma Syed Advocates
High Court Peshawar

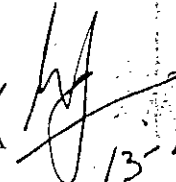
BRIEF

(b) (A)

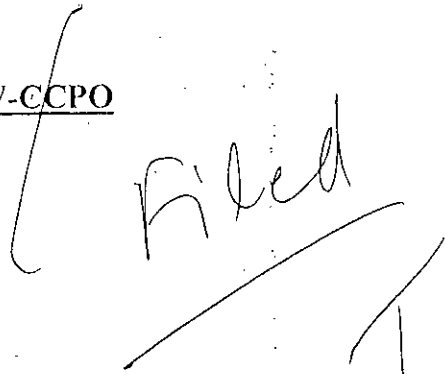
- ❖ Name: Wisal Muhammad (ESM/No. 57)
- ❖ R/o Badaber, Peshawar.
- ❖ Struck off by SP-HQrs: Peshawar vide OB No.3231 dated 23.10.2014, on the allegations that he while posted at Police Station Pishtakhara Peshawar, absented himself from his lawful duty w.e.f 04.10.2013 till his struck off i.e 23.10.2014 without taking permission or leave. Total Absence 01 Year and 19 Days

Data/posting History

- ❖ Education: Nil
- ❖ Date of Enlistment 20.10.2009
- ❖ Struck Off: 23.10.2014

PA  13-2-19

W-CCPO

 Filed

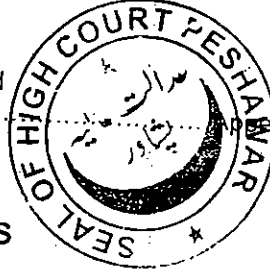
13-2-19

ATTESTED

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Cr. Appeal No 660 P /2016

Wisal Muhammad s/o wali Muhammad
R/o Sori Zai Teh: & Distt: Peshawar..... Plaintiff



V E R S U S

- 1) The State
- 2) Mst: Naheed w/o Sher Muhammad alias Babo
R/o Village Miskin Abad Takht Bhai..... Respondents.

Case FIR No 739 Dated 7/10/2013
U/S 302/324/ 449/34-PPC
PS Lund Khwar (Takht Bhai)

Appeal against the judgment and order dated
29/10/2016 passed by ASJ-II, Takht Bhai
wherein His impugned order and judgment the
appellant is convicted

ATTESTED

EXAMINER
Peshawar High Court

i) U/S 302(B) PPC and sentenced to DEATH
penalty on four counts. Appellant shall be hanged
by his neck till he is died.

Appellant shall be also liable to pay compensation of
RS 100000/- for each deceased to respective legal
heirs of deceased. The compensation amount shall
be recoverable as arrears of land revenue and in
case of non-payment or non-recovery, the convict
shall suffer simple imprisonment for 6 Months.

ii) The appellant convicted and sentenced u/s 449
PPC to suffer for 7 Years RI and to pay fine Rs
10000/- in default of payment of fine to suffer
simple imprisonment for Three Months

FILED TODAY

Deputy Registrar

01 NOV 2016

CrA-660-16-CompFile

ATTESTED

(Opening sheet Criminal Appeal (Section 419 CrPC)
BEFORE THE PESHAWAR HIGH COURT PESHAWAR.
JUDICIAL DEPARTMENT

Appellate Side _____ Criminal Appeal No 660-P 2016

District	Date of Filing Petition	Whether filed by appellant in Person or by pleader or agent	Stamp on petition of appeal
Peshawar	1/11/2016	(HUSSAIN ALI) Advocate Supreme Court Of Pakistan	Exempt

Wisal Muhammad s/o wali Muhammad
R/o Sori Zai Teh: & Distt: Peshawar.....Appellant—

V E R S U S

- 1) The State
- 2) Mst: Naheed w/o Sher Muhammad alias Babo
R/o Village Miskin Abad Takht Bhai.....Respondents.

Appeal from the order ASJ-II, Takht Bhai

Date 29/10/2016

SENTENCE wherein His impugned order and judgment the appellant is convicted

i) U/S 302(B) PPC and sentenced to DEATH* penalty on four counts. Appellant shall be hanged by his neck till he is died .

Appellant shall be also liable to pay compensation of RS 100000/- for each deceased to respective legal heirs of deceased. The compensation amount shall be recoverable as arrears of land revenue and in case of non-payment or non-recovery , the convict shall suffer simple imprisonment for 6 Months.

ii) The appellant convicted and sentenced u/s 449 PPC to suffer for 7 Years RI and to pay fine Rs 10000/- in default of payment of fine to suffer simple imprisonment for Three Months

iii) The appellant sentence u/s 324 PPC to suffer 7 years RI and to pay RS 10000/ fine . in case of non-

CrA-660-16-CompFile

ATTESTED
EXAMINER
Peshawar High Court

FILED TODAY

Deputy Registrar

01 NOV 2016

ATTESTED

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET

(a)

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
19.12.2018	<p><u>Cr. Appeal No. 660-P of 2016 with murder reference No.20 of 2016.</u></p> <p>Present: Mr. Javed Ali Ghani, advocate, for the appellant.</p> <p>Mr. Rab Nawaz Khan, AAG, for the State.</p> <p>Mr. Abu Bakkar Saddique, junior of counsel for the complainant.</p> <p style="text-align: center;">*****</p> <p><u>QAISER RASHID KHAN, J:-</u> The instant appeal arises out of the judgment dated 29.10.2016 of the learned Additional Sessions Judge-II Takht Bhai whereby the appellant was convicted in case FIR No. 739 dated 07.10.2013, under sections 302/324/449/34 PPC registered at Police Station Lund Khwar, District Mardan and sentenced and as under;</p> <ol style="list-style-type: none">i. Under section 449 PPC to undergo 7 years R.I and to pay a fine of Rs. 10,000/- or in default thereof to suffer simple imprisonment for three months.ii. Under section 302(b) PPC to death on four counts along with compensation of Rs. 1,00,000/- for each deceased to be paid to the respective legal heirs. The compensation amount shall be recoverable as arrears of land revenue and in case of non-payment or non-recovery, the convict shall suffer imprisonment for 6 months.iii. Under section 324 PPC to 7 years RI and to pay a fine of Rs.10000/- or in default thereof to undergo SI for six months.iv. Under section 337-F(ii) PPC to undergo one year as tazir and to pay daman of Rs. 30000/- and in case of non-payment of daman, be kept in jail as convict of simple imprisonment till recovery of the said amount of daman. Benefit of section 382-B Cr.PC was extended

"younas"

(DB) Hon'ble Mr. Justice Qaiser Rashid Khan
Hon'ble Mr. Justice Qasim Ali Khan.

ATTESTED

EXAMINER
Peshawar High Court

ATTESTED

and it was directed that all the sentences shall concurrently.

2. During the pendency of the instant appeal, the parties entered into a compromise, therefore, on 10.05.2018 the matter was sent to the learned trial court for ascertaining the genuineness of the compromise and for recording the statements of the legal heirs of all the deceased and injured. On 29.11.2018, the matter was again remitted to the learned trial court as there was no opinion as to whether the compromise so effected between the parties was genuine or otherwise and that is how the learned trial judge has submitted a fresh report wherein he has verified the genuineness of the compromise.

3. In the instant case, Sher Muhammad, his two daughters namely Mehnaz and Mst. Hina and second wife Mst. Shahida lost their lives while complainant Mst. Naheed (first wife of Sher Muhammad) remained unhurt. In the incident minor Khadija also received firearm injuries. The learned trial court has recorded the statements of all the major legal heirs of the four deceased wherein, they have stated to have effected a valid and genuine compromise with the accused-appellant and waived off their right of qisas and diyat or any compensation while in respect of minor legal heirs of the deceased, namely Sudais, Owais, Abu Bakar, Rehan (sons), Aiman, Khadija, Rukhsar (daughters) of deceased Sher Muhammad, landed property measuring 2 kanals on behalf of the convict-appellant has been transferred in their names vide mutation No. 18546 attested on 19.10.2018.

ATTESTED

EXAMINER
Peshawar High Court

"younas"

(DB) Hon'ble Mr. Justice Qaiser Rashid Khan and
Hon'ble Mr. Justice Qalandar Ali Khan.

ATTESTED

4. Since the learned trial court has verified the genuineness of the compromise arrived at between the parties and the minor LRs have been properly compensated, therefore, this appeal is allowed on the basis of such compromise and accordingly, the conviction and sentence recorded by the learned trial court vide impugned judgment dated 29.10.2016 are set aside and the convict-appellant is acquitted of the charges. He be released forthwith, if not required in any other case.

(W)

5. The Murder Reference is answered in the negative.

Announced.
19.12.2018.

[Signature]
SENESNE JUDGE

[Signature]
CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 175 c
The Qanun-e-Shahadat Ordinance, 1947
09/NOV 2019

No. 12976
Date of Presentation of Application 09/11/19
No of Pages 2
Copying fee 20/-
Total 20/-
Date of Preparation of Copy 09/11/19
Date of Delivery of copy 09/11/19
Received By *[Signature]*

"younas"

(DB) Hon'ble Mr. Justice Qaiser Rashid Khan and
Hon'ble Mr. Justice Qalandar Ali Khan.

ATTESTED

To

Central City Police Officer,
Peshawar.

12

2

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER
DATED 23.10.2014 WHEREBY APPELLANT WAS
DISCHARGED FROM SERVICE.

Facts giving rise to the present service appeal are as under:

1. That the appellant was appointed as Constable in Police and the appellant was performed his duties with entire satisfaction of his superiors.
2. That the appellant was falsely involved in a criminal cases F.I.R No. 739 u/s 302/324/449/34 PPC dated 07.10.2013 was registered against the appellant and appellant was arrested and put behind the bar.
3. That, thereafter, the appellant was departmentally proceeded, without serving any charge sheet, statement of allegation, regular inquiry and even without serving show cause notice, on the basis of absentia the impugned order dated 23.10.2014 was passed against the appellant whereby the appellant was discharge from service without following proper procedure. (Copy of impugned order is attached as Annexure-A).
4. That thereafter appellant was acquitted in FIR by the appellate court Peshawar High Court Peshawar vide judgment dated _____ after acquittal appellant filed this departmental appeal on the following grounds amongst others.

GROUNDS:

- A) That the impugned orders dated 23.10.2014 are against the law, facts, norms of justice and void-ab-initio, material on record, therefore not tenable and liable to be set aside.
- B) That the appellant was discharge from service which was not provided in the list of penalty, so, the impugned order is defect in the eye of law and void. It is further held in Service tribunal judgment "Hazarat Ali vs Police deptt and Faiz Muhammad vs Judiciary deptt. It is pertinent to mentioned here that, the limitation

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does not run against the void order. So, the limitation may be condoned and the appeal of the appellant may be heard on merit.

- (13)
- C) That according to supreme court judgment cited as 2010 PLD sc 695, the appeal after acquittal in criminal case is good step and shall be treated in time.
- D) That there is no order in black and white form to dispense with the regular inquiry which is violation of law and rules and without charge sheet, statement of allegation and proper inquiry the appellant was discharge from the service vide order dated 23.10.2014 without given personal hearing which is necessary and mandatory in law and rules before imposing penalty. So the whole procedure conducted has nullity in the eye of law. So the impugned order is liable to be set aside.
- E) That According to the judgments of the superior court if the case was not yet finalized against the appellant, the appellant cannot be penalized for that case and consider him innocent till the finalization of the case.
- F) That the appellant has been condemned unheard in violation of Article 10-A of the Constitution of Islamic republic of Pakistan and in violation of maxim "Audi Alterum Partum" and has not been treated according to law and rules. That according to reported judgment cited as 2019 CLC 1750 stated that Audi Alterum Partum" shall be read as part and parcel of the every statute. The same principle held in the Superior Court judgments cited as 2016 SCMR 943, 2010 SCMR 1554 and 2020 PLC(cs) 67, where in clearly stated that the penalty awarded in violation of maxim "Audi Alterum Partum" is not sustainable in the eye of law.
- G) That according to Federal Shariyat court Judgment cited as PLD 1989 FSC 37 the show cause notice is must before taking any adverse action, non-issuance of show cause notice is against the injunction of Islam. Hence the impugned order is liable to be set-aside.
- H) That the show cause is the demand of natural justice before taking adverse action and also necessary for fair trial and also necessary in light of injunction of Quran and Sunnah but show cause was not served to the appellant (show cause given to the appellant but with the impugned order) which is malafide on the part of the deptt. So, fair trail denied to the appellant which is also violation of Article 10-A of the constitution. Further it is added that according to reported judgment cited as 1997 PLD page 617 stated that every action against natural justice treated to be void and unlawfully order. Hence impugned order is liable to be set-aside. The natural justice should be considered as part and parcel according to

superior court judgment cited as 2017 PLD 173 and 1990 PLC cs 727

- (11)
- I) That impugned order was based on willful absence, so, for the willful absence procedure is provided in Rule 9 of the E&D rule 2011, which is so much crystal clear. The authority before imposing major penalty also violates the procedure of Rule-9. So the impugned order is defected in eye of law.
 - J) That the penalty order was not under issued under proper law so the penalty order is illegal, void-ab-initio, defective and nullity in the eyes of law.
 - K) That nothing has been proved against the appellant in departmental proceeding the proceeding was taken on the basis absentia but the absentia of the appellant was beyond the control of appellant due to criminal case and appellant was behind the bar. That all the actions taken against the appellant is before the finalization of the criminal case which is the violation of CSR 194 and without any proof, hence the appellant is eligible for the reinstatement
 - L) That no proper procedure has been followed before passing the impugned order and even, there is no show cause notice and statement of allegation was served upon the appellant, thus the proceedings so conducted are defective in the eye of law
 - M) That under CSR-194/194-A the appellant was suspended till the order of the Competent court but the appellant was removed from the service which is against the law and rules.
 - N) That the appellant has been condemned unheard and has not been treated according to law and rules.
 - O) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
 - P) That neither the appellant was associated with the enquiry proceedings nor has any statement of witnesses been recorded in the presence of appellant. Even a chance of cross examination was also not provided to the appellant which is violation of norms of justice.
 - Q) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.
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it is, therefore most humbly prayed that the appeal of the appellant may be accepted and the appellant may be re-instated into service with all back benefits.

Wisal Ex-Constable

Yours Obediently
Wisal Ex- Constable

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لیدر الٹ

KP Service Tribunal, Peshawar

تیم منجانب
بنام

موزخہ
مقدمہ
دعویٰ
جزم

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ
آن مقام Peshawar کیلئے سید نصرت احمد علی سید اولیاء

مقرر کر کے فراہم کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار ہوگا۔ نیز
ڈیکل صاحبہ کو رہنمائی نامہ کرنے و تقررات تالیف فیصلہ برحلاف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور اصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائع پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یا کٹہر ذمہ یا ایس کی برادگی اور منسوخی
نیز دائر کرنے اپیل گمرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بس صورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا جائے بجائے مقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساخت
پرواخذ منظور قبضہ ہوگا۔ دوران مقدمہ میں جو خرچہ و ہزینہ التوا سے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیش مقام دورہ پیروی یا حد سے باہر ہو تو وکیل صاحب یا ہند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھو یا کہ مندرجہ۔

wisal Muhammad
Wakil

Accepted
7/5/21

المرتومہ 2021 19 ماہ 20
واہ العباد

مقام Peshawar کے لئے منظور ہے۔

**SCANNED
KPST
PESHAWAR**

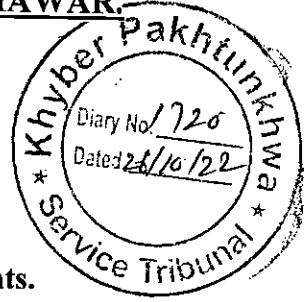
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.192 /2022.

Ex- Service Man Wisal Muhammad No.7360 of CCP Peshawar..... **Appellant.**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**



REPLY BY RESPONDENTS NO. 1, &2.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.
8. That the appellant is not a permanent employee hence this Hon'ble Tribunal has no jurisdiction under section 04 of Service Tribunal Act 1974 to entertain the appeal.

REPLY ON FACTS:-

- 1) Incorrect. The appellant was appointed in the respondent department as Ex-Service Man on contract basis, later on he was struck off from force on the charges of wilful absence. Worth mentioning here that this Hon'ble Tribunal has no jurisdiction to entertain appeal of the appellant, as he was not a government/ civil servant. Further, appeal of the appellant is also badly time barred.
- 2) Incorrect. The appellant while posted at PS Pishtakhara absented himself from his lawful duty w.e. from 04.10.2013 to 23.10.2014 without taking leave/permission. In this regard he was issued show cause notice, but the appellant did not bothered to appear before the competent authority, hence he was struck off from force and contract was terminated. Further, the appellant deliberately concealed this information about criminal case from his department and high ups.
- 3) Incorrect. The appellant being not a permanent employee was not required proper departmental enquiry as per law/rules. His claim for conducting enquiry is not lawful/legal. The appellant being a contract employee was legally struck off from force, as he is not entitled to deal as a regular employee or civil servant.
- 4) Incorrect. In fact the appellant being a contract employee has no right to file departmental appeal for his grievance against any punishment order passed by the competent authority on account of his misconduct.

REPLY ON GROUNDS:-

- A) Incorrect. The punishment order passed by the competent authority is legal/lawful and liable to be upheld.
- B) Incorrect. The appellant being a contract employee was legally struck off from force, as he is not entitled to deal as a regular employee or civil servant.
- C) Incorrect. The appellant was deliberately absented himself from his lawful duty without taking any leave or permission, hence he was struck off from force and contract was terminated.
- D) Incorrect. The appellant being not a permanent employee was not required to issue him charge sheet with statement of allegation and proper departmental enquiry as per law/rules. His claim for conducting enquiry is not lawful/legal being a contract employee.
- E) Incorrect. The appellant being a contract employee was legally struck off from force, as he is not entitled to deal as a regular employee or civil servant.
- F) Incorrect. The appellant was treated as per law/rules and no violation of Constitution of Pakistan 1973 has done by the replying respondents.
- G) Incorrect. The appellant was issued show cause notice and the punishment order passed by the competent authority as per law/rules and terms of contract.
- H) Incorrect. Para explained in the above para. Furthermore the appellant was rightly struck off from force.
- I) Incorrect. The appellant was deliberately absented from his lawful duty without taking any leave or permission, hence he was struck off from force and contract was terminated.
- J) Incorrect. The punishment order was just legal and has been passed in accordance with law.
- K) Incorrect. The appellant was absented himself from his lawful duty without taking leave/permission and plea of his criminal case has no legal footage as he has not informed his boss regarding his act.
- L) Para already explained in the preceding para. Furthermore he was issued show cause notice, but did not appear before the competent authority.
- M) Incorrect. The appellant being not a permanent employee was no need to suspend till the order of competent court.
- N) Incorrect. The appellant was treated as per law/rules.
- O) Incorrect. The appellant being a contract employee was legally struck off from force, as he is not entitled to treat as regular employee/ civil servant.
- P) Incorrect. Para already explained in detailed in the above paras. Further, the appellant was not a regular employee, hence there is no need to issue him charge sheet, with

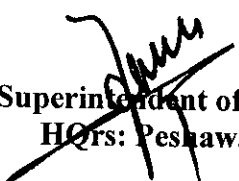
statement of allegation to conduct departmental enquiry against the Ex- Service Man (appellant).

Q) That the respondents may also be permitted to raise additional grounds at the time of arguments.

PRAYERS:-

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits, and legal footing, may kindly be dismissed with costs please.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs: Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.192 /2022.

Ex- Service Man Wisal Muhammad No.7360 of CCP Peshawar..... Appellant.

VERSUS

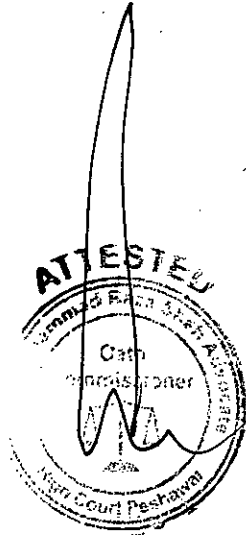
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. Respondents.

AFFIDAVIT

We respondents No. 1 & 2 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal.

Capital City Police Officer,
Peshawar.

Superintendent of Police,
HQs: Peshawar.



26 OCT 2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.192 /2022.

Ex- Service Man Wisal Muhammad No.7360 of CCP Peshawar..... Appellant.

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. Respondents.

AUTHORITY.

I, Capital City Police Officer, Peshawar, hereby authorize Mr.Ahmad Jan SI legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.

Capital City Police Officer,
Peshawar.

